

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.12657 of 2017
and
W.P.M.P.Nos.13480 & 13481 of 2017

Good Shepherd Education Trust
Represented by its Managing Trustee,
North Street, Marthandam,
Tamil Ndu - 629 165. ..Petitioner

Vs.

- 1.All India Council for Technical Education
Represented by its Member Secretary
Nelson Mandela Marg,
Vasant Kunj, New Delhi - 110 067.
- 2.Southern Regional Officer
All India Council for Technical Education
Haddows Road, Chennai-600 006.
- 3.Anna University
Represented by its Registrar,
Chennai-600 025.
- 4.The Commissioner of Technical Education,
Chennai-600 025.

..Respondents

Prayer :

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in F.No.Southern/2017/1-3361406901_LOR dated 30.04.2017 and quash the same and directing the respondents 1 and 2 herein to consider the application of the petitioner with Application ID No.1-3361406901 to start a new technical institution in the name of Good Shepherd College of Engineering and Technology at Maruthamparai, Kaliyal Village in Kanyakumari District.

For Petitioner : Mr.Doraisamy,
Senior Counsel for
Mr.Muthumani Doraisami
For Respondents : Mrs.A.L.Gandhimathi,
Standing Counsel, for R1 & R2
Mr.M.Vijayakumar,
Standing Counsel, for R3
Mr.A.Kumar,
Special Government Pleader, for R4

O R D E R

The petitioner is aggrieved by the order dated 30.04.2017 passed by the first respondent rejecting their application for approval to set up a new technical institution. Consequently, the petitioner seeks for a direction to the respondents 1 and 2 to consider their application to start a new technical institution in the name of Good Shepherd College of Engineering and Technology at Maruthamparai, Kaliyal Village in Kanyakumari District.

2. The case of the petitioner in short is as follows:

2.1. The petitioner Trust has established various Educational Institutions. In order to start a new technical institution, the petitioner Trust submitted an application before the second respondent with all necessary documents and requisite fees. Before the Scrutiny Committee constituted by the first respondent, the petitioner submitted all the information to its fullest satisfaction. The Expert Visiting Committee has also visited the institution and found that the proposed institution has the required infrastructure and submitted its report on 14.03.2017. However, the first respondent through the impugned order dated 30.04.2017 rejected the request of the petitioner on the following reasons:

1. Certificate regarding Minority Status, if applicable at the time of application - Not presented.

2. Classification of land (Mega/Metro/Urban/Rural) certificate by the Competent Authority - Name of issuing authority - Tahsildar (Not presented)

3. Documents showing possession of the land in the name of the Trust - Not accepted.

4. Area made available for proposed institution, Ownership type (Sale/Gift Deed or Govt. Lease etc) is this land shared with other Institution, if yes then permanent Institute ID of the Institute - 10.27 document for 3/1B not produced. Partly not presented.

2.2. The reasons given for rejection are flimsy and trivial. The petitioner has not at all applied for approval by claiming to be a minority Institution. Therefore, the rejection of approval on that ground shows total non-application of mind. Classification of land certificate by the competent authority was also already submitted by the petitioner at the time of scrutiny. Hence, the rejection of application on this ground also establishes the non-application of mind. The petitioner submitted a representation on 01.05.2017 to the first respondent furnishing the Land Classification Certificate and also the Possession Certificate and land documents including patta copy, Encumbrance Certificate, Filed Map etc., with a request to consider the same for processing the application for approval. However, the said request was not considered. Therefore, the present writ petition is filed before this Court.

3. The second respondent filed a counter affidavit, wherein it is stated as follows:-

The petitioner institution has applied for starting a new technical institution and submitted their application. Their application was placed before the Scrutiny Committee and on verification of all the documents, an inspection was made by the Expert Visiting Committee. The Regional Committee rejected the request of institution since the land documents were not acceptable. As against the rejection letter, the petitioner filed an appeal before the Standing Appellate Committee, which also rejected the petitioner's application by the impugned order dated 30.04.2017. At that time of inspection, the petitioner institution did not have infrastructure and the documents produced by the Institution related to the lands were not proper to show the ownership of the Trust over the area proposed for institution in Survey Nos.3/1B and 3/2. If at all the petitioner had complied with the same after the date of rejection, it is open for the petitioner to apply for approval in the next academic year i.e. 2018-2019. Hence for the present academic year i.e. 2017-2018, the application of the petitioner has been scrutinized and the same was rejected.

