

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.6817 of 2019
and W.M.P.No.7591 of 2019

Indra Ganesan Educational and Charitable Trust
rep. by its Secretary
Mr.G.Rajasekaran,
No.72, West Bouliward Road,
Tiruchirapalli-620 008
establishings and administering
Shri Indra Ganesan Institute of Medical Science
Madurai Main Road, Manikandam.

.. Petitioner

Vs.

1. The Member Secretary,
All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 070.
2. The Regional Officer,
Southern Regional Office,
AICTE, Shastri Bhavan, 1st Floor,
Nungambakkam,
Chennai-600 006.
3. The Principal Secretary,
Housing and Urban Development (UDA[3])
Department, Fort St. George,
Chennai-600 009.
4. The Director of Town and Country Planning,
807, Anna Salai, Chennai-600 002.
5. The Deputy Director of Town and Country Planning,
Regional Office, Tiruchirapalli.
6. K.Kallikudi Panchayat
rep. by its Executive Officer,
Manikandam, Tiruchirapalli District.

.. Respondents

- * R3 to 6 impleaded as per order of this Court
dated 23.04.2019 in WMP No.10529/2019 in WP.6817/19 by PSNJ)

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to grant approval without insisting on DTCP approval, by accepting the approval of the Panchayat for B.Pharm. Degree course from the academic year 2019-20 on wards in accordance with law.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents: Mr.B.Rabu Manohar,
Senior Central Govt. Counsel
for RR1 and 2
Mr.N.Inbanathan, AGP for RR 3 to 6

O R D E R

The petitioner is an educational trust and it intended to start a Polytechnic college in the year 2008 at K.Kallikudi after obtaining appropriate approvals from the competent authorities. The petitioner trust also obtained necessary building approval from the President, K.Kallikudi Panchayat by the proceedings dated 08.04.2008. However, the said proposal was not materialized.

2. It is stated that the petitioner trust decided to commence Shri Indra Ganesan Institute of Medical Science - College of Pharmacy from the academic year 2018-19 in the vacant building, which was constructed for polytechnic college. It applied to the All India Council for Technical Education (in short, "AICTE")/the first and second respondents, the Pharmacy Council of India and the State Government. In this regard, the Government of Tamil Nadu passed G.O. to their favour with an intake of 60 seats. The Pharmacy Council of India also granted approval to the petitioner trust for the academic year 2018-19. The affiliating University - the Dr.M.G.R. Medical University has also given consent of affiliation on 23.10.2018.

3. The petitioner now applied to the Pharmacy Council of India for continuation of approval for conducting B.Pharm. Course for the academic year 2019-20 and also to the AICTE. The only deficiency pointed out by the AICTE is with respect to the building plan not being approved by the DTCP. The petitioner college was given hearing. Since the AICTE did not accept the explanation offered by the petitioner trust qua DCTP approval, the petitioner is before this Court seeking a direction to the AICTE to grant approval without insisting on DTCP approval, by accepting the approval granted by the Panchayat, for B.Pharm. Degree course from the academic year 2019-20 onwards.

4. This Court had granted an interim order directing the first and second respondents/AICTE to consider the approval of the petitioner college without insisting on the DTCP approval, which would be subject to the result of the writ petition.

5. Admittedly, the petitioner Trust wanted to start B.Pharm. degree course in the vacant building which was meant for a polytechnic college constructed in the year 2008 and submitted application to the AICTE. The village panchayat, which granted building approval did not forward the plan papers to the DTCP and the petitioner cannot be faulted with and the AICTE cannot insist on approval from the DTCP for buildings constructed prior to 01.01.2011. G.O.Ms.No.76, dated 14.06.2018 required the educational buildings in non-planning areas constructed prior to 01.01.2011, which is the date of coming into force of Section 47-A of the Town and Country Planning Act, 1971, to obtain concurrence, if it was not obtained so far. The said G.O.Ms.No.76 was later quashed by this Court on 01.12.2018. However, it was clarified that any application, which was made during the relevant period, i.e., before the expiry of three months, the DTCP was directed to consider the same and pass orders.

6. It is also now stated that that portion of the order is under challenge in Writ Appeal. It is argued by the learned counsel for the petitioner that it is settled position of law that buildings, which are constructed in a panchayat area after 1994 do not require to get approval from the DTCP and for approval, the application has to be filed with the Executive Authority of the Village Panchayat and the Executive Authority before giving approval has to get concurrence with the DTCP.

7. At this juncture, it is also relevant to advert to the following directions issued by a Division Bench of this Court in the judgment in Tamil Nadu Unaided Polytechnic Management Association V. Government of Tamil Nadu, reported in (2018) 4 CTC 129.

"46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and

offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.

(b) Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.

(c) In cases of partially constructed buildings, no completion certificate or other amenities be provided unless a favourable opinion is given by the Town Planning Authority.

(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities."

8. Though the judgment of the Division Bench was passed on 06.07.2018, the G.O.Ms.No.76, dated 14.06.2018 issued by the Government was not brought to the notice of the Division Bench. The Division Bench in the aforesaid judgment gave certain directions emphasizing that a procedure has to be adopted while obtaining DTCP approval, hence, the petitioner has to follow the same. The Division Bench also made it clear that there should be single window system through which, either past or future approvals could be done.

