

Sr.No.211

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

CWP No. 23271 of 2016

Date of decision:08.05.2017

Ganpati Institute of Hotel Management

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Sukhvinder Singh Nara, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana

Mr. Rajesh K.Sheoran, Advocate
for respondent No. 2.

Mr. P.K.Chugh, Advocate
for respondent No. 3.

Rakesh Kumar Jain, J.(Oral)

This petition is filed for seeking a direction to respondents No. 2 & 3 to accept the admissions of students dated nil who have been admitted by the petitioner for the second shift Diploma in Hotel Management Course for the academic session 2016-17.

In brief, it is alleged that the petitioner was firstly affiliated with All India Council for Technical Education(AICTE), respondent No. 2 i.e. Haryana State Board of Technical Education(HSBTE) and respondent No. 3 i.e. Haryana State Technical Education Society(HSTES) in the year 2013 to provide second shift diploma in Hotel Management. The petitioner institute was given affiliation to run the above said course under the All India Council for Technical Education(Grant of Approvals for Technical

Institutions) Regulation 2012 and in terms of section 27(u) of the Haryana State Board of Technical Education Act No. 19 of 2008. It is alleged that the petitioner institute got the affiliation continuously till the academic session 2016-17 when the petitioner, inadvertently, failed to deposit the affiliation renewal fees of ₹65,000/- before the last date of renewal i.e. 29.04.2016. It is alleged that the petitioner came to know about the fact when its affiliation could not be renewed due to non-deposit of renewal fee within the stipulated time when the petitioner tried to submit the admission details of 42 students admitted in the course for the academic session 2016-17 on the online portal of respondent No. 3. It is further alleged that the petitioner informed respondent No. 3 vide e-mail dated 26.07.2016 that they are facing problem in login on intrascbh for admission as on login it is shown invalid institute id and password. The petitioner allegedly requested for updating the same ASAP. In response of the said e-mail, respondent No. 3 same day informed the petitioner that *“it is informed Seat Matrix of Diploma(Engg.) course for the session 2016-17, has been prepared of the affiliated institutions with Haryana State Board of Technical Education (HSBTE) only. As your institution does not exist in the list provided by HSBTE, so the institution has not been considered for admissions in Diploma(Engg). Respondent No. 2 again sent e-mail on 2.08.2016 that “as per instructions dated 25.02.2016(Copy available on official website of Board) the institutes were supposed to submit the Hardcopy of complete application duly signed by the Principal of the institute alongwith Undertaking and Supplementary Information must reach Secretary, HSBTE, through registered post/by-hand within a week of online submission but not later than 29th April, 2016. It was also mentioned that it*

is evident from your letter under ref. that the lapse is on your part in submitting the affiliation proforma for session 2016-17. Therefore, it is requested to submit complete affiliation fee alongwith due fine amount upto 01.08.2016 i.e. formal date of submission of documents to the Board for grant of extension of affiliation for 2016-17. The petitioner gave response on 8.08.2016 and mentioned that they are submitting extension file for approval 2016-17 and asked for institute ID & password, so that they can admit student. However, on 12.08.2016 respondent No. 3 informed the petitioner that “It is again informed that Seat Matrix of Diploma(Engg.) course for the session 2016-17, has been prepared of the affiliated institutions with Haryana State Board of Technical Education(HSBTE) only. As your institution does not exist in the list provided by HSBTE, so the institution has not been considered for admissions in Diploma(Engg). Therefore, it is informed that you may contact HSBTE, Panchkula in this regard.

On 13.08.2016, respondent No. 3 further informed the petitioner that “*with ref. to your application no.GIHM/SEC/135, dt.01.08.2016, the request for extension of affiliation for Polytechnic Course 2nd shift for session 2016-17 has been rejected as the request has been submitted much later after the last date of submission of application*”.

On 17.08.2016, the petitioner sent e-mail in which it is mentioned that “*we have left to students in admitting online students details in intra portal, so we are requested to give us some more time to admitting students. Please extend the date of online admitting students details.*” In this regard, same day respondent No. 3 has informed that “*in this regard, it is informed that Sanctioned Intake for the course Diploma (Engg.) for the*

session 2016-17 has been considered as per list of institutions along with Sanctioned Intake provided by Haryana State Board of Technical Education(HSBTE), Panchkula. As your institute does not exist in the list provided by HSBTE so your request can not be considered.”