4. Mr.K.Doraisamy, learned Senior Counsel appearing for the petitioner submitted that the rejection order, impugned in this writ petition, was passed in total non-application of mind,

since none of the grounds referred to therein is factually correct. He further submitted that when the petitioner has not applied by claiming itself with any minority status, the question of producing minority status certificate does not arise. Likewise, he submitted that in respect of further three grounds, the documents already furnished by the petitioner are sufficient to prove and establish that their claim is bonafide and the rejection order was made in total non-application of mind. He invited this Court's attention to the report of the Scrutiny Committee and pointed out that the details shown in the said report would show that the reasons stated in the impugned order are contra to those details which were made after making scrutiny of the documents. He further invited this Court's attention to the gift deed dated 21.08.2008, registered as Document No.2070 of 2008, land use certificate dated 31.03.2009 issued by the Revenue Divisional Officer, Padmanabhapuram and another certificate issued by the very same officer dated 31.03.2009 stating that the land in Survey Nos.3/1B and 3/2 are suitable for educational institution and the other certificates issued by the Tahsildar, Vilavancode dated 25.03.2009 and 03.09.2009 and submitted that all these documents overwhelmingly support the case of the petitioner, more particularly, establishing that the petitioner Trust is in possession of 10.27 acres of land in R.S.Nos.3/1B and 3/2 of Kaliyal Village, Vilavancode Taluk, Kanyakumari District, which the first respondent failed to consider. Therefore, he submitted that this Court has to intervene and direct the first respondent to re-consider the whole issue, based on the documents submitted by the petitioner.

5. Mrs.A.L.Gandhimathi, learned Standing Counsel appearing for the respondents 1 and 2 submitted that the petitioner, though applied for approval by showing the lands in S.Nos.3/1B and 3/2, has not furnished necessary documents indicating the actual extent of property available in respect of such survey numbers and therefore, the rejection is sustainable. She further submitted that the last date for considering the application for the present academic year is already over by 30.04.2017, and therefore, the question of re-considering the issue does not arise. Hence, she submitted that the petitioner can very well apply for the next academic year i.e. 2018-2019.

6. Heard both sides.

7. The impugned order of rejection was passed by citing four reasons which are as follows:

1. Certificate regarding Minority Status, if applicable at the time of application - Not presented.

2. Classification of land (Mega/Metro/Urban/Rural) certificate by the Competent Authority - Name of issuing authority - Tahsildar (Not presented)
3. Documents showing possession of the land in the name of the Trust - Not accepted.
4. Area made available for proposed institution, Ownership type (Sale/Gift Deed or Govt. Lease etc) is this land shared with other Institution, if yes then permanent Institute ID of the Institute - 10.27 document for 3/1B not produced. Partly not presented.

8. While considering the first reason, it is evident that the same is an outcome of total non-application of mind, as it is not the case of the petitioner that they are minority and therefore, the question of producing the certificate to that effect does not arise. The other three reasons are inter linked with each other and they are in respect of the extent of lands shown by the petitioner in their application to establish the proposed institution. It is seen from the report of the Scrutiny Committee dated 03.03.2017 which consists three members, out of whom one is an advocate, that such committee, on verification of the documents, accepted the same by indicating that the documents show the possession of the lands in the name of the Trust measuring to an extent of 10.27 acres. Thereafter, the Expert Visiting Committee filed the report and consequently, the rejection order was passed, which was confirmed by the Appellate Authority. The only dispute between the parties, as could be seen from the documents produced before this Court, as well as by considering their submission, is with regard to the total extent of the land available with the petitioner under S.Nos.3/1B and 3/2. According to the petitioner, the lands at both survey numbers are measuring totally 10.27 acres and in support of such submission, they rely on the gift deed and other certificates issued by the revenue officials, as stated supra. It is to be noted that those documents are not generated or executed after the rejection of their request and on the other hand, they are in existence much earlier to the very making of the application. Perusal of those documents certainly indicate that the reasons stated by the first respondent is not factually correct insofar as the total extent of the land under S.Nos.3/1B and 3/2 when both put together. Though the petitioner has sought to explain through their representation made on 01.05.2017 immediately after receipt of the rejection order, the first respondent has not given an opportunity to the petitioner to explain as to how they are justified in making such thing.

