

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3391 OF 2018

- 1 Late Haribai Warpudkar Gramin
Mahila Sevabhavi Sanstha, Parbhani
through its President
Samsher Sureshrao Warpudkar
Age 34 years, occ. Agril & business
R/o 'Nakshtra', Vishnu Nagar,
Basmat Road, Parbhani
Tq. & Dist. Parbhani

2. Proposed Renuka Mata Institute of
B. Pharmacy, Pedgaon
Gut no. 461, Pedgaon
Tq. & Dist. Parbhani
Through its President

Petitioners

Versus

1. All India Council of Technical Education
Nelson Mandela Marg
Vasant Kunj, New Delhi 110070
through its Member Secretary
2. Standing Appellate Committee
All India Council for Technical Education
New Delhi Nelson Mandela Marg
Vasant Kunj,
New Delhi 110070
through its Chairman
3. Re-Scrutiny Committee
All India Council for Technical Education
Western Regional Office,
Mumbai 2nd Floor
Industrial Assurance
V.N. Road, Opposite Churchgate Railway Station
Churchgate, Mumbai 28
4. Western Regional Office
All India Council for Technical Education

Mumbai, through its Regional Officer,
2nd Floor, Industrial Assurance
V.N. Road, Opposite Churchgate
Railway Station, Churchgate
Mumbai 20.

Respondents

Mr. M.S. Deshmukh, advocate for petitioners.
Mr. S.V. Advant, advocate for respondent no. 1.

**CORAM : R.M.BORDE &
K.K. SONAWANE, JJ.
RESERVED ON : 23rd APRIL, 2018
PRONOUNCED ON : 26th APRIL, 2018**

JUDGMENT : (Per R.M. Borde,J.)

- 1 Rule. Rule made returnable forthwith.
2. Heard finally at admission stage with the consent of learned counsel for the respective parties.
3. Petitioners are praying for issuance of writ of certiorari or any other writ or order in the like nature for setting aside decision rendered by respondent no. 2 - Standing Appellate Committee on 20.03.2018 as well as decision rendered by respondent no. 3 - Scrutiny Committee dt. 12.03.2018 refusing to recommend proposal tendered by petitioners for grant of approval for establishment of B.Pharmacy college at Pedgaon, Tq. & Dist. Parbhani during the academic year 2018-2019 with further direction to respondents to send Expert Visit Committee and, on consideration of the report of the said Committee, to consider the proposal tendered by petitioners for setting up B.Pharmacy college.
4. Petitioner no. 1 - trust is presently running Polytechnic as

well as Pharmacy college at Karegaon, Tq. & Dist. Parbhani. Respondent no. 1 - AICTE published Approval Process Handbook 2018-2019 and floated an advertisement seeking applications for grant of approval as well as for extension of approval in favour of institutions intending to establish new technical institutions including Pharmacy college as well as for continuing to operate the institution during the academic year 2018-2019. Petitioner - Trust, in compliance with the requirements, submitted a proposal within stipulated period. Certain clauses incorporated in the Approval Process Handbook 2018-2019 are relevant for consideration. Those are :-

1.9.1 Requirements and Eligibility

- a. The Promoter Society / Trust / Company shall have the Land as required and has its lawful possession with clear title in the name of the Promoter Society / Trust / Company on or before the date of submission of application.

1.9.8 Evaluation of the application by Scrutiny / Re-Scrutiny Committee

- i. The Re-Scrutiny Committee shall verify only the deficiencies pointed out by the Scrutiny Committee as per the norms and standards and shall countersign all the documents that are accepted.

1.12 Appeal Procedure

- a. As per the provision laid down in Clause 1.10 m of this chapter, an Institution / Applicant, if aggrieved by the decision of the Executive Committee shall have the right to appeal once to the Council within 7 days from the date of uploading of LoR.
- b. The Appeal of the Institution shall be

considered by the Standing Appellate Committee. The appeal schedule shall be notified on the Web-Portal.

c. Applicants should adhere to the given schedule of Standing Appellate Committee and not to remain absent in view of the stern time limit given by the Hon'ble Supreme Court.

d. The Report of the Scrutiny and / or Expert Visit Committee (as applicable) shall be placed along with the observations of the Approval Bureau, before the Standing Appellate Committee on the date and time scheduled by AICTE. An Officer of the Council concerned shall assist the Committee and place relevant records and documents before the Committee and make necessary arrangements for the conduct of the meetings, however, he/she shall not be a part of the Committee.

e. Two representatives of the Institution shall be invited to present their case along with the compliance and supporting documents, before the Standing Appellate Committee.

