

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13379 of 2018

and

W.M.P.Nos.15761 and 15762 of 2018

Sri Shanmugha Educational Charitable Trust,
Rep. by its Chairman,
Mr.K.Shanmugam,
106 D, Sankari Road, Seetharampalayam,
Thiruchengode, Namakkal District-637 209,
Established and Administering
Sri Shanmugha College of Pharmacy,
Morur Post, Sankari TK, Salem Dt., Tamil Nadu

.. Petitioner

Vs.

1. The Member Secretary,
All India Council for Technical Education,
Nelson Mandela Marg,
Vaant Kunj,
New Delhi-110 070.
2. The Regional Officer,
Southern Regional Office,
AICTE, Shastri Bhavan, 1st Floor,
Nungambakkam, Chennai-600 006.
3. The Pharmacy Council of India,
Represented by its Secretary-cum-Registrar,
Combined Council Building,
Temple Lane, Kotla Road,
Aiwan-E-Ghalie Marg,
Post Box No.7020, New Delhi-110 002.
4. The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai-600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter of rejection passed by the first respondent in F.No.Southern/2018/1-

3662892461_LoR, dated 12.03.2018, confirmed in appeal vide impugned final letter of rejection of the first respondent AICTE in F.No.Southern/2018/1-3662892461_LoR, dated 30.04.2018 and quash the same and consequently direct the respondents to grant approval for starting four year B.Pharmacy Degree course by the petitioner College (Sri Shanmugha College of Pharmacy, Pullipalayam, Morur Post, Sankari Tk, Salem Dt., Tamil Nadu) with an intake of 60/120 seats from the academic year of 2018-2019.

For Petitioner : Mr.N.L.Rajah,
Senior Counsel for
Mr.D.Prabhu Mukunth Arunkumar

For Respondents: Mr.B.Rabu Manohar for RR-1 & 2
Mr.M.T.Arunan for R-3
Mrs.V.Annalakshmi, Govt. Advocate for R-4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Letter of Rejection passed by the first respondent in F.No.Southern/2018/1-3662892461_LoR, dated 12.03.2018, confirmed in appeal vide impugned final letter of rejection of the first respondent AICTE in F.No.Southern/2018/1-3662892461_LoR, dated 30.04.2018 and quash the same and consequently direct the respondents to grant approval for starting four year B.Pharmacy Degree course by the petitioner College (Sri Shanmugha College of Pharmacy, Pullipalayam, Morur Post, Sankari Tk, Salem Dt., Tamil Nadu) with an intake of 60/120 seats from the academic year of 2018-2019.

2. The case of the petitioner-Trust is that they wanted to run a Pharmacy College for the academic year in question. The petitioner-Trust had an existing approval building, wherein the petitioner-Trust's Engineering College is being conducted. Since the Trust wanted to start Pharmacy College and that they have sufficient space, wherein the building has been constructed, it has been decided to shift the Engineering College to the new building and run the Pharmacy College in the premises where the Engineering College was already functioning. The total extent of the Engineering College is 7.5 acres and that the entire College is situated within the area of 11.75-1/2 acres. The petitioner satisfied all the requirements as per the Regulations of the Pharmacy Council of India and AICTE and that the Pharmacy College obtained permission from the Government of Tamil Nadu, consent for affiliation from Dr.M.G.R. University and with other necessary approval from the appropriate authorities to start a Pharmacy College from the academic year 2016-2017 with an intake of 60 students. The Pharmacy Council of India approved the petitioner-Trust to start B.Pharm Degree course from the academic

year 2017-18 with an intake of 60 seats. The AICTE issued public notice in November/December 2017 to apply online for starting new technical Colleges which included the Pharmacy Colleges from 01.01.2018 to 31.01.2018 and based on that, the Trust applied online on 31.01.2018 for starting Pharmacy College from the academic year 2018-19. The computer generated report based upon the online application, showed no deficiency. The Trust was called to appear before the Scrutiny Committee, which they did and produced the necessary documents and after scrutiny, the Committee did not find any deficiency except DTCP approval, which is not in the name of Sri Shanmugha College of Pharmacy.

3. According to the petitioner, the so-called deficiency (ies) pointed out, cannot be called as deficiencies at all. The petitioner submitted that they have made a representation and that they have also made an appeal through online, pointing out that there are no defects as mentioned and that the intention was to start the Pharmacy College in the place where the Engineering College is situated and that the Engineering College students are going to be accommodated in the new building that has been constructed in the part of the land, which measured more than 11 acres.

4. The respondents 1 and 2 have filed counter affidavit wherein it has been pointed out that the College is functioning only with one approval for the Engineering Courses and then that building has been shown for Pharmacy course and the other building is for Engineering, as there is no building approval for even the Engineering College and the same is awaited from the DTCP and in view of the deficiencies pointed out, the request of the petitioner was not accorded and the impugned order dated 30.04.2018 was issued. It is contended by the respondents 1 and 2 that one approved building wherein the Engineering College was functioning, to be one for Pharmacy College building and that by shifting the students to another building in the same complex in 11 acres (approximately) that belongs to the Trust and without the DTCP approval, the petitioner is trying to enjoy the benefit of the two courses in the same building.

