

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

CWP No. 12518 of 2016 (O & M)

Reserved on:- 25.07.2016

Date of decision: 29.07.2016

The Thapar Polytechnic College, Patiala

....Petitioner(s)

Versus

The Punjab State Board of Technical Education and others ...Respondent(s)

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

Present: Mr. Rajiv Atma Ram, Sr. Advocate,
with Mr. R.S. Kalra, Advocate,
for the applicant-petitioner.

Mr. Chetan Mittal, Sr. Advocate,
with Mr. V.K. Sachdeva, Advocate,
for respondent no. 1.

Ms. Lavanya Paul, AAG, Punjab,
for respondents no. 2 and 3.

Mr. S.K. Sharma, Advocate,
for respondent no. 4.

Mr. Rajat Khanna, Advocate,
for respondent no. 5.

G.S.SANDHAWALIA, J.

1. The petitioner-college seeks the quashing of the minutes dated 06.06.2016 (Annexure P-21) whereby, the Affiliation and Accreditation Committee (in short 'A & AC') of the respondent no. 1-Board rejected the request of the petitioner for issuance of an No Objection Certificate (in short 'NOC') for purposes of having affiliation with the respondent no. 5-The Thapar University, Patiala. The retrospective request from 02.02.2016, when initially the NOC had been granted, was also not recommended.

Challenge has also been raised to the subsequent order dated 09.06.2016 (Annexure P-22) whereby, the Chairman of the respondent no. 1-Board has, on the basis of the above said recommendation of the Committee, passed the formal order rejecting the said claim while exercising his power under Section 22(1)(ii) of the Punjab State Board of Technical Education and Industrial Act, 1992 (in short '1992 Act').

2. The pleaded case of the petitioner-Institute is that the Thapar Education Trust was established vide Trust Deed executed on 09.04.1965 between the Raj Parmukh of Patiala and the East Punjab State Unions (PEPSU) and the trustees of the Mohini Thapar Charitable Trust. As per the Trust Deed, the Thapar Polytechnic and any other school established by the Trust was to be under the Managing Committee to be constituted by the Trust. The Trust was set up with the object of advancing the cause of technical education and practical training upto graduate and post graduate standards in Civil, Mechanical and Electrical Engineering and such other courses which may be decided for the purpose. Accordingly, the Thapar Institute of Engineering and Technology, Patiala (in short 'TIET') was the first institution sponsored by the Trust. The same comprised of a college of engineering for degree courses and a polytechnic for diploma and certificate courses. The foundation stone was laid by the then President of India Dr. Rajendra Prasad on 09.04.1956. Initially, the institute was affiliated to Panjab University for degree courses and the diploma and draftsman courses were recognized by the State Board of Technical Education of PEPSU. On 31.12.1985, TIET became a deemed university under Section 3 of the University Grants Commission Act, 1956 vide notification dated 31.12.1985 (Annexure P-2) issued by the Central Government and became the Thapar

University, Patiala. The petitioner polytechnic college came under a separate management which was constituted for it. The All India Council of Technical Education Act, 1987 (hereinafter referred to as 'AICTE Act, 1987') was promulgated and approval was required for every technical institution. The necessary approval was duly obtained by the petitioner-college and is continuing upto date.

3. The Punjab State Board of Technical Education and Industrial Training Act, 1992 (in short 'the State Act of 1992') was promulgated w.e.f. 1992 and the petitioner-college was affiliated with the said respondent no. 1-Board. Diploma courses were being conducted by the petitioner-institute, which is situated within the premises of respondent no. 5-university. On account of wanting to give up affiliation with the respondent no. 1-Board and to get itself affiliated with the respondent no. 5-university, NOC was sought to be got on the basis of a wrong advise. The State Government, on 14.06.2011 (Annexure P-3), granted the same for the change of affiliation on certain conditions which protected the students already admitted and that the grant-in-aid would only continue for the students admitted in 2009-10 and 2010-11 and the affiliation with the respondent-board would be for the said batches. However, no further steps were taken in furtherance to the said NOC and a second application was thereafter made on 15.09.2015 (Annexure R-1/6) to respondent no. 1-Board and to the State Government-respondent no. 2.