According to the petitioner, they had deposited the amount of ₹80,000/- and ₹95,000/- by way of two challans towards penal fee and has referred to an order dated 28.09.2016 purported to have been passed by respondent No. 2 by which Extension of Provisional Affiliation for the Academic Year 2016-17 for 2nd shift diploma programs was granted. Counsel for the petitioner has submitted that though the admissions have been given to the students in the session 2016-17 without their being affiliation but after the penal amount has been paid and provisional extension has been granted, the admissions to the petitioner institute shall be deemed to have been regularized. It is further submitted that during the pendency of this petition, the students of the petitioner institute have been allowed to take examinations of the Ist semester and the urgency involved in this petition at this stage is because of examinations of IInd semester are on. It is also submitted that the petitioner was asked to file an affidavit to show any proof that the students were admitted in the session 2016-17 before the cut off date because it was the case of the petitioner that the admissions were made before the cut off date prescribed by the Supreme Court in the case of *Parshavanath Charitable Trust and Others Vs All India Council for Tech Edu and Others*. In this regard, affidavit was filed by the petitioner and vide order dated 29.11.2016, respondent No. 3 was directed to verify their averments made in the affidavit.

Counsel for respondent No. 3 has produced verification report

in compliance of order dated 29.11.2016 which is taken on record as mark

'X' in which the following conclusion has been drawn:-

“i) The above mentioned documents submitted by the institute in support of its assertions, are the documents of the petitioner institute itself and have always been in its own custody. These documents were never shared by the petitioner institute upto the last cut-off date for admissions/uploading with the respondent No.3 i.e. Haryana State Technical Education Society(the online admissions facilitating society functioning under the aegis of technical education department) of the State Board of Technical Education Haryana. Therefore, these documents cannot be relied upon as the authentic proof of the claim that the alleged admissions were made upto 15.08.2016.

The institute has not been submitted any documentary/digital evidence from which the truth of assertions made by it can be relied upon.

ii) The relevant documents such as a copy of advertisement, merit list hosted on website, Counseling schedule, report of admission committee, valid proof of fee deposit, any communication with respondent no. 3 or respondent no. 2 and the concerned candidate and any other agency and any other relevant proof hosted on website or emailed to justify that all the admissions mentioned in the list submitted by petitioner institute before the Hon'ble Court were made on or before 15.08.2016, were not made available to the respondent no. 3. In absence of these relevant documents/information, it cannot be concluded that the admissions are made on or before 15.08.2016.

iii) It is informed that in compliance of the interim directions passed by this Hon'ble Court, the students of the Petitioner Institute were provisionally allowed to

*appear in the examinations held in December 2016
subject to final outcome of the case.”*

According to the aforesaid, the petitioner did not provide the relevant documents like the copy of advertisement, merit list posted on website, Counseling schedule, report of admission committee etc. and during the course of hearing, learned counsel for the petitioner has admitted that there was no arrangement for the purpose of admitting the students in the institute and no counseling was also held because it is alleged that there were less seats available in the institute than they were offered.

On the other hand, counsel for respondent No.2 has submitted that as per the schedule prescribed in Chapter V of the affiliation bye-laws of the Board pertaining to “Procedure For Submission of Application For Affiliation And Follow-up Action” a new polytechnic/institution fulfilling the norms of affiliation may apply to the Board for provisional affiliation within one month of recognition/approval from both State Government and AICTE but not beyond 12th April. Schedule given is also mentioned in the reply which is reproduced as under:-

Event	Schedule
Receipt of Provisional affiliation proforma alongwith affiliation fee and AICTE approval letter	Within week of receipt of AICTE approval letter but not later than 12 th April
Receipt of Provisional affiliation proforma alongwith late fee @ Rs. 1000/- per day	Upto 27 th April
Processing of application & final Decision of the Board for grant or refusal of affiliation	Upto 05 th May
Appeal for reconsideration of Affiliation	Upto 10 th May
Issuance of letter of Affiliation/Dis-affiliation on the basis of appeal	Upto 15 th May

Respondent has also made the following averments:-

“6. That the petitioner society in para 7 of the writ

petition has admitted that in the academic session 2016-17 the petitioner, inadvertently failed to deposit the affiliation renewal fee of Rs. 65000/- before the last date i.e. 27.04.2016.

7. *That the petitioner society in para 10 of the writ petition has itself admitted that it had formally applied to the Board for extension of provisional affiliation on 01.08.2016 much later than the prescribed schedule as detailed in para 3 above.*

8. *That it is a matter of record that the respondent no. 2 vide its letter no. 283 dated 28.09.2016 had granted extension of provisional affiliation to the petitioner institute for the session 2016-17 for running three years diploma program in Hotel Management in second shift with a sanctioned intake of 60 seats.*

9. *That HSBTE granted extension of provisional affiliation to the petitioner institute on 28.09.2016 so that the students already enrolled by the petitioner institute in the three years diploma program in Hotel Management continue being affiliated with the Board and that their academics, examination and certification are carried out smoothly.*

10. *That the examination branch of the Board can conduct the examination of the students whose admissions have been accepted by the admission making body i.e. Haryana state Technical Education Society(hereinafter referred to as HSTES). However, as per the admission date submitted by HSTES, no student has been admitted in Diploma in Hotel Management Course of 3 year in petitioner institute.”*

It is also submitted that the extension of provisional affiliation was only for the students already enrolled by the petitioner institute in the three years diploma program, continued being affiliated with the Board so

that their academics, examination and certification may be carried out smoothly and not for the new admissions. It is also submitted that these averments have gone un rebutted as there is no reply/rejoinder filed by the petitioner to deny the same.

