

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.10431 of 2019
and W.M.P.No.10963 of 2019

Selvam Educational and Charitable Trust
Raja Nagar, Vadakankulam Village,
Radhapuram Taluk,
Tirunelveli District-627 116
rep. by its Chairman
S.A.Joy Raja,
established and administering
Rajas International Institute of Technology
for Women, Ozhuginasery,
Nagercoil-629 001
Kanniyakumari 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),
Tirunelveli Region, 108, Trivandrum Road,
Palayamkottai, Tirunelveli-627 002.

7. Therekalputhur Village Panchayat
rep. by its Special Officer,
Agasteeswram Taluk, Nagercoil,
Kanniyakumari District.

.. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 3 AICTE to grant approval to the petitioner for conversion of the present Women's College into a Co-Education institution with change of Name from Rajas International Institute of Technology for Women at Ozhuginasery, Nagercoil-629 001, to Rajas Institute of Technology at Ozhuginasery, Nagercoil-629 001, without insisting on DTCP approval, by accepting the approval granted by the Panchayat to the petitioner for the academic year 2019-20 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

O R D E R

The petitioner is an educational trust, which was established in the year 1985, and it has been running the Rajas International Institute of Technology for Women from the year 2009, after obtaining appropriate approval from the All India Council for Technical Education (in short, "AICTE")/respondents 1 to 3 and also affiliation from the Anna University.

2. It is stated that the petitioner Trust obtained building plan approval from the competent authority, namely, Therekalputhur Village Panchayat by the proceedings dated 26.03.2011. Since the petitioner Trust decided to convert the Women's College into a co-education college and consequently, decided to change the name of the college to Rajas Institute of Technology, it applied to the concerned authorities, for which,

the Anna University has given No Objection Certificate (NOC) and the State Government has also issued NOC on 18.04.2018.

3. The College also applied online with the first respondent for such conversion and name change on 21.02.2019. Though the Scrutiny Committee reported certain deficiencies on 23.02.2019, subsequently, in the report dated 05.03.2019, which was made after compliance, the only deficiency pointed out is "building plan not being approved by the Directorate of Town and Country Planning (DTCP)/Approval from DTCP is awaited." Accordingly, the first respondent on 19.03.2019 communicated to the petitioner to attend Standing Appellate Committee (SAC) meeting on 24.03.2019, in which, though two deficiencies were pointed out, one of which was clarified. As stated supra, the only deficiency now pointed out by the AICTE for keeping the application pending is the non-submission of approval from DTCP for the building.

4. Since the AICTE did not accept the explanation offered by the petitioner trust qua DTCP approval, the petitioner could not convert the Women's College into a co-education college and hence, it is before this Court praying to direct the AICTE to grant approval to the proposed conversion and name change without insisting on DTCP approval, by accepting the approval granted by the Panchayat to the petitioner from the academic year 2019-20.

5. Learned counsel for the petitioner submitted that in so far as the approval granted by the seventh respondent - Village Panchayat is concerned, where the college is functioning, since the same was issued on 26.03.2011, i.e., after the introduction of Section 47-A in the Tamil Nadu Town and Country Planning Act, 1971 with effect from 01.01.2011 and hence, the petitioner could not submit any application 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 and they have to redress the remedy available under G.O.Ms.No.111, Housing and Urban Development [UD4(3)] Department, dated 22.06.2017.

6. Admittedly, the petitioner trust wanted to convert the Women's college to co-education College. For the said purpose, a NOC was obtained by the petitioner from the Anna University and the State Government. The petitioner college had applied to the AICTE for approval and permission for the said change for the academic year 2019-20 vide application dated 21.02.2019. Now the only deficiency pointed out by the AICTE is with respect to the building plan not being approved by the DTCP. The first

respondent, in the meantime, had communicated to the petitioner to appear before the Standing Appeal Committee (SAC), which was scheduled to be conducted on 07.04.2019. The petitioner college was given hearing on that date. 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.

