

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15484 of 2018

and

W.M.P.Nos.18363 and 18364 of 2018

S.A.Engineering College,
Poonamallee-Avadi Road,
Thiruverkadu Post,
Chennai-600 077,
Rep. by its Chairman,
Mr.D.Duraisamy

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Higher Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Commissioner,
Directorate of Technical Education,
53, Sardar Patel Road,
Guindy, Chennai.
3. The Registrar,
Anna University,
Guindy, Chennai.
4. The Director,
All India Council for Technical Education,
Nelson Mandela Marg,
Vasant Kunj, New Delhi-110 070.
5. The Regional Officer,
All India Council for Technical Education,
Shastri Bhavan,
No.26, Haddows Road, Chennai-600 006.

.. 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 of the fourth respondent in F.No.AICTE/AB/SR/PID-1-478111211/2018-19, dated 10.04.2018 and quash the same placing the petitioner College under "No Admission Category" for the Academic Year 2018-19 and further direct the fourth and fifth

respondents herein to grant extension of approval for admission of students to MCA Course for the academic year 2018-19.

For Petitioner: Mr.V.T.Gopalan,
Senior Counsel for M/s.G.P.Bhargavi

For Respondents : Mr.A.Raja Perumal, Addl.G.P. for RR-1 and 2
Mr.M.Vijaya Kumar for R-3
Mr.B.Rabu Manohar for RR-4 and 5

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 of the fourth respondent in F.No.AICTE/AB/SR/PID-1-478111211/2018-19, dated 10.04.2018 and quash the same placing the petitioner College under "No Admission Category" for the Academic Year 2018-19 and further direct the fourth and fifth respondents herein to grant extension of approval for admission of students to MCA Course for the academic year 2018-19.

2. The case of the petitioner is that the petitioner-College had been functioning for several years and that in the present Engineering College, the AICTE has conducted inspection and there are certain deficiencies pointed out. The original Committee went into the question with regard to the deficiencies and pointed out the deficiencies and it held that the petitioner has not complied with the requirements. The Expert Visiting Committee has rendered a finding against the petitioner. Thereafter, the Appeal Committee has gone into the aspect of approval in detail on the request made by the petitioner and found that all the deficiencies barring three, have been fulfilled. The following are the said three deficiencies which have not been fulfilled :

Sl. No.	Deficiencies noted by EVC	Observations of Standing Hearing Committee	Observations of Standing Appellate Committee on 14.02.2018
7	Other facilities	Noted	

Sl. No.	Deficiencies noted by EVC	Observations of Standing Hearing Committee	Observations of Standing Appellate Committee on 14.02.2018
7	Establishment of internal complaint Committee (CC). As per Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Not accepted/Not available (Not available)	Document not accepted	Document not accepted undertaking attached for the removal of deficiency
	Establishment of Grievance Redressal Committee in the institute and appointment of OMBUDSMAN by the University-Not accepted/Not available (Not available)	Document not accepted	No letter from university could be perused
8	Details of Principal / Director/Head of the Institution - Not accepted	Principal appointed without proper procedure no interview was conducted. The Principal appointed before the advertisement	Deficiency exist, Principal appointed is short experience as per AICTE layout.

3. It is the further case of the petitioner that when the defects/deficiencies have been pointed out, the petitioner-College have given an undertaking that they will fill up the post of Principal and they will appoint the Principal on or before 31.03.2018 and that the AICTE can verify and ensure that all the defects pointed out by them, are rectified and that they can have an inspection at their request on or before 10.04.2018. It is further stated that the Principal was appointed on 02.03.2018. On a surprise visit made by the AICTE, the petitioner-College has produced the appointment order of the Principal and also modified the documents that are required with regard to the Committee

constituted for dealing with the sexual harassment complaints and that all the grievances are fulfilled. Without referring to that, the impugned order has been passed.

4. The sum and substance of the impugned order is that apart from three defects as extracted supra, it has been admitted by the respondents-AICTE in the impugned order that the defects with regard to the Principal and Faculty cadre ratio exist and affidavit to appoint Principal before 31st March was enclosed therewith. It appears that the Director of Approval Bureau has not gone into the affidavit and contents submitted by the writ petitioner. Finally, it has come to the conclusion that on account of the non-availability of qualified Principal for more than two years, the AICTE has recommended to put the institute under "No Admission Category" for the academic year 2018-2019.

