

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13709 of 2018

Sri Venkateswara College of Computer
Applications and Management,
rep. by its Chairman,
Commander K.Velu (Retd.),
SF 348/1, 3G Road,
Ettimadai, Palakkad Road,
Coimbatore - 641 112.

... Petitioner

vs.

The Registrar,
Anna University,
Chennai 600 025.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Respondent bearing Lr.No.251/CAI/AU/CR_ScrutinyFailed/2018-4, dated 29.05.2018 and quash the same and consequently direct the Respondent to permit the Petitioner Institute to admit students for MBA and MCA programmes from the academic year 2018-2019 onwards.

For Petitioner : Mr.Jayesh Dolia
for M/s.Aiyar and Dolia

For Respondent : Mrs.Narmadha Sampath
Additional Advocate General
for Mr.M.Vijayakumar

O R D E R

Seeking to quash the proceedings of the Respondent vide Lr.No.251/CAI/AU/CR_ScrutinyFailed/2018-4, dated 29.05.2018 and for a consequential direction to the Respondent to permit them to admit students for MBA and MCA programmes from the academic year 2018-2019 onwards, the Petitioner-Institute has come up with the present Writ Petition.

2. According to the Petitioner, their Institute was established in the year 2007 and it was granted AICTE approval on 14.08.2007. On the basis of the approval granted by AICTE,

the erstwhile Anna University, Coimbatore granted affiliation for admitting students to MBA and MCA programmes. Pursuant thereto, the Petitioner Institute admitted 60 students for the academic year 2007-2008 for MCA programme. The Petitioner Institute submitted an application to the Respondent University for additional course viz. MBA vide proceedings dated 22.10.2008 and the Respondent accorded approval for admitting 60 students to MBA course. In respect of the academic years, 2009-2010 and 2010-2011, the Petitioner admitted 60 students each, for MBA and MCA programmes.

3. For the academic year 2011-2012, the Petitioner submitted an application for increase in intake of students from 60 to 180 for MCA programme and provisional affiliation was granted on 10.10.2011, according approval for admitting 60 students for MBA programme. From the academic year 2011-2012 to 2017-2018, the Petitioner Institute obtained provisional affiliation for admitting 60 students for MBA programme and 180 students for MCA programme. During the academic year 2012-2013, affiliation was accorded by the Respondent consequent upon the merger of Anna University of Coimbatore, Tiruchirappalli, Madurai and Tirunelveli with Anna University, Chennai.

4. In respect of the academic year 2017-2018, vide proceedings dated 07.04.2017, the Respondent issued a show cause notice to the Petitioner-Institute alleging deficiency with regard to faculty and library. On receipt of the same, the Petitioner-Institute sent a detailed compliance Report on 22.04.2017, rectifying the alleged deficiencies as pointed out in the proceedings dated 07.04.2017. Upon being satisfied with the compliance, approval was accorded to the Petitioner-Institute for admitting students for the academic year 2017-2018.

5. In respect of the academic year 2018-2019, the last date for submitting application for intake of students was fixed as 05.01.2018. As per the Respondent's communication dated 06.12.2017, the Petitioner Institute submitted an application to the Respondent through online on 04.01.2018. The requisite fee was remitted in person to the office of the Respondent. By proceedings dated 10.04.2018, the Respondent issued Deficiency Report/Show cause notice and under the head 'General facilities' deficiencies were pointed out in respect of class rooms and Computers and further deficiencies were pointed out with regard to Faculty and Library. On 25.04.2018, compliance Report was submitted to the Respondent stating that the Petitioner Institute is located in an area spanning 2 acres and it has adequate and sufficient infrastructure for accommodating students, who are going to be admitted for the academic year 2018-2019.

6. Thereafter, a communication dated 11.05.2018 was sent by the Respondent informing that Classroom deficiencies continue to exist in the Petitioner-Institute for MBA and MCA programmes. Challenging the same, the Petitioner filed W.P.No.13186 of 2018. However, the said Writ Petition was withdrawn on 05.06.2018. Later, vide impugned communication bearing Lr.No.251/CAI/AU/CR_ScrutinyFailed/2018-4, dated 29.05.2018, the Respondent expressed its inability to reconsider the sanctioned intake for the academic year 2018-19, stating that the documentary evidences provided in the Compliance Report were insufficient. Challenging the said communication, the Petitioner is before this Court.