9. It is not the case of the first respondent that the very application itself was filed belatedly and therefore they are not in a position to consider the request of the petitioner, even after the cut off date. On the other hand, the fact remains that the very impugned order itself was passed on the last date i.e. 30.04.2017 and therefore, the petitioner cannot be faulted in approaching the first respondent once again to consider their claim. I have already considered the very same issue as to whether the question of objection can be raised citing the last date for considering the request in WP.No.16995 of 2017 dated 14.07.2017 and found that when the application itself was made in time, such objection cannot be put against the applicant. Therefore, I am of the view that the first respondent has to reconsider the whole issue in respect of the extent of the land once again.

10. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent for passing fresh orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. It is open to the petitioner to explain and satisfy the first respondent as to how their claim over the title and possession of the total extent of Survey Nos.3/1B and 3/2 measuring to 10.27 acres are justifiable. The whole exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Member Secretary
All India Council for Technical Education
Nelson Mandela Marg,
Vasant Kunj, New Delhi - 110 067.

2.Southern Regional Officer
All India Council for Technical Education
Haddows Road, Chennai-600 006.

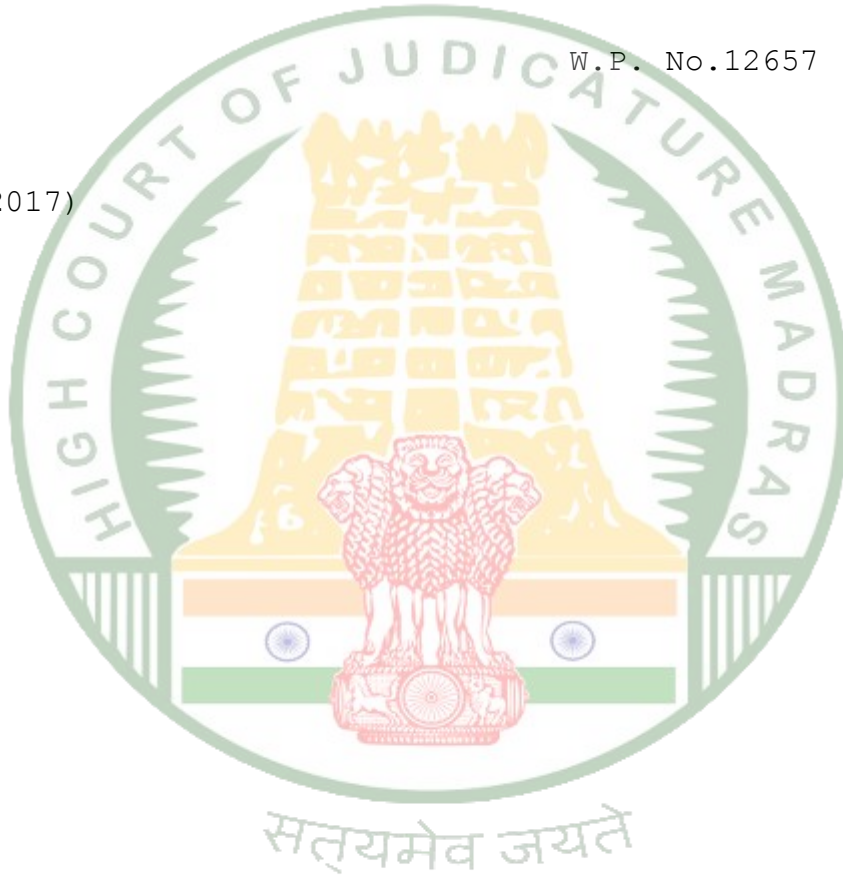
3.The Registrar
Anna University
Chennai-600 025.

4.The Commissioner of Technical Education,
Chennai-600 025.

+1cc to M/s.AL.Gandhimathi, Advocate, S.R.No.54621
+1cc to M/s.Muthumani Doraisami, Advocate, S.R.No.54214
+1cc to M/s.M.Vijayakumar, Advocate, S.R.54458
+1cc to the Government Pleader, S.R.No.54591

W.P. No.12657 of 2017

AR(CS III)
CU(01/08/2017)



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