4. In the meantime, an advertisement dated 29.12.2015 (Annexure P-4) was issued by respondent no. 1 inviting affiliations for the academic session 2016-17 and for continuation of the said affiliations with a cut off date of 08.01.2016. Since the petitioner's case was pending, it applied for

continuation of the affiliation with the condition that in case the NOC was received from the respondent-Board and approval was given by the AICTE-respondent no. 4, it would like to exercise its option of affiliating with respondent no. 5. Thereafter on 02.02.2016 (Annexure P-6), the NOC was received. In the meantime, the petitioner had also applied for extension of approval and change of affiliation to respondent no. 4-AICTE and permission was granted on 05.04.2016 (Annexure P-7) under the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012 for the academic year 2016-17 subject to certain conditions and the affiliating body was shown as respondent no. 1-Board. Thereafter, vide corrigendum dated 16.05.2016 (Annexure P-8), the change of the affiliating body with respondent no. 5 was noticed by respondent no. 4 for the courses in question. Respondent no. 5-university consented to affiliate the petitioner-college for the session 2016-17 and accordingly, admission notice dated 21.05.2016 was issued. However, vide order dated 23.05.2016 (Annexure P-12), respondent no. 1 withdrew the earlier NOC granted on the ground that it was issued without the approval of the competent authority and was thus invalid. Copy of the same was also addressed to respondent no. 2-State and respondent no. 4. Thereafter, the Board issued letter dated 24.05.2016 directing it to withdraw its admission notice dated 21.05.2016. Reply was submitted to the said direction on 25.05.2015 (Annexure P-14).

5. Thereafter, CWP No. 10890 of 2016 was filed, which was disposed of on 27.05.2016 (Annexure P-15) in the presence of the counsel for the respondent-Board on the ground that the principles of natural justice were violated. Accordingly, the orders dated 23.05.2016 and 24.05.2016

were set aside with directions to pass a speaking order to the respondent-Board by 09.06.2016. The petitioner-institute was also directed to appear before the A & AC of the Board on 06.06.2016. The order reads thus:-

“Contesting respondents are on caveat.

I have heard learned counsel for the parties.

One of the arguments raised by learned counsel for the petitioner is that the impugned order dated 23.5.2016 (Annexure P-24) has been passed without hearing the petitioner. No Objection Certificate was earlier issued and has now been withdrawn.

In this regard, learned senior counsel appearing on behalf of the contesting respondents has submitted that the impugned order dated 23.5.2016 and the consequential order dated 24.5.2016 may be set aside and direction may be issued to the respondents to hear the petitioner before passing the order. It is rather contended by counsel for the respondents that the petitioner may be directed to appear before the accredited committee of the Board on 6.6.2016 at 11:00 AM and after hearing the petitioner and considering his submission, appropriate order shall be passed.

Keeping in view the facts and circumstances of the case, the present petition is hereby allowed and the impugned order dated 23.5.2016 (Annexure P-24) and consequential order dated 24.5.2016 (Annexure P-25) are set aside with a direction to respondent No.1 to hear the petitioner and pass a speaking order, in accordance with law, on or before 09.06.2016.

The petitioner is directed to appear before the accredited committee of the Board on 6.6.2016 at 11:00 AM.”

6. Accordingly, the petitioners submitted a representation dated 31.05.2016 (Annexure P-16) requesting respondent no. 1 to close the

proceedings for cancellation of NOC. Thereafter, another two representations dated 06.06.2016 (Annexures P-17 and P-18) were given for the hearing, which was given by the A & AC. In furtherance of further documents sought on 07.06.2016 (Annexure P-19), the documents were supplied on 09.06.2016 leading to the recommendations under challenge and the subsequent order passed by the Chairman of the respondent-Board.

