

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 2772/2015

Vidyasagar Education Society,
Gondia, through its Secretary,
Rupesh S/o Ramesh Kuthe, Aged
about 31 years, R/o Gurunanak
Ward, Gondia, Tah. & Distt. Gondia.

... Petitioner

Versus

1. Union of India,
through its Secretary,
Ministry of Human Resource
Department, Shastri Bhawan,
C-Wing, Dr. Rajendra Prasad
Road, New Delhi, 110001.
2. All India Council for Technical
Education, through its Secretary,
7th Floor, Chandralok Building,
Janpath, New Delhi-110 001.
3. AICTE-Western Regional Office,
through its Regional Officer,
2nd Floor, Industrial Assurance
Building, V.N. Road, Opp.
Churchgate Railway Station,
Churchgate, Mumbai-400 020.

... Respondents

Shri Ravindra L. Khapre, Senior Advocate h/f Shri D.R.Khapre, Advocate for the Petitioner.

Shri Neerja G. Chaubey, Advocate for the Respondent No.1.

Shri Nitin P. Lambat, Advocate for the Respondent No.2.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 14 JANUARY 2021

ORAL JUDGMENT (PER : Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. In view of the order passed on 25 August 2020, the Writ Petition is taken up for final disposal.

2. The Petitioner is a registered Public Trust, registered under the Bombay Public Trusts Act and Societies Registration Act. Petitioner Institute runs various educational institutes including two Junior Colleges, one high school and one Polytechnic College and an Old Age Home by name Matoshri Vruddhashram. The Petitioner has challenged the order passed by the respondent-All India Council for Technical Education dated 7 April 2015, cancelling the approval of the Polytechnical College.

3. The Petitioner had purchased six parcels of land at village Chandani Tola (Nagra), Tahsil Gondia, District Bhandara. Gat Nos. 81, 80, 78, 99, 97, 157 and survey No. 97 were purchased by the Petitioner by registered sale-deeds. Gut No. 81 was purchased from Shri Ramesh Sampatrao Kuthe for consideration of Rs.1,82,500/- on 9 April 1996; Gat Nos. 80 and 78 were purchased from Shri Nandkishore Hairom Agrawal for consideration of Rs.48,000/- and Rs.35,000/- respectively on 9 April

1996; Survey No.97 was purchased from Shri Prathivraj @ Parasram Meshram for consideration of Rs.1,00,000/- on 20 December 2010; Gat No.99 was purchased from Shri Namdeo @ Mulchand Lilhare for consideration of Rs.1,00,000/- on 18 January 2012 and the Gut No. 97 and Gut No. 157 were purchased from Shri Ghanshyam @ Gangadasbhai Patel and another for consideration of Rs.75,000/- and Rs.10,00,000/- respectively on 21 March 2013.

4. The Respondent-AICTE had granted approval to the Gurukul Polytechnic College at Nagra, Gondia run by the Petitioner by order dated 1 November 2011 for the Academic Year 2011-12 and the approval was continued from time to time.

5. The Respondent-AICTE received a complaint that the Petitioner Institute was not functioning as per the norms and regulations laid down by Respondent-AICTE and it was alleged that the Petitioner had submitted false documents for establishment of Polytechnic College at Nagra on the land allotted and reserved for Matoshri Old Age Home by the Department of Social Justice, Government of Maharashtra. It was also alleged that the State of Government had given a grant for construction of Old Age Home on the same land which is shown to be Polytechnic College

6. The complaint was placed before the Standing Complaint Committee of the Respondent-AICTE. A meeting was held on 6 March 2014, and it also considered that a visit be made. Thereafter a report was prepared, and all aspects regarding Petitioner were examined. The report was submitted before the Standing Complaint Committee of the Respondent AICTE, and the meeting held on 31 March 2015, and the Committee made various observations as regards the infrastructure including the barrier-free environment and toilets for the physically challenged, common room, cafeteria, classrooms, library, seminar hall also noted the faculties framed and noted that title deed to the land was not produced. The Committee thereafter recommended the withdrawal of the approval granted to the Petitioner by order dated 7 April 2015, which is impugned in this Writ Petition.

7. Various orders have been passed in this Petition from time to time, and the controversy is considered of narrowed down. The petition came up on board on 8 May 2015 and the Division Bench passed the following order:

“Heard.

Learned Advocate Shri Khapre to place on record affidavit of Chairman of the society pointing out area separately available for college building and home for aged with photographs and maps showing demarcation.

Prima facie it appears that institution is working since long. The major lacunae like class room, tutorial rooms or laboratory are pointed out by respondents with remark that they are less in number.

In this situation, notice, returnable on 10.06.2015

Till then, we permit petitioners to participate in admission process and to admit students provisionally subject to further orders of the Court.”

8. Thereafter the matter was heard on 4 May 2016 and a detailed order was passed as under:

“Heard Shri R.L. Khapre, learned Counsel for the petitioner and Shri R.S. Sundram, learned Counsel for respondents for some time.