f. The Standing Appellate Committee shall either Recommend / Not Recommend the case to the Council or recommend for Scrutiny / Expert Visit Committee. Accordingly, Scrutiny / Expert Visit Committee shall be conducted as per Clause 1.9.8 / 1.9.9 respectively of this Chapter and the reports of the same shall be placed before another Standing Appellate Committee.

g. Representatives of the Applicants where Expert Visit Committee was conducted for the first time to the Institution after Standing Appellate Committee, ONLY shall be invited to present their case along with the supporting documents, before the Standing Appellate Committee. Applicable to cases listed in Clause 1.3.1 of this Chapter only.

h. The concerned Officer in Approval Bureau shall ensure and certify that all the fields of all the Reports are filled completely.

i. The recommendations of the Standing Appellate Committee shall be placed before the Council whose decision shall be final and the same shall be uploaded on the Web-Portal.

j. Applicants, whose applications are recommended for grant of approval by the Council shall be informed for submission of Security Deposit along with an Affidavit.

k. A final Letter of Approval / Letter of Rejection with the reasons for rejection of the application shall be issued to the Institution through Web-Portal, on or before 30th April of the Calendar Year.

l. LoA shall not be granted after 30th April, 2018 in compliance to the order dated 13.12.2012 passed by the Hon'ble Supreme Court of India in CA No. 9048/2012.

5. Petitioners contend that initially, the Scrutiny Committee, on evaluation of the proposal, raised following objections :

1. Site plan not presented.
2. Sections and elevation of building not presented.
3. Phasewise planning not presented.
4. FSI certificate not presented.
5. No reference for FSI was presented for verification.

During re-scrutiny of the proposal, petitioners pointed out that no such deficiencies exist. However, the Scrutiny Committee during conduct of re-scrutiny has pointed out following

deficiencies :

1. Land is mortgaged as revealed from sale-deed.
2. Document registration number is not mentioned correctly in Table-F.
3. Date of registration is wrong in Table-F.

6. Petitioners, on receiving the decision communicated by respondent no. 1 - AICTE vide letter dated 12.03.2018, tendered appeal to the Appellate Committee. The appeal was scheduled for hearing on 20.03.2018. During the course of hearing, petitioners placed on record copies of two letters of Canara Bank dated 01.03.2018 informing that charge has been removed on gat no. 461 so also 'No Dues' certificate and a letter addressed to Tahsildar, Parbhani to remove charge from gat no. 461 as well as current 7/12 extracts of gat no. 461 disclosing that there is no charge on the aforesaid landed property. Petitioners also presented copy of map derived from website to indicate that there is huge distance between village Karegaon and village Pedgaon and as such, it is not possible to run two institutions at the same place and the proposed Pharmacy college is to be established at Pedgaon and as such, copies of sanctioned building plan and all other documents in respect of land gat no. 461 were tendered. It was also demonstrated that the building is already constructed on the site i.e. gat no. 461. Despite this evidence, respondent no. 2 - Appellate Committee rejected the appeal observing that the documents produced in support to say that the land is free from encumbrance or charge are inconsistent and inference cannot be drawn that the same is free from mortgage. The Appellate Committee recorded following observations :

Write this section in brief, Details may be submitted on separate sheets with supporting documents duly signed by the authorized signatory of the applicant organization.

Sr. No.	Scrutiny / Re-Scrutiny noted Deficiencies	Observation and supporting proof verified by Standing Appellate Committee to clear the deficiencies 20.03.2018
1	Land allotted to the other Institution(s) at the same location - (i) LUW Polytechnic, (ii) Prerna Pharmacy (Pg. 16)	It is stated that, these are running at different places & proposed pharmacy college is at Pedgaon - No documents in support.
2	Land details for proposed Institution Mortgaged. (Pg. 14)	Copy of Sale Deed dt.29.01.15 + o.r. Canara Bank letter dt.1.3.18 Original + O.r.
3	(1) Land is mortgaged as revealed from Sale Deed. (2) Doc. Registration number is not mentioned correctly in Table-F. (3) Date of registration is wrong in Table-F.	Copy of another letter dt..... from Canara Bank + o.r. Copy of letter dated 13.03.18 Tahsildar + o.r. Copy of letter dated 14.03.18 to Tahsildar + o.r. These documents do not permit any positive inference about title of the Land as mortgage free. The inconsistencies in the documents as follows : a) Sale Deed dt.29.01.--- on page 2 mentioned that Loan as S.No. 4.

Sd/- 20.03.2018	Sd/-	Sd/-
Signature & Name	Signature & Name	Signature & Name
1. Chairman Standing Appellate Committee	2. Member Standing Appellate Committee	3. Member Standing Appellate Committee

Recommendation of the Standing Appellate Committee, please write one of the following and strike out whichever is not applicable.