5. The fourth respondent has filed counter affidavit, in which it is stated that the AICTE has approved the course and that the fourth respondent is involved in the process of allowing the candidates to participate in the academic year 2018-2019. When there is approval, there is no objection on the part of the fourth respondent to include the petitioner-College in the counselling for the academic year 2018-2019.

6. The petitioner has also filed rejoinder, wherein it has been stated that there is no concept of getting the plan approval with the particular name to the building. The plan approval was in the name of the Trust which is the owner of the land and it is

putting up the building on the land for both the Engineering and the Pharmacy course. The Regulation/Approval Process Handbook (APH) 2018-2019, does not say that the building which has approval, must bear the name of the institute in the planning permission.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the petitioner-Trust was running the Engineering College in the old building that had an approval. They wanted to shift the Engineering College to a new building constructed within the premises that has an extent of over 11 acres (approximately) in toto and that in the existing premises where the Engineering College was run, the petitioner wanted to run the Pharmacy College. The only reason for rejection of approval for Pharmacy Course by the respondents/AICTE is that there is no DTCP approval for Engineering College and it is being awaited from the DTCP.

9. This Court, in W.P.No.13368 of 2018, dated 25.06.2018, with regard to the insistence of DTCP approval for starting a course in the building, has observed as follows:

"2. When the matter is taken up for hearing, learned Additional Government Pleader appearing for the Respondents submitted that the issue involved in this Writ Petition is covered by the order dated 04.07.2017 passed by this Court in W.P.No.15334 of 2017, wherein, this Court has directed the Respondents therein to consider the Petitioner's application seeking approval/permission to start Arts and Science College for Women, without insisting upon the production of approval of the building plan by the Department of Town and Country Planning (DTCP). For better understanding, relevant portion of the said order is extracted hereunder:

"9. Therefore, by following the above said order passed by this Court in W.P.Nos.20890 and 20891 of 2016, dated 31.08.2016, which infact, followed by another learned Judge in W.P.No.9219 of 2017, dated 17.4.2017, this writ petition is disposed of, with a direction to the respondents to consider the application filed by the petitioner seeking for approval / permission to start the Arts and Science College for Women, without

insisting upon the production of approval of the building plan by the Department of Town and Country Planning. In all other aspects, the petitioner shall satisfy the authorities viz., the respondents, if the certificates already produced by them are not sufficient enough insofar as those aspects are concerned. The respondents shall consider the application of the petitioner and pass appropriate orders within a period of four weeks from the date of production of certificates. The petitioner shall produce the other required certificates before the authorities within a period of two weeks from the date of receipt of a copy of this order. ... "

3. On the same terms, this Court disposed of the following Writ Petitions also.

(i) W.P.Nos.682 and 683 of 2018, dated 19.01.2018

(ii) W.P.No.2148 of 2018, dated 15.02.2018"

10. This Court in the above decision held that petitioner shall satisfy the authorities, if the certificates already produced by them are not sufficient enough insofar as those aspects are concerned. It was further directed that the respondents therein shall consider the application of the petitioner therein and pass appropriate orders within a period of four weeks from the date of production of certificates. The petitioner therein was directed to produce the other required certificates before the authorities within a period of two weeks from the date of receipt of a copy of this order.

11. In this case, the AICTE has observed that DTCP approval is awaited and if there is no illegality in running the Engineering College in the new building, they may be permitted to run, but that is not the subject matter in issue in the present Writ Petition. In the present Writ Petition, the issue is with regard to the Pharmacy College in the old building where the Engineering College was originally there, which was shifted to the new building.

12. Taking note of the fact that there is approval for Engineering College and even going by the impugned order, dated 30.04.2018, there is no hard and fast rule for the Pharmacy

College to run in the old building where the original Engineering College was functioning, I am of the view that the impugned order is liable to be interfered with.

13. For the reasons stated above, the Writ Petition is allowed as prayed for. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

cs
To

1. The Member Secretary,
All India Council for Technical Education,
Nelson Mandela Marg,
Vaant Kunj,
New Delhi-110 070.
2. The Regional Officer,
Southern Regional Office,
AICTE, Shastri Bhavan, 1st Floor,
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3. The Pharmacy Council of India,
Represented by its Secretary-cum-Registrar,
Combined Council Building,
Temple Lane, Kotla Road,
Aiwan-E-Ghalie Marg,
Post Box No.7020, New Delhi-110 002.
4. The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai-600 010.

+1 CC to Govt. Pleader sr 46128
+1 CC to Mr.M.T. Arunan, Advocate sr 45207.
+6 Ccs to Mr.D. Prabhu Mukunth Arunkumar, Advocate sr 45203.
+1 CC to Mr.B. Rabu Manohar, Advocate sr 45075.

W.P.No.13379 of 2018

GSP (16/07/2018)