7. In the written statement filed by respondent no. 1-Board, plea taken was that the provisions of the AICTE Act, 1987, the State Act of 1992 and the UGC Act were applicable and the petitioner being affiliated with respondent no. 1, the career of hundreds of students was being played with. The attempt was to come out of the various provisions of the Acts, which were regulatory in nature and in the interest of the general public. The Board had been appointed as the authority competent and responsible for admission to technical institutions in the State under the 2012 Regulations (Annexure R-1/2). The Board was the authority competent to conduct counseling on the basis of the merit of the qualifying examinations to various diploma level courses which had been approved by respondent no. 4. The admissions were being granted on the basis of the qualifying examination i.e. 10th or equivalent for the session 2016-17. The diploma course which the AICTE recognized was not specified by the UGC. The college had been affiliated from the beginning with the Board and issuing the diplomas in accordance with the provisions of the 1992 Act. The said action would lead to commercialization of the education of technical diplomas and the charging of the fees as against the fee fixed by the Punjab Government. The fee structure was far in excess and, therefore, it was only a colourable exercise to earn more money. The factum of application dated

15.09.2015 was admitted. It was, however, averred that another letter dated 10.11.2015 (Annexure R-1/7) had been addressed informing the respondents that the petitioner was planning to apply to AICTE for change of affiliation through their online portal and had asked for the NOC. The same was not accepted by the Board. A request was also made on 14.12.2015 (Annexure R-1/8) that in case change was not permitted by AICTE, they would continue with the existing set up alongwith grant-in-aid. The petitioner had applied in pursuance of the notice on 07.01.2016 (Annexure P-5) and on account of the deposit of fees was deemed to have continued with the affiliation and the petitioner-college stood affiliated for the session 2016-17. On 04.02.2016 (Annexure R-1/9), NOC was again sought subject to the approval from AICTE for change of affiliation.

8. It has been averred that various public notices dated 24.04.2016, 30.04.2016 and 01.05.2016 for granting admission in various institutes had been published by the petitioner. The letter dated 17.05.2016 (Annexure R-1/12) was sent to the Board regarding the NOC issued on 02.02.2016 and the subsequent approval on 16.05.2016 (Annexure P-8) from the academic session 2016-17 and thus, it came to the notice of the respondent-Board that the Director (Academics) of the Board, without any authority in his favour and without putting the matter before the meeting of the Members of the Board, had issued the NOC. The same was thus withdrawn on 23.05.2016 and the letter dated 24.05.2016 was also issued to withdraw the advertisements issued. The order passed by this Court and the subsequent meetings being a matter of record also find mention accordingly.

The plea taken by the Board is also that no proceedings of respondent-Board had taken place and the matter of issuance of the NOC had not been

placed before the Board or before the A & AC. The minutes of the meeting of the Committee were accordingly relied upon to submit that the college was bound under the regulations of the Act, guidelines issued by the UGC as well as the Board. The corrigendum dated 16.05.2016 thus was on account of misleading AICTE and after the cut off date of 30.04.2016 since the admission had already started on 24.04.2016. Reliance was also placed upon the Approval Handbook of the AICTE whereby, no change was allowed of the Board to University for the purpose of affiliation. Accordingly, counseling fixed by the college was stated to be in complete violation of the instructions issued by the Board.

8A. The admission being made by the respondent no. 5-university was stated to be against UGC guidelines and the private universities and deemed universities could not affiliate any college or institution for conducting courses leading to award of diplomas. The deemed university could only award degrees and not diplomas. Resultantly, reference was made to the communication dated 16.06.2016 (Annexure R-1/20) whereby, letter was issued to respondent no. 4 highlighting the illegalities which were sought to be done by the petitioner and that the approval granted vide corrigendum dated 16.05.2016 be withdrawn and status quo be restored. Reference was also made to letter dated 17.06.2016 whereby, the said respondent had asked to defer admissions to students to all diploma courses till final decision was taken and the matter was referred to the Standing Appellate Committee. The request made by the petitioner-institute for deleting its name from the counseling portal from 2016-17 on 16.06.2016 (Annexure R-1/22) was highlighted which was repeated on 23.06.2016.

