

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.16274 AND 16282 OF 2019

COMMON ORDER

The issue involved in both the writ petitions is identical and hence they are heard together and are being disposed of by this common order.

2. The case of the petitioners is that the 1st petitioner in both the writ petitions is Aurora Educational Society and it is promoting the 2nd petitioner – Colleges in both the writ petitions. The 2nd petitioner in W.P.No.16274 of 2019, is the college imparting post graduation course in Master of Computer Applications (MCA) and the 2nd petitioner – college in W.P.No.16282 of 2019, is imparting post graduation course in Master of Business Administration (MBA). The establishment and running of the above said technical courses, is governed by the provisions of All India Council for Technical Education Act, 1987 (for short 'AICTE Act'), which is a central legislation. Both the colleges are located in the respective addresses given in the cause title at Moosarambagh Hyderabad. The management of the said colleges, intended to change the location of the colleges i.e., in W.P.No.16274 of 2019, the location of the college was sought to be changed from Moosarambagh to the new location at Nampally, and in W.P.No.16282 of 2019, the location of the college is sought to be changed from Moosarambagh to Punjagutta at the given respective addresses, which are situated in Hyderabad city. For granting

approvals and renewals, the All India Council for Technical Education (AICTE), which is 4th respondent in both the writ petitions, promulgated AICTE (Grant of Approvals for Technical Institutions) Regulations, 2016 (for short 'the Regulations'). In accordance with the said Regulations, both the colleges have made applications for grant of approval for the academic year 2019-20, and also for change of location. The competent authority under the AICTE Act, in compliance with the provisions of the Regulations, vide proceedings dated 30.04.2019 and 19.05.2019, extended approvals for both the colleges, for the academic year 2019-20, at the proposed new locations of the college. The colleges have made applications to the State Government i.e., the respondents 2 and 3, for issuance of No Objection Certifications (NOCs) for the proposed change of location of the colleges, and also to the 1st respondent – Osmania University, represented by its Registrar, for issuance of NOCs for the proposals for change of location, and also for extension of affiliations for the academic year 2019-20. Vide the impugned letters dated 29.04.2019 and 07.05.2019 in File No.CTE-ACD2/ACAD/85/2019-ACADEMIC-I, the 2nd respondent rejected the proposals. Consequently, the 1st respondent – University, vide proceedings Nos.999/H/engg./2019-20/Acad.IV-1 and 1000/H/Engg./2019-20/Acad.IV-1 dated 19.07.2019, also intimated the 2nd petitioner – colleges that request for issuance of NOCs by University for change of location from Moosarambagh, is not agreeable. The case of

the petitioners is that the 1st respondent further refused to grant affiliation to both the colleges for the academic year 2019-20. Aggrieved by the said action of the State Government and the 1st respondent – University, the present writ petitions have been filed.

3. Sri D.Prakash Reddy, learned Senior Counsel appearing for the petitioners in both the writ petitions, submit that law relating to establishment and running of the institutions imparting technical courses, is fully occupied by the provisions of the AICTE Act, which is enacted by the Central Government in exercise of legislative powers traceable to Entries 65 and 66 of List – I of Schedule VII of the Constitution of India and Entry-25 of List-III. He submits that education, which was a State subject having been provided under Entry-11 of List – II, was moved to List-III, making it a concurrent subject. He submits that AICTE is created to look into infrastructural norms and to ensure that that institution meets all such requirements. Thus the field is occupied by the central legislation i.e., AICTE Act, 1987 and the Regulations made thereunder, and that neither the State Government, nor the University, can act in a manner that is at variance with or repugnant to the decision taken by the competent authority under the central legislation. He submits that the role of the State Government and the University, is only advisory in nature to the extent of suggestions at the stage of granting approval by the AICTE, and that once the AICTE grants approval, the same would prevail and any

state policy or legislation, has to yield to the decision of AICTE. Learned Senior Counsel submits that under Regulation 1.6 of the AICTE Approval Process Handbook 2019-20, procedure for grant of approvals has been prescribed, and the colleges have complied with the said procedure and after subjecting the colleges to inspection and finding no deficiencies, the AICTE has eventually granted approvals for the academic year 2019-20 and also for change of location. He submits that in pursuance of the applications of the colleges for issuance of NOCs for the proposed change of location, the 2nd respondent – Commissioner caused inspection of new locations and found no deficiencies and that he also addressed letter dated 24.03.2019, recommending the 3rd respondent – Government, for issuance of NOCs in favour of the colleges. But the 2nd respondent vide letter dated 29.04.2019 intimated the petitioners that the proposals for change of location was rejected by the Government. He submits that in fact the 2nd respondent also addressed the said letter to the AICTE, but however, the AICTE in compliance with the procedure, granted approvals. Learned Senior Counsel further submits that the 2nd respondent vide letter dated 07.05.2019, intimated the petitioners that the Government has taken a view to discourage shifting of institutions as it brings imbalance in the geographic spread of permitted institutions, and, therefore, the proposals were rejected. He reiterated his submissions stating that when once AICTE grants approval, the policy of the State

