

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT APPEAL Nos.782, 784, 787, 796 and 800 of 2017

COMMON JUDGMENT: (*Per VRS,J*)

Three colleges, by name, Muffakham Jah College of Engineering & Technology, Amjad Ali Khan College of Business Administration, and Sultan-Ul-Uloom College of Pharmacy, managed and administered by an Educational Society, by name, Sultan-Ul-Uloom Education Society, which are functioning in a vast extent of land in Road No.3, Banjara Hills, Hyderabad, were granted extension of approval by AICTE for the current academic year 2017-2018 by proceedings, dated 10.04.2017.

2. However, the AICTE suddenly woke up to the fact that there were several complaints, dated 20.07.2014, 19.04.2014, 10.03.2014, 26.08.2015, 16.11.2015 and 22.02.2016 lodged by M/s. S.V.Nagaraja Reddy, Shaukat Ali Mirza, Himayat Ali Mirza, Amina Marziya and Ooliya Kulsum, and Akhtar Hussain, to the effect that the land, over which all the three colleges are located, never belonged to the Society, which had obtained approval from the AICTE, and that in the past several years, the approval of the AICTE was obtained on misrepresentation of facts. On that score, the AICTE constituted a Two-Member Committee, which issued show-cause-notices to the

Society, and after granting an opportunity of hearing, the Two-Member Committee, which the AICTE sought to call as “*Two Man Justice Committee*”, submitted a report to the AICTE. Based upon the report, the AICTE passed an order on 29.04.2017 placing the Muffakham Jah College of Engineering & Technology in “*No Admission*” category for the academic year 2017-2018 and ordered the withdrawal of approval for the other two colleges.

3. Challenging the orders passed by the AICTE on 29.04.2017, the three colleges along with the Society managing the institutions filed separate writ petitions in W.P.Nos.17161, 17148 and 17168 of 2017 on the file of this Court. In the writ petitions, the colleges did not implead the persons, who lodged the complaints with the AICTE. However, the complainants before the AICTE appeared before the Court through their counsel and highlighted that they were not made parties. Thereafter, the colleges themselves filed applications for impleadment.

4. After hearing the respective counsel appearing for the writ petitioners, the opposing parties (who were the complainants before the AICTE), and the learned standing counsel for the AICTE, the learned single Judge passed an elaborate order, dated 09.06.2017, granting interim reliefs to the colleges in question. In short, the interim reliefs granted by the learned single Judge to all the three colleges were to the following effect:

- i) that there will be an interim suspension of the order of the AICTE, dated 29.04.2017,
- ii) that the colleges should disclose to the students seeking admission to the college, about the pendency of the civil case and the writ petitions, and
- iii) that an undertaking should be taken from the students joining the courses in these colleges indicating their awareness about the litigation and that they will not claim any equities later.

5. So far, the AICTE has not come up with any appeal against the interim order passed by the learned single Judge on 09.06.2017. But, two sets of parties, who filed independent complaints before the AICTE, have come up with the present writ appeals. While the first three writ appeals are filed by Ms. Ameena Marzia and Ms. Ooliya Kulsom, the fourth and fifth writ appeals are filed by a group of Companies and an individual, who sought a claim not in respect of the entire extent of Acs.24.00 of land, over which all the three colleges are located, but in respect of Acs.6.00 out of the entire extent of Acs.24.00, on the ground that they had purchased the said land long time ago.

6. We have heard Mr. Mahmood Ali and Mr. B. Chandrasen Reddy, learned counsel appearing for the appellants, Mr. D. Prakash Reddy and Mr. L. Ravichander, learned senior counsel appearing for

the respondent-colleges, and Mr. K. Ramakanth Reddy, learned standing counsel appearing for the AICTE.

7. It appears that the entire land, over which all the three colleges before us are located, was purchased by a Trust known as "*Prince Muazzam Jah Trust*". Nawab Mir Osman Ali Khan Bahadur, H.E.H., Nizam VII, created a Trust under a document, dated 08.10.1949, purportedly for the benefit of his second son Prince Muazzam Jah Bahadur, daughter-in-law Princes Niloufer, and children born to Prince Muazzam Jah Bahadur. This Trust seems to have purchased the land of an extent of Acs.24.10 guntas, under a registered Sale Deed bearing No.702/1954.

8. It appears that Prince Muazzam Jah Bahadur married three ladies. The appellants in the first three writ appeals were born to one of the three wives of Prince Muazzam Jah Bahadur.

9. The claim of the appellants in the first three appeals is that as per Clause 2 (g) of the Deed of Trust, the property was liable to be partitioned according to the Muslim Law of Inheritance, since the Trust would automatically stand dissolved. However, the Trust claimed that they had paid more than about Rs.50,00,000/-, pursuant to an oral agreement of sale, and that they had independent right over the property in question.