7. As stated already, the petitioner Trust could not submit its application under G.O.Ms.No.76 for concurrence with the DTCP, as it obtained building approval from the seventh respondent only on 26.03.2011, i.e., after the cut off date, which was fixed on 01.01.2011. 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. 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.

10. 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. 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."

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 seventh respondent - Village Panchayat on 26.03.2011 itself is sufficient for the AICTE to consider the application of the petitioner for approval and as per the directions issued by the Division Bench, as stated supra, the seventh respondent has to forward the papers pertaining to the college to the DTCP authorities to form an opinion and return back to the Village Panchayat to make suitable ratification. He contended that the failure on the part of the village panchayat cannot be put against the petitioner.

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. 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. In such circumstances, the petitioner is permitted to submit the duly self-attested copies of the plan documents to the seventh respondent within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the seventh 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/sixth respondent within a period of two weeks thereafter.

15. The respondents 5 and 6 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.

16. In the meanwhile, the respondents 1 to 3/AICTE are directed to give approval to the petitioner institution as sought in their application for conversion and name change 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 DTCP authorities, as directed above.

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

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

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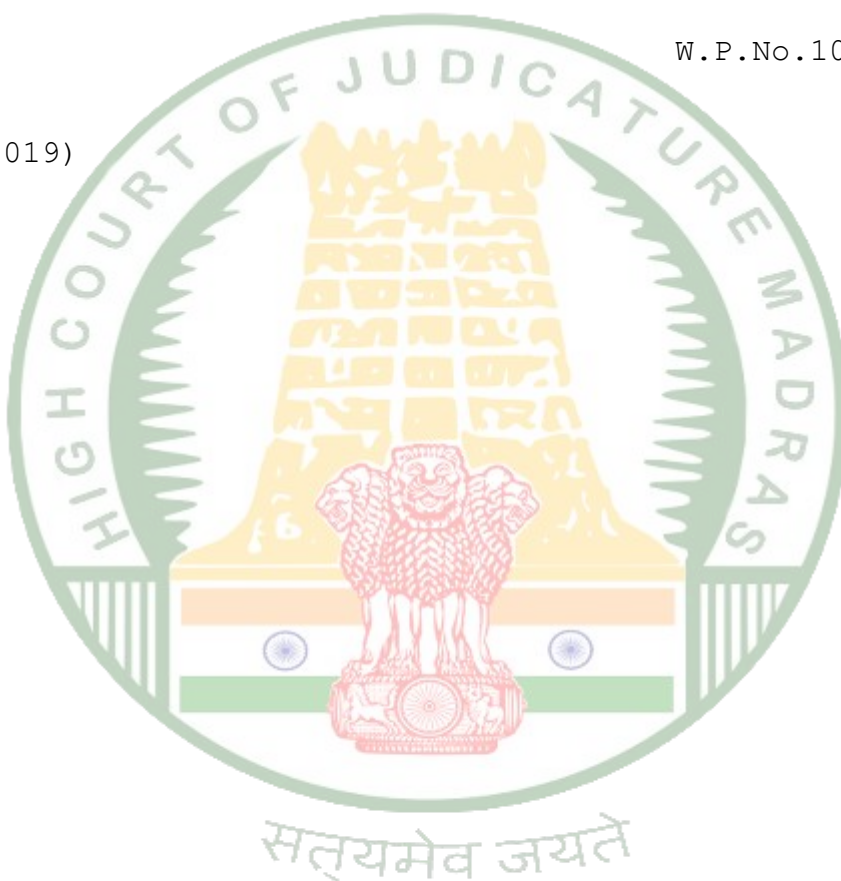
+1 CC to Mr.B.Rabu Manohar, Advocate sr 38880.

+1 CC to Govt. Pleader sr 39084.

+1 CC to Mr.D.Prabhu Mukunth Arunkumar, Advocate sr 39240

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AD(CO)
SP(27/04/2019)



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