5. Learned counsel appearing for the respondents submitted that there is cut-off date fixed by the Apex Court and the learned counsel for the respondents relied on decisions reported in CDJ 2014 SC 877 = 2014 (16) SCC 330 (Varun Saini and others Vs. Guru Gobind Singh Indraprastha University) and CDJ 2012 SC 892 = 2013 (3) SCC 385 (Parshavanath Charitable Trust and others Vs. All India Council for Tech. Edu. and others) and the Supreme Court held that the cut-off date when once fixed, cannot be altered. Learned Standing Counsel appearing for respondents 4 and 5/AICTE submitted that the time is very short and that it is open for the petitioner to comply with the condition(s) so that commencing or continuing with the course for the academic year 2019-2020 would be considered.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. It is not in dispute that the appellate Committee has found that the petitioner has complied with all the requirements/defects that are being pointed out. Though the impugned order says that the Principal was not available for more than two years, it appears that by order dated 02.03.2018 appointing the Principal, has not been gone into. Of course, it has been argued by the learned Standing Counsel for respondents 4 and 5/AICTE that whether the Principal is duly qualified to be appointed and continued in the post. This Court cannot render a finding at this stage in that effect. As the deficiencies pointed out, had been rectified and that has been overlooked by the respondents and that the establishment of internal complaint Committee as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is said to have been complied with and the communication has been received by the respondents, which has not been answered in the impugned order and that taking note of the submission of the Government that there is a cut-off date prescribed by the Apex Court in the above two decisions, which cannot be altered by any Court much less this Court and that the Supreme Court in the judgment reported in 2002 (3) SCC 533 (Padma Sundara Rao Vs. State of T.N.), has held that one fact may make a world of

difference when the same was relied on and the relevant portion of the said judgment of the Apex Court reads as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

8. The impugned order is defective and the cut-off date prescribed by the Apex Court, may not be applicable to the facts of the present case, if the impugned order is illegal. Taking note of the fact that the candidates can be accommodated before 1st August and that between 1st August and 15th August, the Management Quota seats can be filled up, this Court is of the view that the inspection shall be done and a final decision shall be taken on or before 29.07.2018 in the presence of the petitioner. As the petitioner has admitted that they are willing to bear the charges, they will meet necessary charges for the inspection, which is evident from the affidavit, dated 14.02.2018 enclosed in page 44 of the typed set of papers filed along with the Writ Petition, even though the date of inspection/EVC had been restricted to 10.04.2018 in the said affidavit.

9. The All India Council for Technical Education (AICTE), in its Approval Process Handbook, 2018-2019 in its Chapter VI, has dealt with penal action in case of violation of Regulations/Approval Process Handbook 2018-2019, more particularly, in Clauses 6.3 and 6.4, which reads as follows:

"6.3: Non-fulfilment of requirement of qualified Principal/Director:

Institution not having qualified Principal/Director for a period more than 12 months shall be liable to any one or more of the following punitive actions by the Council till the regular Principal/Director is appointed.

. Reduction in "Approval Intake"

. No admission for one Academic Year

6.4: Non-fulfilment of Faculty: Student ration, not adhering to Pay Scales and/or qualifications prescribed for Faculty

Institutions not adhering to Pay scales, or qualification prescribed for Faculty members for more than 12 months and not maintaining prescribed Faculty: Student ratio shall be liable to any one or more of the following punitive actions by the Council.

. Suspension of approval for supernumerary seats, if any, for one Academic Year

. Reduction in "Approved Intake".

. No admission is respective Course(s) for one Academic Year

. Withdrawal of approval in the respective Course

. Withdrawal of approval of the institutions

The Council may initiate penal action for not regularising and ensuring the timely and full payment of the salary of the Staffs through Electronic Clearing Service (ECS) by nationalized banks. The Institution collecting / withholding any of the original Educational/Professional Certificates of a Faculty member shall be liable to any one or more of the above said punitive actions by the Council."

10. It is true that the AICTE cannot impose by way of punitive action a condition that no admission for one academic year can be made till a regular Principal is appointed. In this case, after the regular Principal is appointed, the impugned order has been passed. If the impugned order had been passed prior to the appointment of Principal, certainly this Court would not have interfered with the order, as wrong doers cannot get shelter through the order of this Court. In case the person who is appointed is found to be unqualified or defective, etc., it is open for the respondents 4 and 5/AICTE to pass a fresh order barring the admission for the period of one academic year.

11. With the above observations, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Higher Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Commissioner,
Directorate of Technical Education,
53, Sardar Patel Road,
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Vasant Kunj, New Delhi-110 070.
5. The Regional Officer,
All India Council for Technical Education,
Shastri Bhavan,
No.26, Haddows Road, Chennai-600 006.

+1cc to Mr.M.Vijaya Kumar, Advocate sr.no.46864
+1cc to Mr.sG.P.Bhargavi, Advocate sr.no.46714
+1cc to Mr.B.Rabu Manohar, Advocate sr.no.46646
+1cc to Government Pleader sr.no.47596

W.P.No.15484 of 2018

nr 19/07/2018

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