10. The disputes between the legal heirs of Prince Muazzam Jah Bahadur and the Trust lead to a spate of civil disputes. One of the

civil disputes, which has a bearing upon the complaint given by the appellants, was a suit for partition in O.S.No.387 of 2006. The claim of the appellants in the first three appeals, who were the plaintiffs in O.S.No.387 of 2006, was for partition and separate possession of their 2/5th share in the property, over which the three colleges now stand. It is essential to note here that the suit is still pending and not even a preliminary decree has been passed.

11. The appellants in the other two writ appeals claim to have independently purchased Acs.6.00 of land out of the total extent of Acs.24.00 from Prince Shahamat Ali Khan, who was purportedly the sole beneficiary under the Trust. Therefore, they claim that the colleges are not entitled to make use of the property that they have lawfully purchased.

12. It is of interest to note that the first appellant in W.A.No.796 of 2017 and W.A.No.800 of 2017 claimed to be the General Power of Attorney Holder from Prince Shahamat Ali Khan, the sole beneficiary under the Trust, in his complaint to the AICTE on 20.07.2014. This is one of the complaints, to which a reference has been made in the impugned order passed by the AICTE.

13. The learned single Judge, upon perusal of the material on record, came to the conclusion that when the rights of the complainant parties, who had admittedly gone to the civil Court, had not crystallized into a decree in their favour, it was not open to the AICTE

to order the shutting down of the colleges for the current academic year, especially when the colleges have been running for the past more than 30 years. Therefore, after weighing the *prima facie* case, the balance of convenience and the irreparable hardship, the learned single Judge passed the interim order restoring the approval granted by the AICTE by its original order, dated 10.04.2017.

14. The order of the learned single Judge is assailed by Mr. Mahmood Ali, learned counsel appearing for the appellants in the first three appeals, on the ground that when admittedly, the Trust has no right, title or interest over the property lawfully acquired by them, there was no question of any interim order being passed in favour of the colleges. The Court cannot take into account, according to the learned counsel for the appellants, any sympathy factor for the grant of the interim order. In this connection, the learned counsel placed heavy reliance upon the decision of the Supreme Court in *Seema Arshad Zaheer and others Vs. Municipal Corporation of Greater Mumbai and others*¹.

15. But, we do not think that the aforesaid contention is well founded. Even according to the appellants, the civil dispute with regard to the status of the mother of the appellants started way back in 1957. In the year 1987, the colleges were established. For reasons, which we are not able to decipher, the suit for partition was filed in the year 2006 almost after 20 years of the establishment of the

¹ (2006) 5 SCC 282

colleges. It is claimed that one of the colleges was established in the year 1980 itself.

16. Today, the claim of the appellants before the civil Court in O.S.No.387 of 2006 is for 2/5th undivided share in the land, over which the colleges are located. In the suit for partition, the Court is yet to pass a preliminary decree. Therefore, it was not out of any sympathy that the learned single Judge actually granted the interim order. The decision in *Seema Arshad Zaheer* case arose out of a dispute with regard to constructions. There, two private interests clashed with each other.

17. But insofar as a college is concerned, it is not merely the interest of a few individuals, who constitute the Society, that determines the balance of convenience. The colleges, which are in existence for about 30 years, create a support system for hundreds of individuals, who teach and who work as non-teaching staff, and the fate of thousands of students cannot depend upon an ultimate success that the appellants are certainly bound to get in the suit for partition with regard to their 2/5th share.

18. Mr. Mahmood Ali, learned counsel for the appellants, relied upon another decision of the Supreme Court in *Medical Council of India Vs. Rajiv Gandhi University of Health Sciences and others*² for the proposition that Courts are ill-equipped to decide whether a

² (2004)6 SCC 76

college should have extension of approval or not, and that it is better left to the decision of the expert bodies.

19. There can be no quarrel about the above fundamental proposition of law. It is exactly for the reason that the colleges rely upon the approval granted by the AICTE from the year 1994 and the renewal granted year after year for 23 years. Even for the current academic year 2017-2018, the AICTE granted approval and we would certainly give credit to the experts, who found the existence of infrastructure, the appointment of necessary teaching and non-teaching staff, and the availability of equipment. But, without disputing any of these, if the AICTE had to withdraw approval or suspend approval for the current academic year merely on the basis of a title dispute raised by the parties, who were yet to secure a decree from a competent Court, such a case would not fall within the mischief sought to be addressed by the Supreme Court in *Medical Council of India* case.