Government, or the University, cannot be in variance with that of the central legislation. As the AICTE has granted permission, the respondents 1 to 3 are not justified in rejecting the proposals for grant of NOCs and the 1st respondent – University is also not justified in refusing to grant affiliations. In support of the above contention, learned Senior Counsel relied on the judgment of the Apex Court in *JAYA GOKUL EDUCATIONAL TRUST v. COMMR. & SECY TO GOVT. HIGHER EDUCATION DEPARTMENT*¹.

4. On the other hand, learned Government Pleader for Higher Education appearing for respondents 2 and 3, submits that the power of the State Government to grant permission for establishment of educational institutions, is traceable to Section 20 of Telangana Education Act, 1982 (for short 'the Act of 1982'). She submits that the said provision provides for the procedure for grant of permission for establishment of educational institutions in a locality. Shifting of the institution from one location to another location, also amounts to establishment educational institution in the new location and for that permission is mandatory. She submits that how many colleges should function at a particular city/place is within the domain of the State Government and the norms in that aspect, are silence under AICTE Act, and hence, the decision of the State Government in this regard, cannot be said to be repugnant or contrary to the decision of the AICTE. In

¹ (2000)5 SCC 231

support of this contention, learned counsel relied on the judgment of the Apex Court in *THE JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY, REP. BY ITS REGISTRAR vs. SANGAM LAXI BAI VIDYAPEEP*². She produced written instructions of the 2nd respondent dated 15.08.2019, wherein it is stated that “*Telangana State Council of Higher Education (TSCHE) has prepared the State of Telangana Perspective Plan of the Technical Education – 2018 (PPTE-2018-19), which has taken into account the statistics of colleges, courses and seats in professional colleges (Engineering / Pharmacy / MBA/ MCA) in Telangana State. The TSCHE has made a note of the imbalance in the number of seats available in IT related disciplines and conventional disciplines in PPTE – 2018-19. As per the above mentioned Perspective Plan of the Technical Education – 2018 (PPTE – 2018-19), no permission is to be granted for starting of new MBA/MCA colleges, which also means no permission is to be granted for change of location of MBA / MCA colleges from their existing locations to the new locations.*” Learned Government Pleader submits that in view of the Perspective Plan of the Technical Education – 2018, the State Government has taken a policy decision not to grant any permissions. She submits that AICTE Act also provides for consultation process with the State Government and in the present case, though the State Government has intimated its decision to AICTE, without taking into consideration the policy of the Government, approvals were granted. Therefore, she

² Special Leave Petition (C) No.9718 of 2018 dated 29.10.2018

submits that respondents 2 and 3 are justified in refusing to grant NOCs for proposed change of location of the colleges, and seeks to dismiss the writ petitions.

5. Sri Ch.Jagannatha Rao, learned Standing Counsel for the 1st respondent – University submits that the University has rejected proposals for grant of NOCs for change of location, based on the policy of the Government.

6. Heard Sri K.Ramakanth Reddy learned Standing Counsel for the 4th respondent – AICTE

7. There is no dispute that in respect of the colleges imparting technical education, in the present cases M.B.A. and M.C.A., for grant of approvals, the field is governed by the provisions of AICTE Act, which is a central enactment. There is also no dispute that the 4th respondent – AICTE, granted approvals the 2nd petitioner – colleges, for the academic year 2019-20 and also for change of location. When the AICTE grants approval, whether the State Government on the ground of policy decision, could reject proposals for issuance of NOCs for change of location, and whether the University could reject affiliation, are the issues which are no longer *res integra*. The Apex Court in *Jaya Gokul Educational Trust case* (supra), considering identical issue, held as under:

27. The so-called “policy” of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga*

Kirupananda & Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N. {(1996)3 SCC 15} which was a case relating to medical education and which also related to the effect of a Central Law upon a law made by the State under Entry 25 List III, it was held (at SCC p. 35, para 34) that the

“essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone”.