2. Shri Khapre, learned counsel submits that after directions of the Hon'ble Apex Court, fresh advertisement has been issued and accordingly petitioner has submitted necessary papers for scrutiny. Those papers are not being scrutinized, as approval of petitioner is already cancelled.

3. Our attention is invited to orders passed by this Court on 08.05.2015. It is submitted that on the strength of same, the college of petitioner is still functioning, and on 01.06.2015, it was inspected. No deficiencies or lacunae were noticed. Our attention is also drawn to the reply affidavit filed by the Director and Regional Officer of respondents before this Court, wherein the respondents have in paragraph no.13 stated that case of petitioner is under consideration after visit of expert committee to ascertain whether the petitioner Institute has cured the deficiencies. It is also submitted that the petition has been filed with undue haste. This stand is taken in reply affidavit filed on 25.06.2015.

4. Shri Sundram, learned Counsel fairly states that thereafter he has not received any further instructions in the matter. However, according to him as the approval is already cancelled, unless and until there is fresh consideration of the issue by respondents, the petitioner cannot admit students.

5. The fact that the petitioner College is functioning even today is not in dispute. In this situation, in the light of the earlier orders, we permit the petitioners to admit students

provisionally subject to further orders of this Court in the matter, through regular process of admission. Each student being admitted shall be informed accordingly in writing and prospectus issued by the College shall contain this condition.

6. Respondents to file their reply pointing out the outcome of the exercise of fresh consideration, within a period of six weeks from today.

7. List the matter for further consideration on 21.06.2016.

8. Copy of this order be furnished to learned counsel for the parties to act upon.”

9. The Petitioner tendered an affidavit on 10 June 2015 “*titled Affidavit of compliance with the order dated 7 April 2015*”. In the affidavit the Petitioner placed on record the details regarding the shortfalls pointed out by the Respondent-AICTE. It also placed on record the details regarding the Old Age Home and the notices received. Thereafter the petition came up on board and also reference was made to a fresh inspection report carried out by the Respondent-AICTE. The communication of the Petitioner on 20 April 2015 to the Respondent-AICTE pointed out that shortfalls have been removed, and so also placed on record.

10. The petition thereafter came up on board on 25 April 2017 and Rule was issued, and a detailed interim order was passed as under:

“Heard.

RULE.

By this writ petition, the petitioner has challenged the action on the part of the respondent No.2-All India Council for

Technical Education in withdrawing the recognition granted to the petitioner to run the polytechnic college.

According to the respondent No.2-AICTE, when the college was inspected, certain deficiencies were found and since they were cured, the permission granted to the petitioner-society to run the college was cancelled by the impugned order that is challenged in this writ petition.

By an interim order dated 08/05/2015, this court had permitted the petitioner-society to provisionally admit the students in the college during the said academic year and by a subsequent order, a similar permission was granted for the next academic year.

It is not in dispute that during the pendency of the writ petition, a fresh inspection was carried out in the college run by the petitioner-society and the inspection report is favourable to the petitioner, except the objection that the land on which the college is situated belongs to the government. Since in the subsequent inspection, no other deficiencies were found, we had asked the respondent-AICTE to make an enquiry whether the objection raised by the respondent-AICTE in regard to the land utilized for the purpose of running the polytechnic college is correct or not. It is submitted that the respondent-AICTE has written to the Sub-Divisional Officer, Gondia to state whether the land on which the petitioner-society is running the college belongs to the government and whether the government is desirous of recovering the land from the petitioner. It appears that the query made by the respondent-AICTE to the Sub-Divisional Officer, Gondia is not yet answered by the Sub-Divisional Officer. There is no other lacuna found in the college run by the petitioner-society as per the recent inspection, except the deficiency pertaining to the land. Since the ownership of the land appears to be the major issue between the petitioner and the respondent-AICTE and since the issue is not yet resolved by securing the necessary information from the Sub-Divisional Officer, Gondia or from any other government authority as secured by the respondent-AICTE, it would be necessary in the interest of justice to grant

a similar provisional permission to the petitioner-society to admit students in the polytechnic college run by the petitioner-society during the academic session 2017-18. Since we do not find any other serious deficiency, except the deficiency pertaining to the ownership of the part of the land and since the said issue is not yet resolved, it would not be proper in the interest of justice to refuse permission to the petitioner to admit students in the polytechnic college in the next academic session, specially when there is no deficiency in respect of infrastructure, equipments and other amenities. The order of the Hon'ble Supreme Court in Special Leave Appeal (C) 22082 of 2016 (All India Council For Technical Education v. Rachana Sansad College of Applied Art and Craft and others) dated 14/12/2016 and relied on by the counsel for the respondent-AICTE would not be applicable to the facts of this case, as in the case before the Hon'ble Supreme Court though several deficiencies were pointed out by the AICTE to the High Court, the High Court had granted permission to provisionally admit the students in the college in that case.