Scrutiny Recommended	EVC Recommended	Rejected
X	X	X

d)	The Copies of letters to Tahsildar and Talathi refer to S. 461 and other Survey Nos.	Continued Will be cleared by seller & the last para on page 2 sta. the Land is free and without incumbrance. b) Copy of _____ letter dt. 1.3.18 refers to charge on S.461 alongwith 4 other lands & clearance of loan Rs.8.50 lakhs but other charges being continued. c) The copy of other letter dt.1.3.18 by Canara Bank mentions about Loan of 8.50 Lakh being cleared with reference to any S.No.
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Sd/- 20.03.2018	Sd/-	Sd/-
Signature & Name	Signature & Name	Signature & Name
1. Chairman Standing Appellate Committee	2. Member Standing Appellate Committee	3. Member Standing Appellate Committee

7. In the nutshell, the objection is that the land proposed by the petitioners is not free from mortgage and there is charge in respect of loan borrowed from Canara Bank. In the sale-deed there is reference that the loan amount would be cleared by the seller i.e. petitioners which is indicative of the fact that the land is not free from encumbrance. Copy of the letter dated 01.03.2018 refers to charge on survey no. 461 alongwith four other lands. Though it refers to clearance of loan of Rs. 8,50,000/-, the other charges are continued. Communication by bank dated 01.03.2018 discloses clearance of loan of Rs. 1,50,000/- however, it does not refer to survey number of the land.

8. Petitioners have invited our attention to 'No Dues' certificate issued by Canara Bank on 01.03.2018. The bank has certified that the loan amount of Rs. 8,50,000/- has been cleared on 24.09.2014 and there are no dues outstanding pertaining to the account number mentioned in the certificate. Second letter bearing the same date i.e. 01.03.2018 issued to the Talathi, Padegaon directs him to remove charge of the bank in respect of gat nos. 458, 461, 907, 956 and 955. The last sentence of the letter records that other encumbrances be maintained. Referring to the last sentence of the communication dated 01.03.2018, it is argued on behalf of respondent that there are other encumbrances on the property.

9. Communication by Canara Bank to the Talathi would obviously refer to the dues receivable by the bank whereas last sentence of the communication shall have to be construed having reference to any other charges by any other entities. Whereas on perusal of application at page no. 86 of the petition, it appears that

a request was made to the Tahsildar to take a note of repayment of loan of Rs. 8,50,000/- drawn from Canara Bank and to remove charge recorded on the 7/12 extracts in respect of said loan. Copy of 7/12 extracts is also placed on record. 7/12 extracts do not disclose any charge in the other right column. Thus, it is clear that the property land gat no. 461 does not carry encumbrances nor there is any entry in the 7/12 extracts. The dues payable to the bank have already been repaid and the property has been released from mortgage. 'No Dues' certificate dated 01.03.2018 and the communication to the Talathi by the Bank dated 01.03.2018 coupled with application to the Tahsildar by the petitioners on 14.03.2018 and the copy of 7/12 extracts annexed to the petition make it clear that the property is free from encumbrances and the inference drawn by the Appellate Committee is erroneous. Reference to the recitals contained in the sale-deed executed on 29.01.015 shifting the liability in respect of payment of loan on the purchaser cannot be construed to mean that presently there is any encumbrance on the property. The view taken by the Appellate Committee is thus erroneous. The other deficiencies pointed out by the Committee have been removed by the petitioners whereas the deficiencies pointed out by the Appellate Committee do not bear any substance. Petitioners have made a categorical statement in the petition that the property gat no. 461 is free from encumbrances. The statement made by petitioners on oath in the petition coupled with the documents referred to above lead to the only conclusion that the property gat no. 461 is free from encumbrances and the objection raised by the Appellate Committee is incorrect.

10. In view of reasons recorded above, writ petition deserves to be allowed and the same is accordingly allowed. Decision rendered by respondent no. 2 - Standing Appellate Committee dated 20.03.2018 as well as the impugned decision rendered by respondent no. 3 - Re-Scrutiny Committee dated 12.03.2018 refusing to recommend proposal of petitioners to respondent no. 1 for grant of approval for establishment of B.Pharmacy college at Pedgaon, Tq. & Dist. Parbhani for academic year 2018-2019 are quashed and set aside. Respondents are further directed to depute Expert Visit Committee for conducting inspection of the facilities provided by petitioners and, on consideration of the report of the Expert Visit Committee, shall take further steps in accordance with the provisions of law and in conformity with the Approval Process Handbook 2018-2019. Rule is accordingly made absolute. There shall be no order as to costs.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE

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