The Board had informed the petitioner vide letter dated 17.06.2016

(Annexure R-1/23) that it would be responsible for its acts and conducts and admissions made directly were in contravention of the guidelines of the Board and were not legal and the college would be responsible. Reference was also made to the letter dated 30.06.2016 (Annexure P-33) of the Standing Appellate Committee that the college would remain affiliated to the Board and the matter had been put in abeyance on account of pendency of the present case.

9. Accordingly, the plea taken was that the Board was the sole regulator body in the State of Punjab and duty bound to protect the welfare of students in the field of technical education. The respondent no. 5-university was not eligible to grant affiliation in view of the UGC guidelines. They could not be allowed to take a contrary stand that it had applied for NOC but the same was not required. Reference was made to clause 4.14 and 4.15 of the Approval Handbook whereby, the NOC is required from the existing affiliating institution (Annexure R-1/28) and resultantly, the impugned orders were justified. The plea that other institutions were offering such courses was answered by pleading that the Board was contemplating to take action against all such institutions.

10. State, in its reply, took the plea that respondent No.3-Board is an autonomous statutory body created under the Punjab State Board of Technical Education & Industrial Training Act, 1992 and has its own Board of Governors. Relief had been claimed against the said Board and therefore, it was merely a performia party.

11. Respondent No.5, in its reply, stressed upon the setting up of the Society by way of a Memorandum of Association, which was registered on 22.10.1985 (Annexure R5/3), whereby the TIET was registered and led

to the granting of the status of deemed University, as per the notification dated 30.12.1985. Reference was, accordingly, made to the powers and functions and the objects of the Institute to aver that diplomas could be awarded under Clause 3(v). Reference was made to Section 2(f) of the UGC Act, to plead that the University could be established under the Central Act and under Section 3 that the Central Government could declare, by notification in the official Gazette, that any Institute for higher education other than a University, shall be deemed to be a University. The AICTE-respondent No.4 was the competent body to grant approval and affiliation to every technical institute for academic session. The affiliation was changed on 16.05.2016 to the said respondent and various deemed Universities were offering Diploma Courses in Engineering, after taking requisite permission and affiliation from the said Council and details of the said Universities were mentioned, accordingly. The petitioner-College was, accordingly, affiliated to the said University and the same had not been withdrawn by the Council, during the pendency of the present petition. Respondent No.1-Board, without any authority, had been admitting students to the petitioner-College for the academic session 2016-17 and the admissions were bad.

12. Senior counsel for the petitioner has, on the basis of the said pleadings, questioned the decision on the ground that the report was to be submitted and decided by the Board as per provisions of Section 19(4) of the 1992 Act by the respondent-Board and the order has not been complied with and the Board has not decided the issue. The Chairman had usurped the power of the Board and the Board having not taken a decision, the same was not in consonance with the directions issued earlier by this Court. A speaking order had not been passed and neither a formal hearing had been

given by the Chairman. Secondly, the jurisdiction of the order under Section 22(1)(ii) was challenged on the ground that the issue did not fall within the jurisdiction of the Board and there was no provision for grant of NOC and, therefore, the Chairman could not have taken a decision. Accordingly, it was contended that the petitioner-institute could not be forced to affiliate itself with the respondent-Board and had a choice of affiliation.

13. Mr. Chetan Mittal, Sr. Advocate for the Board has accordingly submitted that the petitioner-institute was not entitled to make admissions and the NOC had been wrongly issued. The Chairman had the jurisdiction and had rightly passed the impugned order and accordingly justified the same.

