

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A.909 of 2017
and C.M.P.No.12824 of 2017

1. The Registrar,
Anna University,
Chennai - 600 025.
2. The Director,
Centre for Affiliation of Institution,
Anna University,
Chennai - 600 025. ... Appellants

vs.

Kongu School of Architecture,
Represented by its correspondent
Perundurai Railway Station Road,
Thoppupalayam)PO),
Perundurai Taluk,
Erode - 638052. Respondent

Appeal filed under Clause 15 of the Letters Patent against
the order dated 29.06.2017 made in W.P.No.14704 of 2017.

Prayer in W.P. No 14704 of 2017:

Writ Petition filed under Article 226 of the Constitution of India seeking writ of Certiorari and Mandamus Calling for the records of the Respondents relating to letters No.211/CAI-Deficit Colleges - 39/AU/2017 dated 14.05.2017 and 02.06.2017 on the file of the 1st Respondent and quash the same and directing the Respondents to consider the representation of the Petitioner dated 03.06.2017 requesting to grant affiliation to the Petitioner Institution for the full intake of 40 seats in 5 Year Full Time B.Arch Degree Course for the year 2017-2018 in the light of the judgement of the Division Bench of this Honourable Court in WA No.716 of 2016 etc.

For Appellants : Mr.K.Venkatramani,
Additional Advocate General
Assisted by Mr.M.Vijayakumar
For Respondent : Mr.Kandhan Doraisamy

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. Issue notice. Mr.Kandan Doraisamy, accepts notice on behalf of the respondent.

2. With the consent of counsel for the parties, this writ appeal is taken up for final hearing and disposal.

3. This is an appeal preferred against the judgment of the learned single Judge dated 29.06.2017. By virtue of the said judgment, Writ Petition No.14704 of 2017 has been allowed.

4. The respondent, herein, is the original writ petitioner. By virtue of the said writ petition, the prayer sought for by the respondent was that communications dated 14.05.2017 and 02.06.2017 issued by the appellant No.1-University be set aside. A further direction was sought by the respondent, which was to consider its representation dated 03.06.2017, requesting for grant of affiliation to appellant No.1-University for full intake of 40 students in the five year Full-time Bachelor of Architecture Degree Course, for the academic year 2017-2018.

4.1. The moot point, which arose before the learned single Judge and that, which also, arises for consideration, before us, is : as to whether the appointment of the fully qualified Principal took place within the deadline prescribed for that purpose i.e., 15.05.2017.

4.2. The facts, which are necessary to be looked at for this purpose, are as follows :

4.3. The Respondent was established in the year 2015. The Council of Architecture (in short "COA") accorded approval to the respondent to admit students qua five year Full-time Bachelor of Architecture (B.ARch.) degree course with the intake of 40 students qua the academic year 2015-2016.

4.4. The respondent was granted Provisional affiliation on 17.07.2015, by the appellant No.1-University, albeit, for the academic year 2015-2016.

4.5. In so far as academic year 2016-2017 was concerned, COA, on 07.05.2016, granted extension of approval for intake of 40 students. In the meanwhile, though, the respondent was placed in a situation because of which, it did not have a Principal in position. The result was that the post of Principal fell vacant.

4.6. Under the extant regime, the COA was required to have its nominee on the Selection Committee constituted for the

purpose of appointing a Principal. It is not disputed before us that during the requisite period, when interview for appointment of the Principal were slated by the respondent, the nominee of COA was not available, as she was travelling outside the Country.

4.7. The record also shows that the respondent had submitted an application on 12.01.2017 to appellant No.1-University for grant of affiliation qua the academic year 2017-2018. Evidently, upon receipt of such application, appellant No.1-University directed inspection of the facilities and faculty put in place by the respondent. An inspection was, we are told, carried out on 15.03.2017. The inspection, inter alia, revealed that the respondent did not have a Principal in position.

4.8. It is in this background that on 02.05.2017, the respondent wrote to appellant No.1-University that since the nominee of COA was not available for conducting interview for the post of Principal and given the fact that the nominee would return only on 24.05.2017, it may be granted extension for appointment of Principal, till 31.05.2017.

4.9. The record seems to indicate and, this is not disputed by the counsels for the parties before us, which is, that there was no specific response was given to the respondent's letter dated 02.05.2017. What is, however, available on record is the letter dated 08.05.2017, issued by the appellant No.1-University. This letter was issued, apparently, in the background of the deficiency report dated 21.04.2017 being generated. This deficiency report was generated, we are told, pursuant to the inspection carried out on 15.03.2017.

5. By virtue of the communication dated 08.05.2017, appellant No.1-University put the respondent to notice that its intake of 40 students for the academic year 2017-2018 was dependent on appointment of a Principal. The time for curing this deficiency was given to the respondent, albeit, till 5.p.m., on 11.05.2017.

5.1. Given these circumstances, the respondent, it appears, took the necessary steps and vide communication dated 09.05.2017 informed the appellant No.1-University that the Principal and other faculty members had been recruited and furthermore, the necessary documents in that behalf were being submitted. In sum, the respondent, vide communication dated 09.05.2017, sought affiliation for the academic year 2017-2018.