7. Mr.Jayesh Dolia, learned counsel for the Petitioner contended that the Respondent has not assigned any reason in the communication dated 11.05.2018, in reply to the Compliance Report of the Petitioner and nowhere it is stated in the said communication as to the alleged insufficient documentary evidence. He further contended that the Respondent, in the impugned order dated 29.05.2018, as an afterthought, has relied upon an earlier order of the Apex Court, dated 13.12.2012, which has no application to the case on hand. Hence, according to the learned counsel, the Respondent's communication dated 11.05.2018 has to be merged with the impugned order dated 29.05.2018.

8. When the matter is taken up for hearing, Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the Respondent, vehemently contended that there is no question of merger of the Respondent's communication dated 11.05.2018 with that of the impugned order dated 29.05.2018, as contended by the learned counsel for the Writ Petitioner and that the two orders are independent of each other. According to her, even assuming that the impugned order dated 29.05.2018 is interfered with, the earlier communication dated 11.05.2018 shall automatically stand and that the Petitioner would not be entitled to run any Classes for the academic year 2018-2019.

9. Learned Additional Advocate General went on to contend that there is no approved building plan for running the Classrooms and that the words viz 'insufficient documentary evidences' used in the impugned order would mean that without any approved plan for the classrooms, no classes can be conducted with regard to MBA and MCA programmes. To substantiate her stand, she drew the attention of this Court to the decision rendered by the Apex Court in the case of Parshavanath Charitable Trust and others vs. All India Council for Technical Education reported in (2013) 3 SCC 385, relevant portion of which, reads as under:

"43. The above Schedule though was finalized by the Committee on 29th January, 2012 but the

same appears to have been notified only on 30th September, 2012. The reasons for the same are again unknown. We are unable to appreciate that once the academic session begins on 1st August, then as to why should admission be granted upto 30th August of the year, particularly when, as per the terms of the Schedule, beyond or after 30th April, AICTE will not issue any approval for commencement of new course for additional intakes. The Schedule, thus, introduces an element of arbitrariness and may cause prejudice to the students who might miss their classes for a period of one month without any justification. Thus, it is required that the above-stated Schedule be modified to bring it in line with the Schedule for approval as well as to prevent inequalities, arbitrariness and prejudice from affecting the students in relation to their academic courses. The order granting or refusing approval, thus, should positively be passed by 10th April of the relevant year. The appeal should be filed within one week and the Appellate Committee should hear the appeal and decide the same by 30th April of the relevant year. The University should grant/decline approval/affiliation by 15th May of the relevant year. Advertisement should be issued and entrance examination conducted positively by the end of the month of May.

44. The admission to academic courses should start, as proposed, by 1st August of the relevant year. The seats remaining vacant should again be duly notified and advertised. All seats should be filled positively by 15th August after which there shall be no admission, whatever be the reason or ground."

10. In reply, Mr. Jayesh Dolia, learned counsel for the Petitioner submitted that the Petitioner-Institute was established in the year 2007 and they started admitting students from the academic year 2007-2008 and that for the past ten years, classes are being conducted and there are sufficient Classrooms in the Petitioner-Institute. He further submitted that he has no objection for this Court in appointing an Advocate Commissioner to inspect the Petitioner-Institute to arrive at a conclusion as to whether there are sufficient Classrooms in the Petitioner-Institute for conducting Classes.

11. Learned counsel for the Petitioner also submitted that the decision relied on by the learned Additional Advocate General in the case Parshavanath Charitable Trust may not be applicable to the facts of this case, as the cut-off date prescribed therein would be applicable, only if the order passed by the Respondent is allowed to stand. According to him, if the impugned order is set aside, then, in terms of paragraph 44 of the said decision, admission to academic courses should start by 1st August and that 15 days' time has to be granted to the Petitioner-Institute to fill up additional vacancies.

12. Heard the learned counsel for the parties and perused the material documents available on record.

13. The decision of the Apex Court in Parshavanath Charitable Trust case is very clear that cut-off date has to be scrupulously followed, provided the decision of the authorities is held to be valid. Even otherwise, academic courses for the present academic year are to commence only on 1st August. In the Respondent's earlier communication dated 11.05.2018, some deficiencies have been pointed out with regard to classrooms and computers and the Petitioner has complied with the same.

14. The Respondent-University has not disputed the fact that there are sufficient classrooms in the Petitioner-Institute. But, according to them, the main deficiency is that there is no sanctioned plan with regard to the classrooms and that the entire building in the Petitioner-Institute has been constructed without any sanctioned plan. However, the impugned order dated 29.05.2018 is not clear about the deficiencies in the Petitioner-Institute. For better understanding, relevant portion of the impugned order is extracted hereunder:

"The compliance report submitted was scrutinized by a Scrutiny Committee. As there were insufficient documentary evidences provided in the Compliance Report towards rectification of classroom deficiency, the sanctioned intake of M.B.A. and M.C.A. courses was reduced to No Admission. This is based on the criteria and norms evolved for the academic year 2018-19."