20. Insofar as the appellants in the last two writ appeals are concerned, as we have pointed out earlier, the first appellant was a person, who claimed to be the General Power of Attorney Holder from Prince Shahamat Ali Khan. He not only sought to implead himself, but also sought to implead all Companies, which purchased the land of an extent of about Acs.6.00 from the beneficiary of the Trust. Interestingly, the first appellant's complaint to the AICTE is

dated 20.07.2014. He was granted power under a document, dated 16.09.1994. But, admittedly the Deed of Power was cancelled on 30.04.2011, forcing Mr. S. V. Nagaraja Reddy to go before the civil Court and seek to challenge the cancellation of power, in O.S.No.942 of 2011. It appears that pending the original suit, the first appellant, Mr. S.V. Nagaraja Reddy, obtained an interim suspension of the cancellation of the Deed of Power. But, that order of interim suspension was subsequently vacated by this Court. Interestingly, the copy of the complaint made by Mr. S. V. Nagaraja Reddy on 20.07.2014 to the AICTE does not even disclose either the cancellation of his power under the Deed, dated 30.04.2011, or the fact that the above suit is pending adjudication on the validity of the cancellation of such power. In other words, the AICTE acted on the complaint given by a person, who did not make a full disclosure in his complaint willfully or otherwise of the right that he had to object the grant of approval by the AICTE. Therefore, the complaint given by Mr. S. V. Nagaraja Reddy should not even have been acted upon by the AICTE, when he was guilty of not bringing to the notice of the AICTE full facts in his complaint, dated 20.07.2014.

21. One important fact, which weighed in the mind of the learned single Judge for granting the interim reliefs to the colleges, is that on an earlier occasion, a similar attempt was made to make the AICTE refuse approval. This happened in the year 2012. One of the parties to the civil suit for partition, namely, Princes Fatima Fouzia,

filed a writ petition in W.P.No.1196 of 2012 on the file of this Court, challenging the grant of extension of approval to the colleges for the academic year 2011-2012, on the ground that there was a dispute with regard to the property. But, the said writ petition, to which the AICTE was a party, was dismissed by a learned Judge of this Court by an order, dated 27.01.2012. Though an appeal was filed in W.A.No.229 of 2012, the same was dismissed for non-prosecution on 13.11.2014.

22. Therefore, the learned single Judge took note of the fact (1) that in the absence of any allegations of lack of infrastructure, lack of teaching and non-teaching faculty, and lack of laboratory equipments, the AICTE could not have merely acted upon the complaints given by the parties whose rights are yet to be finally adjudicated by a civil Court, (2) that the interests of students and faculties constituting an element of public interest are involved, and (3) that an earlier attempt to shut down the colleges failed in the year 2012 with a seal of approval from this Court. Therefore, the learned Judge thought fit to grant the interim order that is assailed in these appeals. It is needless to point out that the parties, who indulge in civil litigation for properties, are normally prone to think that unless a collateral damage is caused, the civil litigation will not really bear fruit. Though in some cases such attitude of the parties cannot really be found fault with, in cases of this nature, institutions established for more than three decades cannot be allowed to be shut down, on the basis of the objections raised by the parties, whose rights are yet to crystallize in

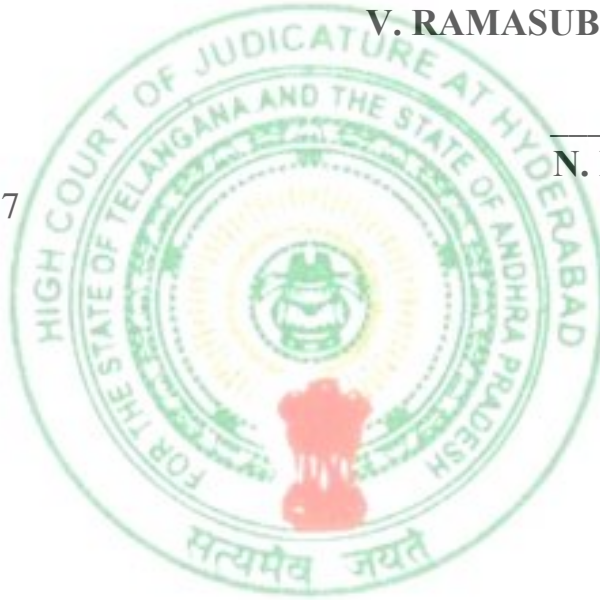
the form of a decree. Therefore, we are of the considered view that the learned single Judge did the only thing that was possible, while examining the question of the grant of interim reliefs and we find no reasons to interfere with the same. Hence, all the Writ Appeals are dismissed.

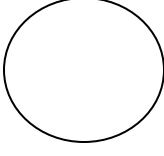
Consequently, miscellaneous petitions if any pending in the appeals shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

27th June, 2017
cbs





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W.A.Nos.782, 784, 787, 796 & 800 of 2017
(dismissed)

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+ WRIT APPEAL Nos.782, 784, 787, 796 and 800 of 2017

% 27-06-2017

W.A.No.782 of 2017

Ms. Ameena Marzia and another .. Appellants

Vs.

\$ Sultan-ul-uloom Education Society, rep. by its
Secretary, Banjara Hills, Hyderabad and others .. Respondents

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>HEAD NOTE:

! Counsel for appellants	: Mr. Mahmood Ali
^ Counsel for R.1 to R.3	: Mr. Tarun G. Reddy
^ Counsel for R.4	: Mr. K. Ramakanth Reddy

? CASES REFERRED :

- 1) (2006) 5 SCC 282
- 2) (2004)6 SCC 76