5.2. The record also seems to indicate that this communication was received by the appellant No.1-University on 10.05.2017. We may also note that nothing has been placed on record by the appellants, which would have us come to a different conclusion.

5.3. Be that as it may. Appellant No.1-University vide communication dated 14.05.2017, inter alia, informed the respondent that its compliance report was scrutinised by the concerned committee and its scrutiny had led to the conclusion

that the documents submitted "were not sufficient/acceptable" qua certain courses conducted by it. The communication concluded with appellant No.1-University informing the respondent that it had reduced its sanctioned intake of students for the academic year 2017-2018 by 25%.

5.4. Apparently, the respondent via its representatives made enquiries with the officers of the appellant No.1-University and thereafter, discovered that the unarticulated deficiency, which was adverted to in appellant No.1- University communication dated 14.05.2017, pertained to the purported lack of experience of the Principal appointed by the respondent.

5.5. It is in this background that the respondent vide communication dated 19.05.2017, submitted further documentation to establish that the Principal, appointed, had, in fact, the necessary experience.

5.6. We may also record that by a communication dated 27.05.2017, COA granted extension of its earlier approval given to the respondent to admit students to the 5 year full-time Bachelor of Architecture (B.Arch.) degree course qua academic year 2017-2018.

5.7. The appellant No.1-University, perhaps, realising that it had given no reasons for reducing intake of students by 25% in its earlier communication to the respondent, vide communication dated 02.06.2017, informed that the said action had been taken in view of the fact that the Principal appointed by the respondent did not have the necessary experience.

5.8. This communication was responded to by the respondent vide a detailed letter 03.06.2017. In this letter, the respondent set forth its stand on the matter.

5.9. Importantly, via the communication dated 03.06.2017, the respondent called upon appellant No.1-University to reconsider its decision and, accordingly, called upon it to grant provisional affiliation, with permission for intake of full 40 students qua academic year 2017-2018.

6. Since, the appellants did not do the needful, the respondent approached this Court, as indicated at the outset, by way of a Writ petition under Article 226 of the Constitution.

7. The learned Single Judge vide impugned judgment has set aside the communications dated 14.05.2015 and 02.06.2017 issued by the appellant No.1- University and as prayed by the respondent directed consideration of its representation dated 03.06.2017.

8. Being aggrieved, the appellants have approached this Court by way of the instant appeal.

9. Mr.Venkatramani, learned Additional Advocate General, who appears for the appellants, makes a singular submission, which is that, respondent's request cannot be considered, as directed by the learned single Judge, in view of the fact that the deadline

fixed by the Supreme Court vide its judgement rendered in : Parshavanath Charitable Trust & Others Vs. All India Council for Tech. Edu & Others, CDJ 2012 SC 892, stands crossed.

9.1. According to the learned Additional Advocate General, the deadline fixed for admissions qua the academic year 2017-2018 is 15.05.2017. It is submitted, in this connection, that since, necessary documentation, regarding the experience of the Principal, was submitted only on 19.05.2017, which was a date that fell well after the deadline fixed for the academic year 2017-2018, its request for affiliation cannot be considered for the academic year 2017-2018.

10. On the other hand, Mr.Kandhan Doraisamy, who appears on behalf of the respondent, says that the facts and events, as sketched out by the learned single Judge in the impugned judgement, would show that necessary steps had been taken well in time. In this behalf, it was emphasized that the Principal, having requisite qualification and experience, was appointed on 09.05.2017, that is, well before the deadline fixed in that regard. Learned counsel stressed that the Principal appointed had the necessary experience and, since, a specific objection with regard to that aspect was not put to the respondent vide communication dated 14.05.2017, further information could only be furnished to appellant No.1-University on 19.05.2017.

11. We heard the learned counsel for the parties and perused the records. There can be no doubt that the deadline fixed by the Supreme Court in the aforementioned judgement cannot be crossed. The record would show that an application with regard to intake of 40 students for the academic year 2017-2018 was submitted by the respondent as far as back in January, 2017. The inspection, even, according to the appellants, was carried out only on 15.03.2017. The deficiency report, in that behalf, was generated on 21.04.2017. There is no dispute that one of the deficiencies, which was pointed out by the Inspection Committee, was with regard to the Principal not being in position.

11.1. The respondent, on being told about the deficiency, did take steps to cure the deficiency. However, the necessary speed required to cure the deficiency encountered an impediment, as the representative of the COA was not available for conducting interviews. Admittedly, COA's representative was required to be present on the Selection Committee. The records indicate that she was not available. This led to the respondent appointing a Principal, and that, the factum of the appointment of the Principal was communicated to the appellants vide communication dated 09.05.2017.