14. From the above-said pleadings, apparently, it is clear that the question which arises is whether the respondent-Board had complied with the earlier order dated 27.05.2015, reproduced in para 5 above, in its entirety and whether the Chairman had passed a speaking order while rejecting the claim of the petitioner-Institute while accepting the recommendation of the A & AC. The order passed by the Chairman on 09.06.2016, reads as under:

“In compliance of order dated 27-5-2016 passed by Hon'ble Punjab and Haryana High Court in CWP 10980 of 2016 titled “Thapar Polytechnic college, Patiala Vs Punjab State Board of Technical Education and Industrial Training, Chandigarh and others,” 39th Affiliation and Accreditation Committee Meeting called as a special meeting was held on 06.06.2016 under the Chairmanship of S. Sewa Singh Sekhwan, Chairman of the PSBTEIT, Chandigarh where members of the Board and representatives of Thapar Polytechnic college were present.

After hearing the parties and considering the documents on record, the Committee has made the following recommendations:

“The request of Thapar Polytechnic College, Patiala dated 15.9.2015 and subsequent correspondence to issue NOC for running Thapar Polytechnic College under Thapar University AND the subsequent request vide letter dated 6.6.2016, to approve the NOC dated 02.02.2016 retrospectively, both may be rejected, being without any merit.”

In terms of Powers conferred under Section 22(1)(ii) of the Punjab State Board of Technical Education and Industrial Act, 1992 as amended up to date, I, Sewa Singh Sekhwan, Chairman of the PSBTEIT, Chandigarh, under the extraordinary circumstances and on the recommendations of the Affiliation and Accreditation Committee and after considering the documents submitted by Thapar Engineering College on 09.06.2016 in response to Letter PSBTE/DDA/1154 dated 07.06.2016, pass the following order:

“The request of Thapar Polytechnic College, Patiala dated 15.09.2015 and subsequent correspondence to issue NOC for running Thapar Polytechnic College under Thapar University AND the subsequent request vide letter dated 6.6.2016, to approve the NOC dated 02.02.2016 retrospectively, both are hereby rejected, being without any merit.”

Dated :9.06.2016

Sd/-

CHAIRMAN”

15. A perusal of the above order would go on to show that the Chairman, apart from mentioning that under the extraordinary circumstances and on the recommendations of the A & AC, he was rejecting the claim of the petitioner has failed to give any separate reasons and has only toed the line of the A & AC, of which he was a member. Specific

directions had been issued by this Court that the Board would decide the issue. Though the petitioner was also directed to appear before the A & AC. The recommendations of the A & AC, thus, was accepted by the Chairman, without placing the same before the Board, as had been directed and therefore, the directions of this Court have not been complied with in its entirety and thus, cannot pass muster of judicial scrutiny. The said fact had also been put to the Senior Counsel for the Board on 14.07.2016 when the case was earlier heard. On instructions taken on 25.07.2016, from Mr.Puneet Aggarwal, Secretary of the Board, Mr. V.K.Sachdeva, Advocate, had informed the Senior Counsel that the Board will convene a special meeting and re-decide the issue regarding the dispute in question, pertaining to the affiliation of the petitioner-College. This Court has been assured that the said exercise would be conducted within 4 weeks from the receipt of the certified copy of this order.

16. Senior counsel for the petitioner, though on the said issue, was satisfied that the matter should be decided by the Board. However, it is his case that the admissions that have been made, in pursuance of the public notices issued by the petitioner, to the said course, should continue and they should be entitled to charge the fees which could not be regulated by the respondent-Board, since they were free to seek affiliation with respondent No.5. Reliance has also been placed upon the Division Bench judgment passed in CWP-20055-2015 titled *Punjab Technical University Non-Teaching Employees Association, Jalandhar & others Vs. State of Punjab & others*, decided on 02.06.2016, to contend that the petitioner-Polytechnic College could not be forced to continue its affiliation with respondent No.1-Board. It is, accordingly, contended by the Senior Counsel for the

petitioner that the students admitted by them should be given degrees by the respondent No.5.

