

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1680 of 2015 (O&M)

Date of Decision: 09.10.2017

Janki Institute of Art & Craft

...Appellant

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL**

Present: Mr. Anil Ghanghas, Advocate for the appellant

Mr. Vishal Garg, Addl. AG Haryana

Mr. IP Singh, Advocate for respondent No.3

SURYA KANT, J. (Oral)

(1) The appellant is a privately managed unaided institute and at the relevant time, it used to impart Art & Craft Teacher Training Course. The Director, Industrial Training Department, Haryana after getting the inspection of the Institute conducted on 19.04.2011, vide memo dated 04.07.2011 (P3) granted conditional/provisional permission to the appellant-Institute for admission of the students in Art & Crafts Teacher Training Course for session 2011-13 on the following terms and conditions:-

“1. That you will deposit a bank Guarantee of Rs.5.00 lacs in the name of Director, Industrial Training Deptt. Haryana with Headmaster, Govt. Art School, Rohtak before date of start of admission for session 2011-13. The bank guarantee will be forfeited if the Centre/Organisation failed to.

a) All the deficiencies noticed during last inspection will be removed within two months.

b) The training standard will be improved.

The infrastructure offered by the Centre for Art & Craft Teachers Training Centre will not be used for any other purpose except for Art & Craft Teachers Training Centre without the permission of this directorate.’

- c) *Complete staff required for the centre with specified qualifications will be appointed.*
- d) *The salary to the staff will be paid through the bank.*
- e) *Physical presence of the students will be ensured.*
- f) *Will abide by the instructions issued by the department.”*

(emphasis applied)

(2) The appellant-Institute in compliance to the above-reproduced Clause-1 furnished a Bank guarantee of ₹ 5 lacs in the name of Director, Industrial Training Department, Haryana.

(3) No deficiency was admittedly informed to the appellant-Institute which it was obligated to remove within two months. In fact, a fresh inspection was carried out on 04.01.2012 and pursuant thereto, the appellant-Institute was served with a show cause notice dated 02.07.2012/01.08.2012 (P6) informing the appellant-Institute that the Government had decided to forfeit the Bank guarantee of ₹ 5 lacs deposited by it and also to withdraw temporary recognition. It will be appropriate to reproduce the entire show cause notice which reads as follows:-

“Your institute was granted temporary permission for admission in Art.&Craft Teacher Training Course vide director I.T.I. letter No.T-8 Art & Craft Admission/2011-13 dated 04.07.2011 on the conditions mentioned below:-

“1. That you will deposit a bank Guarantee of Rs.5.00 lacs in the name of Director, Industrial Training Deptt. Haryana with Principal/Headmaster, Govt. Art School, Rohtak before admission for session 2011-13. The bank guarantee will be forfeited if the Centre/Organisation failed to.

- a) *All the deficiencies noticed during last inspection will be removed within two months.*
- b) *The training standard will be improved.*

The infrastructure offered by the Centre for Art & Craft Teachers Training Centre will not be used for any other purpose except for Art & Craft Teachers Training Centre without the permission of this directorate.'

- c) Complete staff required for the centre with specified qualifications will be appointed.*
- d) The salary to the staff will be paid through the bank.*
- e) Physical presence of the students will be ensured.*
- f) Will abide by the instructions issued by the department."*

According to the abovesaid conditions your institute had submitted a Bank guarantee of Rs.5 lakh with the Principal, Government Art School, Rohtak and thereafter admissions were permitted. The inspection committee carried out inspection of your institute on 4.1.2012 and found under mentioned discrepancies.

- 1. Classes are not being taken and practical jobs are not conducting regularly as per requirement of the syllabus.*
- 2. Maximum Tools and Equipment are short.*
- 3. Instructors are not preparing Instructional material and Training Material*
- 4. Strength of the students admitted is very poor only eleven students are in 1st year and 15 student are in 2nd year.*
- 5. Internet connection is not available*

The Government has taken a decision that the bank guarantee deposited by your institute is to be forfeited and by withdrawing your temporary recognition, transfer the students to other training institutes. In case you wish to put your defence in this matter you may do so within 3 days on receipt of this letter otherwise the action will be taken as per rules."