(emphasis supplied)

Therefore, the State could not have any “policy” outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to the light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action.”

8. In view of the above judgment of the Apex Court it is clear that when once following the procedure contemplated the under the AICTE Act and the Regulations made thereunder, approvals were granted, there is no scope for any further objection or approval by the State Government and that the policy of the State Government cannot be contrary to the approval granted by the 4th respondent - AICTE. In the present case, as per the averments made in the writ affidavit, based on the application of the petitioner – colleges to the 2nd respondent, inspection was conducted and no deficiencies were pointed out in the inspection and the in pursuance of the same, 2nd respondent vide letter dated 24.03.2019 also recommended the 3rd respondent for issuance of NOCs, but however, in view of the decision of the Government to discourage shifting of institutions as it brings imbalance in the geographic spread of permitted institutions, NOCs for change of locations, could not

be granted. Here it is noticed that the 4th respondent – AICTE, in spite of the communication of the 2nd respondent vide dated 29.04.2019 with regard to rejection of proposals of the petitioners, granted approval for change of location of the petitioner – colleges. This circumstance shows that the AICTE, which is the competent authority, has taken the view of the Government into consideration before granting approvals. In view of the facts and circumstances of the case, and the judgment of the Apex Court referred to 1 supra, the impugned proceedings of the 2nd respondent, cannot be sustained.

9. Coming to the contention of the learned Assistant Government Pleader for Higher Education with regard to applicability of Section 20 of the Act of 1982, it is be noticed that the there is no dispute that the said provision provides that a competent authority shall conduct a survey to identify the educational needs of the locality under its jurisdiction and accordingly grant permissions by following the procedure laid down therein.

10. The learned Government Pleader for was asked to find out the exact connotation of the word 'locality' occurring under Section 20 of Act of 1982. Though the learned Government Pleader sought to explain by producing written instructions stating that 'locality / location' of the institute means the place where the building of the institute is at present located i.e., Moosarambagh, Hyderabad; she could not point out any

definition under the Act of 1982, nor under the Rules framed there under. Therefore, when the 'locality' is not defined, it is not known how the respondents 2 and 3 could say that impugned action of theirs refer to Section 20 of Act of 1982.

11. As per the averments made in the writ affidavits, the 4th respondent independently formed an Expert Visiting Committee, which visited the proposed new location of the colleges for inspection on 09.03.2019 and 05.04.2019 respectively, and as the said Committee observed 'nil' deficiencies and recommended for grant of approval, 4th respondent in compliance with the procedure under the Regulations, granted approvals. Even in the inspection caused by the 2nd respondent, no deficiencies could be found, but only because of the policy of the Government, NOCs, were rejected. It is also to be noticed that before rejecting the proposals for NOCs, the petitioners were not issued with any notices giving them opportunity, and this amounts to violation of principles of natural justice. Further, as already noted above, as per the judgment of the Apex Court referred to one supra, the decision of the Government cannot be contrary to the approvals granted by the competent authority under the AICTE Act, which is a central legislation. Hence, the impugned action of the respondents 2 and 3, is liable to be set aside.

12. For the foregoing reasons, the action of the respondents 2 and 3 in rejecting to grant NOCs for the proposed change of location of the

2nd petitioner – colleges in both the writ petitions vide the impugned proceedings, cannot be sustained and the same are accordingly set aside.

13. Learned Standing Counsel for the 1st respondent – University submits that the petitioners have made applications for affiliation mentioning the old addresses of the colleges, and hence they may be directed to apply mentioning proposed new locations.

14. In view of the same, the 2nd petitioner – colleges in both the writ petitions, are permitted to make necessary applications afresh for affiliation for the academic year 2019-20 and the 1st respondent – University, without reference to the rejection of NOCs by the State Government, shall cause inspection of the colleges at the proposed new locations, and consider for grant of affiliations in accordance with law.

15. Learned counsel for the petitioners submit that first phase of counseling is completed and the date for second phase of counseling is likely to be announced shortly and hence certain time frame may be fixed to the 1st respondent to carry out the above said exercise.

16. In view of the above submission, the 1st respondent shall complete the process of inspection within a period of ten days from the date of making such applications, and thereafter take appropriate action in accordance with law.

17. The writ petitions are accordingly allowed to the extent indicated above.

18. Interlocutory applications pending, if any, shall stand closed.
No order as to costs.

A.RAJASHEKER REDDY,J

DATE:19—08—2019

AVS

