

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.29834 of 2017

ORDER

Heard Sri R.Raghunandan Rao, learned Senior Counsel appearing for Sri T.Vinod Kumar and learned Standing Counsel appearing for the 2nd respondent-University.

The petitioner-Society was established in the year 2011 for the purpose of imparting education, technical and non-technical. The society started a college in the name of 'Masterji School of Planning and Architecture' and it's name was subsequently changed to 'Maestro School of Planning and Architecture' in the year 2014. It was affiliated to the 2nd respondent-University. Approval was granted by the 1st respondent for one year for the academic year 2011-12 with an intake of 80 students per year and it was extended to academic year 2012-13 also. Initially, the college was situated at Madhapur, Hyderabad. Later on, it was shifted to Vattinagulapally. After shifting, approval was granted for one more year for the academic year 2013-14 and again extended to 2014-15. In the year 2015, the 1st respondent granted approval for three years for intake of 80 students for the academic years 2015-16, 2016-17 and 2017-18. On 8th August, 2016, a surprise inspection was conducted and certain irregularities were noticed. A letter was issued on 2.9.2016, fixing the intake @ 40 for the academic year 2016-2017 subject to the

conditions stated therein. The petitioner applied on 4.1.2017 for restoring the intake of 80 by stating as follows:

“In view of the deficiencies of the faculty and scales that were brought to our notice, we have appointed the required cadre wise faculty and also have taken steps to implement scales for the entire permanent faculty.

In view of the council’s observation that we were sharing premises with a school, we have moved into a premise that is independent and is larger. We have taken the Premises with an area of 3700.0 sq.mts. on a long lease of 33 years as per the latest council norms.

We have also rectified the other minor deficiencies that were brought to our notice by COA. Besides we have taken steps to improve the academics too.

As the process of submitting the Extension of Approval of online applications has began, we will be uploading all the above details along with documentary support for the council’s consideration. All the above mentioned facts can be verified by the council during the inspection of our institute.

We request the council to kindly consider our genuine efforts and sincerity in providing good architectural education and restore our intake of 80.”

A show cause notice dated 24.7.2017 was issued asking the petitioner to show cause as to why the intake of the institution be put to zero for the academic year 2017-18 for non-maintenance of Minimum Standards of Architecture Education as prescribed by the Council. It was also stated that the Executive Committee after considering the assessment report along with information submitted, decided to reject the application for additional intake with an observation that faculty is deficient as per requirements of 1983 Regulations and status of land and building

unclear. The petitioner was advised to apply for additional intake for B.Arch degree course for the academic session 2018-2019 after removing deficiencies in terms of Minimum Standards prescribed by the Council.

Since there is a provision for review, review was submitted on 27.07.2015 and after considering the same, the 1st respondent passed an order on 22.08.2017 observing as under:

“The Executive Committee perused the documents submitted by the institution and observed the following:

The Institution has not fulfilled its undertaking of last year to construct own building.

No survey number of the plot is mentioned in the rental agreement provided by the institution.

There are different survey numbers mentioned in the records of Panchayat and building plan. Hence, there is discrepancy in the land documents.

Revised plan approved by HMDA to be submitted.

In view of the above, the Executive Committee decided that your institution should appear before the Executive Committee with all original documents related to land and building so that the same could be verified by the Committee.

Therefore, your institution is requested to produce the following original documents before the Executive Committee at its next scheduled meeting:

- 1.Original rent agreement/lease deed.
- 2.Certificate/record that the Survey No. and house no. mentioned in sale deed and lease deed is one and same.
- 3.Certificate clarifying that Survey no.132/6 and 132/1 are one and same or belong to same property.
- 4.Lease Deed registration and stamp duty records.
- 5.Whether stamp papers purchased in 2014 are valid for entering into lease agreement in 2016.

6. Clarification whether building falls under Panchayat area or Development Authority area and land use certificate of the building.

The date and time of the next meeting of the Executive Committee shall be communicated to your institution in due course.”

Thus it is evident that as on today, there is no approval from the 1st respondent and in the meanwhile the 2nd respondent is going ahead with the process of counseling for admission of the students. At this stage, the present writ petition is filed challenging the action of the 1st respondent in refusing to grant permission to the petitioner-College with annual intake of 80 students per year pursuant to the application dated 30.01.2017 and to permit the petitioner to participate in the admission counseling process of the 2nd respondent to be conducted on 8/9.9.2017.

The above events would clearly show that the petitioner did not get any approval from the 1st respondent and granting of approval itself is pending consideration by the 1st respondent and therefore, issuance of direction to the 2nd respondent does not arise.

In a recent decision of the Supreme Court in *Dental Council of India v. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli*¹, it was held as follows:

“14. In *Medical Council of India v. Rajiv Gandhi University of Health Sciences* ((2004) 6 SCC 76) the three-Judge Bench referred to the authority in *Union of India v. Era Educational Trust* ((2000) 5 SCC 57) and emphatically reiterated the law declared therein. The reiteration is as follows:—

¹ 2017 SCC online SC 376

“4. We once again emphasise that the law declared by this Court in *Union of India v. Era Educational Trust* (supra) that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by educational institutions concerned for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council.”

15. The aforesaid pronouncement, as is manifest, rules that issue of an interim order in respect of an institution which has not received the approval is not countenanced in law.

16. In *Medical Council of India v. JSS Medical College* ((2012) 5 SCC 628) the issue had arisen with regard to passing of interim orders by the High Court relating to permission for increase of seats. The anguish expressed by the Court is reflectible from the following passage:—

“12. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis.”

...

24. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations.

There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order, but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the court grants approval in a way which is the subject matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is *sub judice*, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

25. The High Court has to realize the nature of the *lis* or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young. One may say, "... life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.

26. There is no reason to invite a disaster by way of an interim order. A Judge has to constantly remind himself about the precedents in the field and not to be swayed away by his own convictions. In this context, the oft-quoted passage from *Felix Frankfurter* (FRANKFURTER, Felix, in Clark, Tom C., "Mr. Justice Frankfurter: 'A Heritage for all Who Love the Law'," 51 A.B.A.J. 330, 332 (1965)) would be apt to remember:—

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians & those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

27. That leads us to say something about following the precedents. The purpose is to have consistency. A three-Judge Bench in *Government of Andhra Pradesh v. A.P. Jaiswal* (2001) 1 SCC 748) observed:—

“24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy....” ”

This caution, one has to keep in mind while entertaining Writ Petitions relating to approvals/admissions to educational institutions. When there is no approval from the concerned Council which is the regulating body, this Court should not entertain this Writ Petition. The matter is pending with the 1st respondent. The issue of granting a direction to the 2nd respondent does not arise at all.

In the circumstances, this Court is of the considered view that the present writ petition is pre-mature and accordingly, the same is dismissed at the admission stage. No costs.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

5th September, 2017

rkk

Note: Issue CC by two days.