

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8646 of 2019
and W.M.P.No.9165 of 2019

Angammal Educational Trust
rep. by its Administrative Officer
Mr.R.Kathirvel,
Elayampalayam,
Tiruchengode Taluk-637 2015,
Namakkal District
established and administering
Vivekanandha College of Engineering for
Women (Autonomous), Elayampalayam,
Namakkal District. .. Petitioner

Vs.

1. The Member Secretary,
All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 070.
2. The Chairman,
Standing Appeal Committee,
All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 070.
3. The Regional Officer,
Southern Regional Office,
AICTE, Shastri Bhavan, 1st Floor,
Nungambakkam,
Chennai-600 006.

4. The Principal Secretary,
Housing and Urban Development [UDA(3)]
Department, Fort St. George,
Chennai-600 009.
 5. The Director of Town and Country Planning,
807, Anna Salai,
Chennai-600 002.
 6. The Deputy Director of Town and Country
Planning (In-charge),
Salem Region, No.6, Sannathi Street,
Subramaniya Nagar, Sooramangalam,
Salem-636 302.
 7. Sathinaikkanpalayam Village Panchayat
rep. by its President
Elayampalayam, Tiruchengode Taluk-637 205
Namakkal District.
- .. Respondents
- * * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent AICTE to grant change of site and approval for the academic year 2019-20 onwards without insisting on DTCP approval by accepting the approval by the Panchayat for Engineering Courses conducted by the petitioner College in accordance with law.

* * *

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.B.Rabu Manohar,
Senior Central Govt. Counsel
for RR1 to 3

Mr.N.Inbanathan,
Additional Govt. Pleader for RR 4-7

ORDER

The petitioner is an educational trust running various colleges especially for women in several streams, namely, Arts and Science, Engineering, Dental, Nursing, Pharmacy, etc. The petitioner trust started Vivekananda College of Engineering for Women (in short, "VCE") in the year 2001 at Elayampalayam, Namakkal District, after obtaining appropriate approvals from the authorities and also affiliation from the Anna University. The permanent affiliation for certain courses was also granted by the Anna University. The All India Council for Technical Education (in short, "AICTE")/the first and second respondents also granted provisional affiliation year after year from 2001 till date. It is also stated that the petitioner College had obtained Autonomous status based upon the order passed by the University Grants Commissioner (UGC) and the Anna University.

2. It is stated that the petitioner Trust had established an Engineering College in the name and style of Vivekananda Institute of Engineering and Technology for Women (hereinafter referred to as "VIET") at Sathinaikkanpalayam Village, Namakkal District, from the academic year 2006-07 after obtaining appropriate approval from the

competent authorities, including the building approval from the President, Sathinaikkanpalayam Village Panchayat by the proceedings dated 25.01.2006 and affiliation from the Anna University.

3. As the aspirants for engineering courses have considerably come down, the petitioner trust decided to close the VIET at Sathinaikkanpalayam Village. A No Objection Certificate (NOC) was received from the Anna University on 16.11.2016 and permission from the State Government was issued vide order dated 06.02.2017 from the academic year 2016-17. The AICTE also granted approval for closure on 10.04.2017. The last batch of students have already completed the course in the academic year 2018-19, as there was no admission made from the academic year 2016-17.

4. In so far as the approval granted by the President of the Sathinaikkanpalayam Village Panchayat is concerned, where the VIET was functioning, the college had applied to the Directorate of Town and Country Planning (DTCP) for concurrence as per G.O.Ms.No.76, Housing and Urban Development [UD4(3)] Department, dated 14.06.2018 (G.O.Ms.No.76) and also remitted a sum of Rs.1,14,86,549/-.

5. While so, the petitioner trust wanted to shift the petitioner college from Elayampalayam to Sathinaikkanpalayam Village. For the said purpose, a NOC was obtained by the petitioner on 04.01.2019 and application was submitted to the State Government for granting NOC for change of site. The petitioner college had applied to the second respondent for approval and permission for change of site for the academic year 2019-20 vide application dated 20.02.2019. The Scrutiny Committee report dated 23.02.2019 had shown the deficiency only with respect to the building plan not being approved by the DTCP. Therefore, the AICTE had sent a letter of rejection on 18.03.2019. The first respondent, in the meantime, had communicated to the petitioner to appear before the Standing Appeal Committee (SAC), which is scheduled to be conducted from 22.03.2019 to 25.03.2019. The petitioner college was given hearing on 24.03.2019 at 1.30 p.m. 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. Therefore, the only deficiency pointed out by the first and second respondents/AICTE is that the building plan is not approved by the DTCP.

6. As stated already, the petitioner Trust had applied under G.O.Ms.No.76 for concurrence with the DTCP and the same is pending 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.

7. 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.

8. 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."

9. 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. However, the Division Bench has directed that a procedure has to be adopted while obtaining DTCP approval, hence, the petitioner has to follow the same.

10. The learned counsel for the petitioner 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."

11. 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 Sathinaikkanpalayam Village Panchayat on 25.01.2006 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.

12. 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.

13. 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. 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.

14. The learned counsel for the petitioner contended 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.

15. In the case on hand, the Block Development Officer (BDO),

Elachipalayam Block, had already forwarded the building plan approval issued by the Sathinaikkanpalayam Village Panchayat dated 25.01.2006 to the Deputy Director, Directorate of Town and Country Planning, Salem Region, and vide proceedings the BDO informed the Deputy Director in Na.Ka.No.001/2019/P, dated 19.03.2019 that the property tax for the period upto 2017-18 has been paid by the petitioner institution.

16. Be that as it may, the Deputy Director, DTCP, Salem Region/sixth respondent, who was present in the Court, had stated that the plan received from the Block Development Officer, which was approved by the Sathinaikkanpalayam Village Panchayat, was forwarded to the Director, Town and Country Planning, Chennai, vide Na.Ka.No.16683/2018-SR-3, dated 24.09.2018. Though the said letter is dated 24.09.2018, the fifth respondent office seems to have received it by hand-delivery only on 06.12.2018.

17. Now what remains is only the fifth respondent, who is the final approving authority, has 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). Accordingly, the fifth respondent is directed to follow the procedure mandated in paragraph 46 of the aforesaid judgment of the Division Bench of this Court and complete the entire exercise within a period of four weeks from the date of receipt of a copy of this order.

18. As the petitioner College has already observed all the formalities and submitted application, which is now pending before the fifth respondent, the first and second respondents/AICTE are directed to give approval to the petitioner institution as sought in their application on or before 27.04.2019, without reference to DTCP approval, if otherwise all the other norms and conditions are complied with, indicating that the same would be subject to the production of the approval of the DTCP, immediately upon receipt of the same from the fifth respondent, as directed above.

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

23.04.2019

Speaking / Non-speaking Order
Index : Yes/No
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To

1. The Member Secretary,
All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 070.
2. The Chairman,
Standing Appeal Committee,
All India Council for Technical Education,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 070.
3. The Regional Officer,
Southern Regional Office,
AICTE, Shastri Bhavan, 1st Floor,
Nungambakkam, Chennai-600 006.
4. The Principal Secretary,
Housing and Urban Development [UDA(3)]
Department, Fort St. George,
Chennai-600 009.
5. The Director of Town and Country Planning,
807, Anna Salai, Chennai-600 002.
6. The Deputy Director of Town and Country
Planning (In-charge),
Salem Region, No.6, Sannathi Street,
Subramaniya Nagar, Sooramangalam,
Salem-636 302.

PUSHPA SATHYANARAYANA, J.

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