

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 11318 of 2016
Date of decision: 04.07.2016

Rama and Krishna Rural Educational and Research SocietyPetitioner(s)

Versus

All India Council for Technical Education and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Anurag Goyal, Advocate,
for the petitioner.

Mr. S.K. Sharma, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks the quashing of the order dated 30.04.2016 (Annexure P-15) passed by respondent no. 2, vide which, the case of the petitioner-Society for setting up of a new technical institute was rejected on the ground that the occupancy certificate had not been issued by the competent authority. While rejecting the case, the petitioner's right for application for the next academic year as per Clause 9.8 as per the Approval Hand Book 2016-17 was left open.

Counsel for the petitioner has vehemently submitted that the occupation certificate dated 01.07.2016 has been duly issued subsequently by the Director General, Town and Country Planning, Haryana, photocopy of which has been placed on record. It is accordingly submitted that the fire occupation certificate had earlier been granted. After charging ₹6,49,527/- as composition charges, permission for occupation of the building has been

granted. It is, thus, sought to be argued that the petitioner is entitled for consideration for setting up the new technical institute for running of Diploma in Pharmacy for the session 2016-17 with the intake of 60 seats. Counsel for the petitioner has also pointed out that an opportunity was to be given before the Standing Appellate Committee vide communication dated 15.04.2016 (Annexure P-10) and the impugned order was passed violating the principles of natural justice and no opportunity was granted when the order was passed after 15.04.2016.

Counsel for the respondent, on the other hand, has submitted that as per the terms and conditions of the Approval Handbook Process, the necessary permission for occupation certificate had to be in place. The application itself was not maintainable at that stage and in such circumstances, the impugned order passed is justified. It is further submitted that even if the matter is remanded to the Appellate Committee to grant an opportunity of hearing, it would suffice no purpose since admittedly, the occupancy certificate is dated 01.07.2016, much later than the application.

A perusal of the paper book would go on to show that the petitioner had applied before the cut off date in February, 2016 and the matter was examined by the Scrutiny Committee on 07.03.2016 (Annexure P-5). It was noticed against Clause 13 that the occupancy/completion certificate as applicable from the competent authority stating that the building was fully developed and ready had not been submitted. Thus, the deficiency was pointed out by the Scrutiny Committee and the case was not recommended for visit by the Expert Visitation Committee. Thereafter, the matter was put up before the Re-scrutiny Committee on 15.03.2016

(Annexure P-6) and accordingly on 08.04.2016 (Annexure P-7), the deficiencies which were noticed were put up on the web-portal which could be downloaded by the petitioner.

The petitioner was informed that the said communication be treated as a letter of rejection and the reasons for rejection in the E.C. was being sent separately through e-mails. It was thereafter that the matter was put up before the Appellate Committee in which, it was also noticed that the institute had applied for occupancy certificate but had not obtained it so far and the President of the Society had also submitted an affidavit that despite best efforts, it could not be done. The affidavit dated 11.04.2016 is attached as Annexure P-9. Thereafter, the petitioner was communicated through e-mail on 15.04.2016 (Annexure P-10) that his request for appeal before the Standing Appeal Committee would be considered and date of hearing would be given to him. The impugned order was passed on 30.04.2016 on the ground that the occupancy certificate from the competent authority stating that the building is fully developed in all respects for the intended use has not been submitted as per the Approval Handbook (Annexure P-12). Admittedly, as per Clause 1.6, the petitioner could only apply if the building was complete as per the infrastructure requirements. Clause 1.6 reads thus:-

“1.6 Applicants are advised to apply only if the Building for the purpose of application is complete as per the Infrastructure requirements without any deficiency at the time of filling the application form on the AICTE web-portal www.aicte.india.org.”

As per Clause 2.4, the applicant had to fulfill various conditions before the last date prescribed for receipt of applications and would only be eligible to apply in such circumstances. Sub clause (b)

further provided that the certificate of occupancy was to be required from the competent authority as per the standing format prescribed by the issuing authority. The same reads thus:-

“2.4 The applicants fulfilling the following conditions on or before the last date prescribed for receipt of application by the Council shall be eligible to apply.

(a) xxx xxx xxx

(b)Certificate of Occupancy/Completion
(as applicable) from the Competent Authority (as per
standard format prescribed by the issuing Authority).”

It is not disputed that the petitioner, thus, had applied for the necessary approval. He admittedly did not have the said occupation certificate. It is, thus, not disputed that as on the cut off date, the petitioner did not have the prescribed requirements. The proposition of law on this issue need not be elaborated. It is settled principle that there is a sacrosanctity affixed to the cut off date, whether it is for admissions or for applying for a job or for necessary permission. The petitioner itself, thus, opted to take a chance and sought to apply without having the minimum requirements as per the handbook. Therefore, it cannot as such be submitted that the post sanction on 01.07.2016 and the grant of occupancy certificate would entitle him for valid consideration as the society was not eligible on the date of the scrutiny and, therefore, no fault as such can be found with the decision making process.

In such circumstances, it would be futile to remand the matter to the Appellate Committee, as contended by the counsel, on the ground that the principles of natural justice have been violated as the said Committee would also be equally bound by the terms of the handbook and, therefore,

there is no scope for interference in the impugned order dated 30.04.2016 (Annexure P-15).

However, counsel for the petitioner has pointed out that even on an earlier occasion, the petitioner had applied for approval for the session 2015-16 and deposited a sum of ₹3,50,000/-, which stood forfeited on account of a rejection order passed on 30.04.2015 (Annexure P-4) on account of lack of approval of building plan. For the present academic session also, the petitioner has averred that he has deposited ₹7,00,000/- as required as per the application which was paid online by him on 09.05.2016. Admittedly, the respondents, apart from verifying and scrutinizing the documents, have not completed any exercise as such of visitation of premises in question in view of the initial lack of requirements on account of the occupancy certificate being not present.

In such circumstances, this Court is of the opinion that it would be unfair if the petitioner has to pay the upfront fees of ₹7,00,000/- again for consideration for the next academic session as he has on two occasions deposited approximately more than ₹10,00,000/- with the respondents.

Accordingly, the present writ petition is disposed of with the observations that the petitioner's application be considered for the next academic session without insisting for deposit of the application process fee afresh. The petitioner's case would be considered on the strength of the amount already deposited subject to the deposit of necessary documents including the occupancy certificate which has now been received. It will be open to the respondents also to ask for fresh documents whichever are necessary and process the case of the petitioner for next academic session in accordance with law. It is clarified that as per the rules and regulations, if

the additional amount is to be paid for the expense of the Expert Visitation Committee, the petitioner will be bound to pay those charges and the respondents will be entitled to ask for the same.

With the above said observations, the present writ petition is disposed of.

04.07.2016
shivani

(G.S. SANDHAWALIA)
JUDGE