Counsel for respondent No. 3 has also submitted that Haryana State Technical Education Society-HSTES(formerly known as Haryana State Counseling Society-HSCS) in the Department of Technical Education was constituted vide notification no. 20/2/7-4TE dated 21.03.2007 for implementation of transparent and uniform policies in admissions and for completing the admission process in a notified schedule. It is submitted that respondent made admissions in All India Council for Technical Education (AICTE) approved Diploma Courses only in those institutions of the State which are affiliated with respondent No. 2 and the list of such institutions are provided by respondent No. 2 to respondent No. 3 for the purpose of counseling/admissions in every session strictly under the guidelines/schedule issued by the AICTE. It is further submitted that the last date of admissions for the session 2016-17 was fixed according to the AICTE Notification notified in pursuance of orders of Hon'ble Supreme Court of India in Civil Appeal No. 9048 of 2012(Parshavnath Charitable Trust & others vs. AICTE and others) was 15.08.2016. It is further submitted that the petitioner institute did not exist in the list of affiliated institutes which was provided by respondent No. 2 for the session 2016-17. The said institute was not considered for counseling/admissions for the session 2016-17 by them. It is also submitted that the petitioner institute made correspondence to HSTES through e-mail as stated above and they have intimated the petitioner institute that as per list provided by respondent

No. 2 the name of the petitioner institute does not figure in the same and hence, the admissions were not considered. It is further submitted that the petitioner institute got provisional affiliation for the year 2016-17 on 28.09.2016 and the copy of the same was received by respondent No. 3 on 28.09.2016. The last date for admission in Diploma Course for the session 2016-17 was 15.08.2016 and last date for updation of the detail of admitted students was 16.08.2016 and the counseling process was already over, hence, further action was not required by respondent No. 3. Respondent No. 3 further submits that admissions could not be made/recognized without there being any affiliation having been given to the petitioner for the session 2016-17.

I have heard learned counsel for the parties and after perusing the available record with their able assistance the question which arises is *as to whether the petitioner has made the admissions in the Second Shift (Evening classes) of the session 2016-17 after having been affiliated with respondent No. 2 and whether the provisional extension given by respondent No. 2 is meant for the new admissions or for the admissions already there of the previous classes which are running in the institute?*

There is no dispute that in the decision of the Supreme Court rendered in the case of *Parshavanath Charitable Trust and Others(supra)* the cut off date for seeking admission is provided. The complete schedule has been given and it has been ordered in any case no body is allowed to deviate from the schedule. The affiliation was to be obtained on or before 29.04.2016 which has admittedly not been taken by the petitioner for the reasons best known to them. Although the case of the petitioner is that since the chairman of the institute is suffering from cancer, therefore, he could not

manage the affairs of the college properly but fact remains that the college has been seeking affiliation every year, therefore, it knew the intricacies of not seeking affiliation in time and the admissions cannot be given to the new students by the petitioner without getting affiliation from respondent No. 2. The very fact that the admissions have been given by the petitioner to the students in the session 2016-17 without affiliation speaks volume about their casual attitude towards the education system. It appears that the petitioner was only concerned with its own benefit that the seats given to it may not go waste in a particular session and offered admissions without even seeking affiliation and then indulged in this litigation in which the petitioner also obtained the order for the sake of the students to appear in the Ist semester examinations but this Court would not close its eyes from what is happening too often.

In my considered opinion, the Court should not allow these type of cases where the institute, running the course from the last three years, knew about the intricacies of law much less the requirement of getting affiliation before offering admissions. The petitioner has not only played with the life and carrier of the students but has also set up a bad example in the education system only because of its greed in giving admissions in order to consume the seats offered to it. Thus, in these facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed. Now the question is what has to be done for the students who have been cheated by the petitioner. In the facts and circumstances, I direct the petitioner to return the tuition fee as well as admission fee etc. deposited by the students who are admitted by them for the session 2016-17 forthwith and shall also pay the costs of ₹ 50,000/-

each to them for their pain and suffering. The students may also lodge any kind of prosecution against the petitioner for their act of cheating i.e. giving admission without permission.

With these observations, the present petitions is dismissed.

8th May, 2017

Shivani Kaushik

[Rakesh Kumar Jain]-
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No