15. Nowhere in the impugned order, the Respondent has stated that there is no sanctioned plan with regard to the classrooms in the Petitioner-Institute. The words used in the impugned order in that regard are 'insufficient documentary evidences' and one cannot easily presume that those words indicate 'production of sanctioned plan'.

16. Now, the Respondent has tried to improve the impugned order by means of a counter affidavit. In paragraph 5 of the counter affidavit, it is stated by the Respondent that the Petitioner College submitted the Compliance Report on 25.04.2018 and the same was scrutinized by a Scrutiny Committee on 26.04.2018; the Committee accepted all the faculty documents (08 faculties) submitted for the MCA programme, but they did not accept documents pertaining to classrooms, as no approved building plan was submitted by the Petitioner-College. This Court cannot permit the Respondent to improve the impugned order by means of a counter, thereby trying to assign new reasons.

17. Apart from the fact that the Petitioner-Institute has been permitted to conduct Classes from the academic year 2007-2008, as the impugned order is not clear in terms of pointing out the deficiencies in the Petitioner-Institute, this Court feels it appropriate to interfere with the same.

18. Accordingly, the impugned order dated 29.05.2018 passed by the Respondent-Anna University is interfered and the matter is remanded to the Respondent to consider the case of the Petitioner afresh after giving them an opportunity of hearing and a decision shall be taken by the Respondent on or before 10.07.2018.

19. This Court makes it clear that it is open to the Respondent-University to depute a person to inspect the Petitioner-Institute. The Petitioner-Institute shall produce all the documents required by the Respondent-University for the purpose of granting affiliation. It is made clear that AICTE approval and Affiliation by the Respondent-University are independent of each other.

The Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected W.M.P.Nos.16168 and 16169 of 2018 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(aeb)

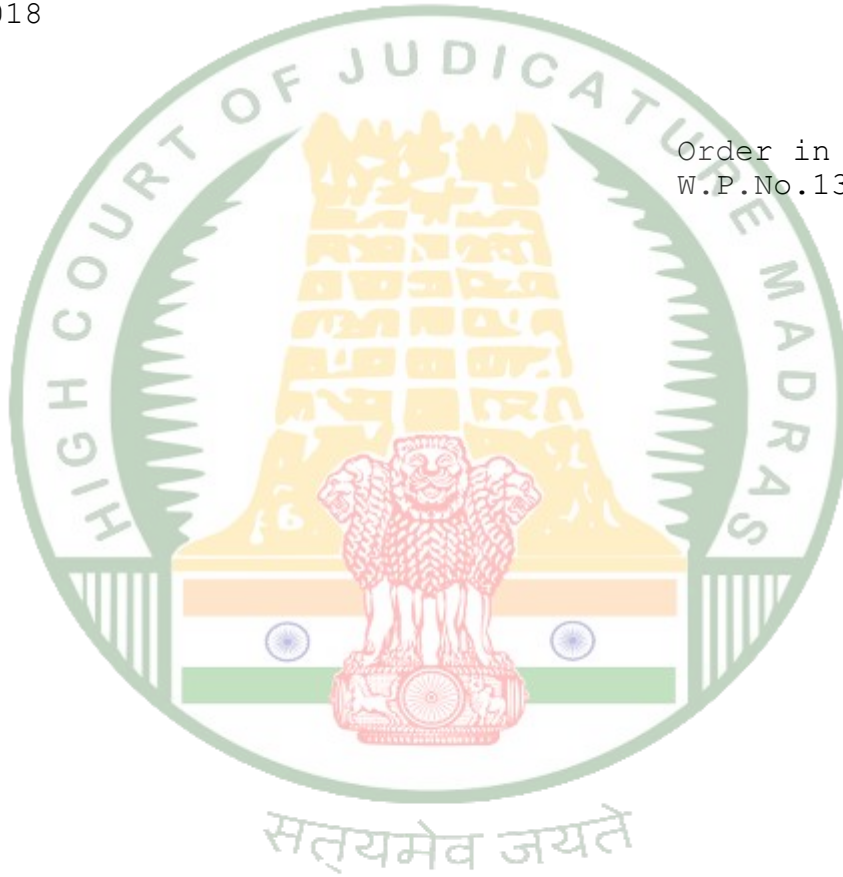
To:

The Registrar,
Anna University,
Chennai 600 025.

+1cc to Mr.M.Vijayakumar, Advocate SR.No.38033
+1cc to M/s.Aiyar & Dolia, Advocate SR.No.37784

SSI (CO)
sm:25.6.2018

Order in
W.P.No.13709 of 2018



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