

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.07.2019

PRONOUNCED ON :12 .07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.14134 and 17896 of 2019 and
W.M.P.Nos.14191, 17302, 17308 and 17315 of 2019

Bhajarang Engineering College,
Rep. By its Chairman
and Managing Trustee,
M.G.Baskaran,
Ayathur, Veppampattu (R.S),
Thiruvallur District. Petitioner in both W.Ps

Vs

1.All India Council for Technical Education,
Rep. By its Advisor - I (Approval),
Nelson Mandeal Marg,
Vasant Kunj,
New Delhi.

2.The Southern Regional Office,
AICTE, Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai - 600 006.

3.The Secretary,
Tamil Nadu Engineering Admission (2019),
Guindy,
Chennai - 600 025.

... Respondents in both W.Ps

Prayer in W.P.No.14134 of 2019 :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the respondents 1 and 2 herein to grant extension of approval for the academic year 2019-2020 to the petitioner college.

Prayer in W.P.No.17896 of 2019 :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for the records relating to the order F.No.AICTE/AB/SR/PID 1-4289448/2019-20, dated 13.05.2019,

of the first respondent herein and quash the same and further direct the first respondent herein to grant extension of approval for the academic year 2019-2020 to the petitioner college.

W.P.No.14134 of 2019:-

For petitioner :Mr.R.Kannan
For Respondents 1 and 2 :Mr.B.Rabu Manohar
For 3rd respondent :Mr.V.Kathirvelu,
Special Government Pleader

W.P.No.17896 of 2019:-

For petitioner :Mr.R.Natarajan
For Respondents 1 and 2 :Mr.B.Rabu Manohar
For 3rd respondent :Mr.V.Kathirvelu,
Special Government Pleader

COMMON ORDER

The petitioner Institute is an Engineering College established in the year 2001. The Institute is duly approved by the All India Council for Technical Education (hereinafter referred to as "the AICTE") and affiliated to Anna University, Chennai. The AICTE has also issued Permanent Institute ID to the petitioner college. On 05/09/2018, the AICTE sent a letter informing the petitioner College that, the Institutions having course(s) where admission is less than 30% of 'approved intake' for the past 5 years consistently, the Council shall reduce 50% of the 'approved intake' in such course(s) in the current academic year, with the approval of the Council.

2.As a follow up to this communication, the 2nd respondent conducted a scrutiny committee meeting on 11/09/2018. The representatives of the petitioner's Institute attended the meeting and produced documents in support of their claim, in respect of students admitted in their college for the past 5 years. Details of faculty, details/proof of salary paid, balance sheet and acquaintance register. In the above meeting, the Committee observed that the petitioner Institute is not paying salary recommended by the 6th pay commission to their faculty and not making the payment of salaries through RTGS/NEFT/Online. Therefore, recommended for closure of the College. The order of closure was received by the petitioner on 12/12/2018. On the same day, the petitioner preferred appeal to the Standing Appellate Committee (SAC) of AICTE. They were called to appear before the Standing Appellate Committee on 06/02/2019 and

produced documents as proof of compliance and also filed affidavit to that effect. The petitioner also brought to the notice of the Standing Appellate Committee that, the AICTE in their web portal has permits direct payment of salaries as one of the mode of payment to faculties. While so, as per the AICTE regulations, the petitioner Institute sought for extension of approval from the AICTE for the academic year 2019-2020 through online on 11/02/2019.

3. Since, the AICTE did not pass order on the application filed by the petitioner Institute, for Extension of Approval (EOA), the petitioner has filed the writ petition in W.P.No.14134 of 2019 for mandamus, to direct the first and second respondents (AICTE) to grant extension of approval to the petitioner Institute for the academic year 2019-2020. Pending the above writ petition, the AICTE has passed an order dated 13/05/2019 reiterating the same deficiencies pointed by the Scrutiny Committee and placed the petitioner Institute under 'no admission' category.

4. Hence, the petitioner has filed the another writ petition in W.P.No.17896 of 2019 for certiorarified mandamus, to call the records relating to the order passed by the first respondent vide F.No.AICTE/ AB/SR/PID 1-4289448/2019, dated 13/05/2019.

5. The subject matter in both the writ petitions are one and the same, namely, refusal of granting approval to the petitioner Institute by the AICTE for the academic year 2019-2020. Since, the first respondent has passed order on 13/05/2019, the prayer in the first writ petition in W.P.No.141134 of 2019 filed for mandamus has virtually become infructuous.

6. In W.P.No.17896 of 2019, the reason for challenging the communication of the first respondent dated 13.05.2019 is that the said order preventing the petitioner Institute from admitting the students for the ensuing academic year 2019-2020 is arbitrary, illegal and contrary to the natural justice principle. The petitioner Institute, running for the past 18 years, by virtue of a non speaking order passed by the first respondent dated 13.05.2019, has become stand still. Virtually, crippling the very existence of the petitioner Institute.