(emphasis applied)

(4) The appellant-Institute submitted its reply within 10 days i.e. on

09.08.2012 (P7) and informed that the shortcomings referred to on the basis of

inspection by the Department held on 04.01.2012 have been rectified. Regardless of that reply, the impugned order dated 08.11.2012 (P8) was passed forfeiting the Bank guarantee of ₹ 5 lacs.

(5) The aggrieved appellant approached this Court but the learned Single Judge vide order dated 03.08.2015 has dismissed its writ petition giving rise to this Letters Patent Appeal.

(6) We have heard learned counsel for the parties at a considerable length and gone through the record. The Director, Skill Development & Industrial Training Department, Haryana has filed additional affidavit dated 19/20.09.2017 reiterating its stand.

(7) It emerges out that the appellant-Institute was granted conditional/provisional permission for admission in Art & Craft Teachers Training Course for the session 2011-13 subject to its depositing the Bank guarantee of ₹ 5 lacs and further subject to removal of all deficiencies “noticed during last inspection” within two months.

(8) It is an admitted fact and conceded by learned State counsel that no deficiency was ever informed/brought to the notice of the appellant-Institute till the impugned show cause notice dated 02.07.2012/01.08.2012 (P6) was served. Vide that show cause notice, the appellant was informed certain discrepancies (and not the deficiencies), as were observed by the Inspection Committee during the inspection held on 04.01.2012. The State Government thus took 7/8 months for informing those ‘discrepancies’ to the appellant-Institute. The appellant-Institute in its reply dated 09.08.2012 maintained that the discrepancies stood removed within 10 days. Thereafter, no further inspection was carried out by the authorities to ascertain whether or not the deficiencies/discrepancies had been removed. It may be observed that the time period granted to the appellant-

Institute to remove the deficiencies was two months. The period of two months was to be counted from the date the deficiencies were brought to the notice of the appellant-Institute. The discrepancies were informed to the appellant only on 02.07.2012/01.08.2012 and admittedly those stood removed within a period of less than one month.

(9) It is thus difficult to hold that the appellant-Institute failed to comply with Clause-1(a) of the memo dated 04.07.2011 (P3) vide which the provisional permission for admission was granted to it. In the light of these uncontroverted facts on record, we fail to understand as to how the bank guarantee furnished by the appellant-Institute could be forfeited. The action of the authorities in this regard is palpably illegal and contrary to their own record.

(10) At this stage, it would also be useful to make reference to the alleged discrepancies observed by the Inspection Committee in their inspection report dated 04.01.2012. These are reproduced in para-3 of this order. It may be seen that the first discrepancy was that the classes were not being taken and practical jobs were not being conducted regularly as per the requirement of syllabus. At best, this discrepancy would warrant sensitization of the teaching faculty to conduct the classes strictly in accordance with the syllabus. The second discrepancy noticed was that maximum tools and equipments were short. Unfortunately, the details of such tools/equipments are conspicuously missing. The third discrepancy was that the Instructors were not preparing the instructional material and training material. That again was a reflection on the quality of the teachers which could be effectively addressed by impressing upon the Instructors to better concentrate on the training module. The fourth discrepancy was that there were less students in the Institute. Apparently, it was not something within the control of the appellant-Institute. The fifth

discrepancy was that of non-availability of internet connection. It does appear that in Course of Art & Craft Training, internet may not be an essential need though it is desirable that such facility is available in the Institute.

(11) Be that as it may, the discrepancies were minor in nature and the same could be legitimately removed within 10 days as was claimed by the appellant-Institute. Still further, the onus was on the authorities to find out whether the discrepancies have been removed or not for which fresh inspection team ought to have been sent. No such exercise was undertaken. The respondent-authorities cannot indulge in unjust enrichment by encashing the bank guarantee which the appellant-Institute had to furnish as a condition precedent for seeking provisional permission for admissions.

(12) For the reasons afore-stated, the appeal is allowed; the order dated 03.08.2015 passed by the learned Single Judge is set aside and the writ petition is allowed with a direction to the respondents to refund the Bank guarantee of ₹ 5 lacs to the appellant-Institute within three months from the date of receipt of certified copy of this order, however, without any interest.

(Surya Kant)
Judge

09.10.2017
vishal shonkar

(Sudhir Mittal)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No