9. The learned counsel for the petitioner pointed out that since the cut-off date for obtaining the approval of the AICTE is on or before 30th April of each year, the anxiety of the petitioner is that the approval should not be rejected for want of certification from the DTCP authorities. It is also pointed out that the "Approval Process Handbook 2019-20" of the AICTE is a legal document as per the All India Council for Technical Education Act, 1987 and other various acts, including the University Grants Commission Act. Annexure XVI provides for answers to frequent queries. 14.4. says "if an Institution intends to utilise a Building constructed earlier, the Building approvals obtained from the then authorities shall be produced, else the approval for the same shall be obtained from the current approving authorities."

10. Going by the above clarification, as issued by the first and second respondents/AICTE, learned counsel for the petitioner argued that the original approval granted by the K.Kallikudi Village Panchayat on 08.04.2008 itself is sufficient for the AICTE to consider the application of the petitioner for approval. However, in view of the subsequent development, namely, issuance of G.O.Ms.No.76 and the directions issued by the Division Bench, as stated supra, the petitioner is bound to follow the same.

11. Learned counsel for the AICTE also pointed out that the Handbook is applicable for each of the States all over India and when there is a specific direction given by this Court, particularly, for the State of Tamil Nadu, even the AICTE is bound to follow the said procedure and consequently, without any doubt, the petitioner is also bound to satisfy the authorities by producing the DTCP approval.

12. Though the Division Bench has given certain directions, since time-frame for each of the authorities is not prescribed and the approval of the AICTE is to be granted by 30th April of each year, the petitioner as well as similarly placed institutions find it difficult to get the order of approval within time.

13. In such circumstances, the petitioner is permitted to submit the duly self-attested copies of the plan documents to the sixth respondent within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the sixth respondent is directed to forward the copies of the papers, either available with them or as submitted by the petitioner, with due endorsement to the concerned DTCP authorities within a period of two weeks thereafter.

14. The DTCP authorities, thereafter, have to follow the procedure mandated in paragraph 46 of the judgment of the Division Bench in Tamil Nadu Unaided Polytechnic Management Association case (cited supra) and complete the said exercise within a period of four weeks from the date of receipt of a copy of the papers pertaining to the petitioner institution.

15. In the meanwhile, the first and second respondents/AICTE are directed to give approval to the petitioner institution as sought in their application for offering B.Pharm. Degree Course on or before 27.04.2019, without reference to DTCP approval, if otherwise all the other norms and conditions are complied with, which will be subject to the concurrence/affiliation to be obtained from the Pharmacy Council of India and Dr.M.G.R.Medical University. The first respondent/AICTE shall indicate in the approval that the same would be subject to the production of the approval of the DTCP, immediately upon receipt of the same from the DTCP authorities, as directed above and other affiliations.

16. This writ petition is ordered accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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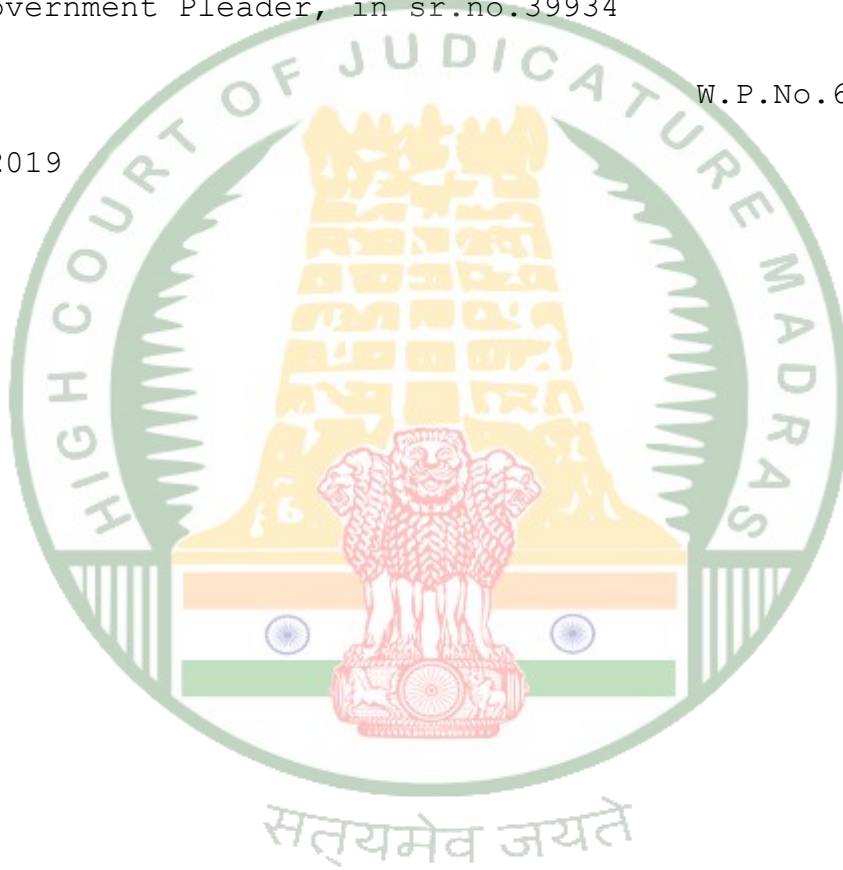
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Manikandam, Tiruchirapalli District.

+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.39244
+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.39011
+1cc to Government Pleader, in sr.no.39934

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