7. While the Hon'ble Supreme Court in Parshavanth Charitable Trust and others -vs- AICTE and others (2013 (3) SCC 385) has given guidelines and time frame for causing inspection and

granting approval, the impugned order in this case, passed after the deadline, though, the enquiry by Standing Appellate Committee was done much prior to the deadline per se reflects the malafide in the impugned order.

8.The Standing Appellate Committee of the AICTE heard the appeal of the petitioner on 06.02.2019. They are supposed to pass order before 30th April 2019, as per the guidelines of the Hon'ble Supreme Court. Whereas, in this case, the respondents failed to pass order on the enquiry conducted by Standing Appellate Committee which forced the petitioner Institute to file a writ of mandamus (W.P.No.14134 of 2019) while that writ petition is pending, the present impugned order (impugned in W.P.No.17896 of 2019) has been passed on 13.05.2019 after the dead line prescribed by the Hon'ble Supreme Court.

9.The first and second respondents representing the AICTE has filed counter affidavit justifying their order dated 13/05/2019 wherein, it is stated that, the petitioner Institute had no admission last academic year. The Scrutiny Committee report, recommended for closure of the Institute. The same was communicated to the petitioner and appeal opportunity was also given to them. Accordingly, the petitioner appeared before the Standing Appellate Committee, on 06.02.2019. On perusal of their compliance report, in the light of the deficiency pointed out by the Scrutiny Committee, the Standing Appellate Committee found the deficiencies noted are not complied. Therefore, the Standing Appellate Committee recommended to keep the Institute under no admission category. In Parshavanth Charitable Trust and others - vs- AICTE and others (cited supra), the Hon'ble Supreme Court has explicitly stated that compliance for grant of approval as well as regulations and provisions of the AICTE, is an unexceptionable condition for granting approval. The impugned order has been passed in accordance with the AICTE Regulation 2019.

10.The deficiency noted by the Standing Appellate Committee, is that the Institute failed to submit TDS for the teaching faculty to prove that they were paid as per the 6th pay commission recommendation. The mode of payment was also not shown. Though, the petitioner Institute states that they are paying salaries to its faculties by cash, as per the recommendations of the 6th pay commission, to ascertain, 'whether they are paying as per the pay scale fixed by the 6th pay commission recommendation or not, the TDS statement will be a relevant document. Having failed to produce the TDS statement, the Standing Appellate Committee has rightly concluded that the petitioner Institute has failed to rectify the deficiencies pointed out during scrutiny.

11.The learned counsel for the petitioner would submit that the petitioner was not afforded opportunity before passing the impugned order dated 13.05.2019 and the respondents have deliberately waited till the expiry of the cut off date and issued impugned order dated 13.05.2019.

12.However, on perusal of the records, it indicates that the meeting of Scrutiny Committee was conducted on 11.09.2018; the deficiency of the Institute was pointed out by the committee and the petitioner Institute was asked to rectify the same and report before the Standing Appellate Committee. When opportunity was afforded to the petitioner Institute to rectify the deficiency and submit the rectification report, the petitioner Institute has not furnished necessary document to show that they have complied the deficiencies. Particularly, when the AICTE insists upon the implementation of 6th pay commission to the faculty and digital payment of system to the faculty, the stand of the petitioner Institute is that, they the recommendation of 6th pay commission is followed and such payment is made by cash. To prove that they actually pay as per the recommendation of 6th pay commission, they have not produced any document. In this regard, the TDS certificate is a relevant document, which could have proved and established that the petitioner Institute is paying its faculty as per the 6th pay commission recommendation. Having failed to produce the document, two doubts emerges:-

“(i)Whether at all the petitioner Institute has engaged real time faculty and
(ii)Whether those faculties are paid salary on par with 6th pay commission recommendation.”

13.The first respondent though passed the impugned order after cut off date, it was only after affording opportunity to the petitioner and affording adequate time to rectify the deficiency, the impugned order has been passed. There is no delay tactics or mala fide intention in the conduct of the respondents. Even in the affidavit, the writ petitioner herein has not placed any document which could give an impression that the faculty of the petitioner Institute are paid as per the 6th pay commission recommendation leave alone, 'whether there are adequate faculties engaged by them'. For the above said reasons, this Court find no merit in the writ petitions.

14.In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

jbm

To

1.The Advisor - I (Approval),
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Nelson Mandeal Marg,
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3.The Secretary,
Tamil Nadu Engineering Admission (2019),
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+2 CCS to Mr.R.Kannan, Advocate sr 59269.

+2 CCS to Mr.B.Rabu Manohar, Advocate sr 59097, 59098.

W.P.Nos.14134 & 17896 of 2019

SS(CO)
SP(01/08/2019)

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