17. Senior Counsel for the petitioner has further submitted that in view of the NOC dated 09.02.2015 (Annexure P-39), issued by the State, whereby a change of affiliation has been permitted, it would not be given the grant-in-aid, for the present year and therefore, it would be prejudiced on that account, also since it would loose the said benefit while continuing to be affiliated with respondent No.1-Board.

18. The said submission, at this stage, cannot be accepted. The career of the students cannot be played with. Admittedly, the petitioner-Institute itself had approached the Board for the continuation of the affiliation and therefore, now, *prima facie*, cannot turn around and say that no NOC was required for it to get affiliated. Respondent No.4 has not filed any counter and the A & AC of respondent-Board has adversely commented upon the right of respondent No.5 to issue degrees to the students who had been admitted to the course on the strength of their Matriculation certificates. The constitution of the Board, as per Section 5, is of various members, who are experts in the field of technical education, both as ex-officio and nominated members, apart from co-opted members. An expert body is yet to opine as to whether the petitioner is free to break away from its affiliation to the Board, which, under the 1992 Act, is the body which is to oversee the Technical Education & Industrial Training in the Polytechnic & Industrial Training Institutes in the State of Punjab. Such an institution is to be affiliated to the Board under Section 2(a) of the Act and the Diploma is to be awarded by such an affiliated institution, in such a course, from time to time, as specified by the regulations, as provided under Section 2(g).

19. That the Apex Court in *Parshavanath Charitable Trust & others Vs. All India Council for Technical Education & others 2013 (3) SCC 385*, fixed the cut off date as 10th April, for the grant of recognition of approval by the AICTE and for the commencement of the academic session as 1st August and the Appellate Committee has to decide the same by 30th April of the said year. The affiliation is to be, thereafter, done by 15th May and the admission is to start by 1st August and seats are to be filled by 15th August. In the present case, as noticed, the grant of recognition was only on 16.05.2016, which is after the last date fixed by the Apex Court. Counsel for the Board was justified in submitting that it was only on account of the fact that there was an earlier NOC in favour of the petitioner on 02.02.2015, which stood withdrawn. Therefore, the issue of affiliation would have to be reconsidered by the said respondent No.4. It is not disputed that the Standing Appellate Committee of the recognizing body, namely, respondent No.4 had also, vide communication dated 03.06.2016 (Annexure P-33), come to the conclusion that the petitioner-Institute was earlier affiliated to the respondent-Board and will continue to be affiliated till the final decision of the present writ petition. Thus, in the facts and circumstances and keeping in view the binding precedent of the Apex Court, the time schedule, as such, cannot be tinkered with and the subsequent recognition, which had been granted for the time being, would not give any right to the petitioner, as has been claimed. It is, however, made clear that the observations which are coming herein are only for the purpose of declining the prayer of the petitioner for granting of degrees by respondent no. 5 for the present academic session and the said observations will not be taken into consideration by the respondent-Board while deciding the issue on merits,

since the matter is to be decided in the terms of the earlier order of this Court. The *status quo*, thus, shall be maintained, as per the earlier position for the present academic session.

20. However, the fact remains that the State Government, on one hand, has given the NOC dated 19.02.2016 (Annexure P-39) whereby the grant-in-aid will no longer continue to the petitioner-Institute for the academic session 2016-17 onwards. In view of the fact that the matter is yet to be decided, the said conditional NOC will not be enforced against the petitioner-Institute for the present year, in view of the fact that the relief of getting degrees awarded from respondent No.5 has been declined for the present year. It will be open to the petitioner to apply for NOC afresh with the State Government. The necessary exercise be conducted by the respondent-Board within a period of 4 weeks from the receipt of the certified copy of this order as duly undertaken.

21. Writ petition stands disposed of, in the above-said terms.

29.07.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