11.2. As indicated by us, hereinabove, there is no dispute about the fact that the said communication was received by the appellants on 10.05.2017. Between 10.05.2017 and 14.05.2017, there was no communication by the appellants to the respondent. Communication which was sent on 14.05.2017, which is, one of the

impugned communications, only indicated that the documentary evidence submitted by the respondent was "not sufficient/acceptable". There was no dilation on the aspect as to what was the insufficiency, if any, in the documentation. The respondent, it appears as noted by us above, found out, through the efforts of its officers, that the documentation furnished by it did not indicate that the Principal appointed by the respondent had the requisite experience. Thus, the documentation with regard to the Principal's experience was submitted to the appellants by the respondent via communication dated 19.05.2017. The appellants, however, on 02.06.2017, for the first time, communicated to the respondent as to why the intake of 40 students for the academic year 2017-2018 had been reduced by 25%. It was indicated in the said letter that the Principal did not have the requisite experience.

11.3. We asked Mr.Venkatramani, as to whether this position factually obtained on 02.06.2017. Mr.Venkatramani, in fairness, has said that the real reason for rejecting the respondent's request for full intake of 40 students for the academic year 2017-2018 was declined on 02.06.2017, as the deadline for admission's had been crossed.

11.4. The learned Additional Advocate General informs us that on 02.06.2017, there was no outstanding deficiency, and that, deficiency with regard to the experience of the Principal stood cured. The documents, even according to him, with regard to the experience of the Principal stood communicated to the appellants vide communication dated 19.05.2017.

11.5. Thus, the core issue before us is that, if, the Principal was appointed before the deadline, which is, 15.05.2017, who, even according to the appellants, has the necessary experience, can the appellants then raise a cavil with regard to the mandamus issued by the learned single Judge. In our view, the answer has to be in the negative. This is not a situation where deficiency, even according to the appellants, did not get cured before 15.05.2017. Had the appellants communicated, clearly, to the respondent as to why they had reduced the intake of 40 students for the academic year 2017-2018, in their letter dated 14.05.2017 or even prior to that date, this problem would not have arisen.

12. Therefore, for the reasons given above, we are not inclined to interfere with the view taken by the learned single judge. The writ appeal is, accordingly, dismissed. We are informed by the learned counsel for the parties that the date for counselling has been extended till 31.08.2017. This statement is taken on record.

13. Consequently, the connected pending application will stand closed. There shall, however, be no order as to costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Registrar
Anna University
Chennai 600 025.

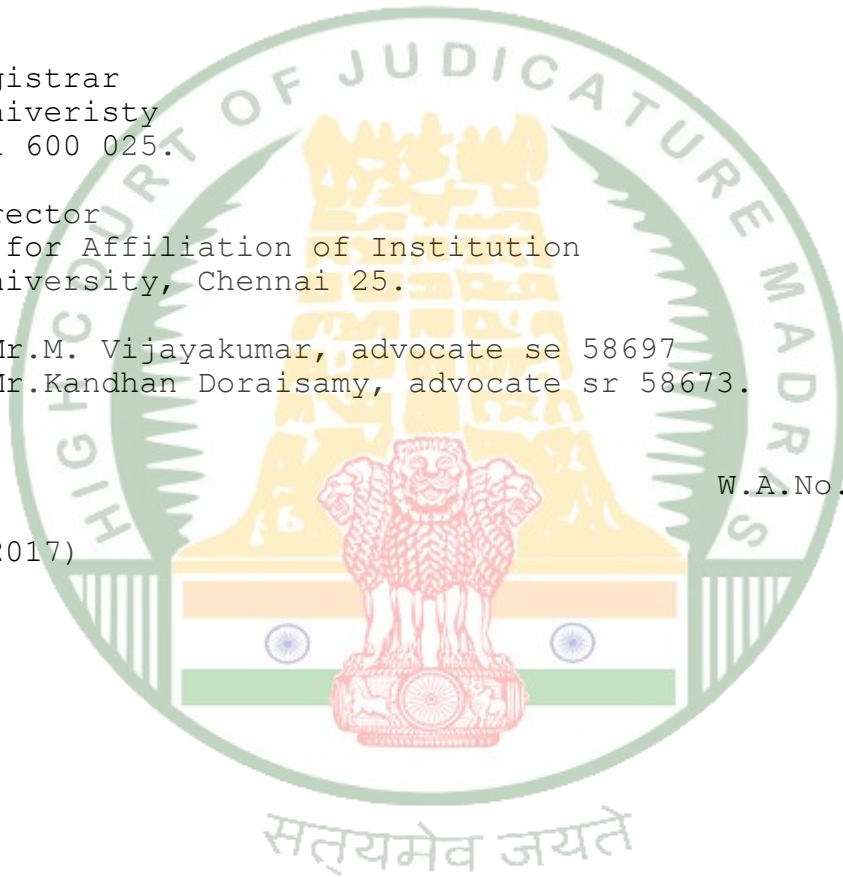
2. The Director
Center for Affiliation of Institution
Anna University, Chennai 25.

+1 CC to Mr.M. Vijayakumar, advocate se 58697

+1 Cc to Mr.Kandhan Doraisamy, advocate sr 58673.

W.A.No.909 of 2017

SP(18/08/2017)



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