Learned counsel Shri Sundaram waives notice of hearing on behalf of the respondents. ”

11. The Division Bench specifically recorded that as per the inspection report placed on record by the additional affidavit there are no other lacunas found in the College run by Petitioner Society and except deficiency pertaining to land there remained no other compliances. The Division Bench highlighted that the ownership of the land was the major issue. Before us also besides the aspect of title to the land, no other ground was urged.

12. Shri R.L.Khapre, Senior Advocate for the Petitioner submitted that the Petitioner has acquired title to the land by the registered Sale-Deeds not set aside by any court and the title of the Petitioner to the land

is unquestionable. The learned Senior Advocate for the Petitioner also has drawn our attention to order passed by the Division Bench of this Court in Writ Petition No. 1728/2013 dated 30 January 2014 filed by the Petitioner wherein the communication issued by the State Government on 5 February 2013 which is the foundation of the impugned order was set aside. The learned Senior Advocate for the Petitioner submitted that being the position there is no impediment in the Respondent-AICTE to restore the approval and continue the same for next Academic Year as all other deficiencies have been removed.

13. Shri N.P. Lambat learned Counsel for the Respondent-AICTE submitted that though the order dated 5 February 2013 issued by the State Government it has been set aside and it has been left open to the State Government to take necessary action, and this cannot be lost sight of the Respondent-AICTE while deciding whether to continue or grant approval to the Educational Institute like the Petitioner.

14. The Respondent-AICTE is governed by the *All India Council for Technical Education Act, 1987* and its powers have been specified under the Act to regulate the standard of technical education. It has powers to grant recognition/approval to educational institute imparting technical institutes. In exercise of such approval/recognition, the AICTE has laid down certain norms to be fulfilled by the educational institutions seeking approval/recognition. The title to the land upon which the building from where technical education is to be imparted is one criterion

for the grant of approval/recognition. It is in the context of the limited inquiry by the AICTE; we will have to examine the stand taken by the Respondent-AICTE before us.

15. The Petitioner has purchased the lands by registered Sale-deeds. The details are that the Gut No. 81 was purchased from Shri Ramesh Sampatrao Kuthe for consideration of Rs.1,82,500/- on 9 April 1996; Gat Nos. 80 and 78 were purchased from Shri Nandkishore Hairom Agrawal for consideration of Rs.48,000/- and Rs.35,000/- respectively on 9 April 1996; Survey No.97 was purchased from Shri Prathivraj @ Parasram Meshram for consideration of Rs.1,00,000/- on 20 December 2010; Gat No.99 was purchased from Shri Namdeo @ Mulchand Lilhare for consideration of Rs.1,00,000/- on 18 January 2012 and the Gut No. 97 and Gut No. 157 were purchased from Shri Ghanshyam @ Gangadasbhai Patel and another for consideration of Rs.75,000/- and Rs.10,00,000/- respectively on 21 March 2013.

16. Nothing is shown to us by the Respondents that these sale-deeds have been set aside by any competent Court of Law. The only contention of the Respondent Counsel before us is that they were not produced at the relevant time; however, this petition is pending since the year of 2015, they have been brought on record. Further, it has been brought to our notice by the learned Counsel for the Petitioner that the Respondent-AICTE itself appointed an Advocate to examine the title of the Petitioner who has done the same and submitted a positive report to

the Council. Therefore, the ground that the Respondent-AICTE is not aware of the Sale-Deed cannot be accepted. Therefore, as for the Respondent-AICTE, because of the Sale-Deeds not questioned or set aside in any Court of Law, the title is satisfied.

17. Turning now to the main basis of the impugned order that is the complaint received regarding grant by the State Government to run the Old Age Home on the same land upon which permission is sought. The impugned order refers to the order dated 5 February 2013 by the Deputy Secretary, Ministry of Social Justice. According to the Respondent-AICTE since by this order, the land is being ordered to be transferred in the name of State Government. This submission is not correct because of the order passed by the Division Bench in Writ Petition No.1728/2013 placed on record by the Petitioner. The order reads thus:

“Petitioner claims that as per Government Policy dated 17th November 1995 five acres of land belonging to the petitioner has been used for constructing a home for aged and that land is still intact. The home for aged is still operational and as such, impugned communication which seeks deletion of name of petitioner from 7/12 extract as well as addition of name of State Government thereto, is without any authority of law. It is stated that amount of Rs.Three lakhs received as grant for running the said home for aged is still intact as per the scheme.

Learned A.G.P. relies upon reply/affidavit. He points out that the Government has provided amount of Rs. Three lakhs for purchase of land and also amount of Rs.Forty Five Lakhs for construction of building for home for aged.

During hearing, we find that District Welfare Officer has submitted a report to Director of Social Welfare mentioning therein that in 2010-2011 the petitioner have procured another

land for constructing Polytechnic college on it. The building of Polytechnic College and home for aged are separate.

Learned AGP has relied upon reply/affidavit as also clause 10(j) of the Schedule-A of the Government Resolution dated 17th November, 1995.

We have perused that Clause. That clause states that Government can provide land for construction of such home for aged. If the Government land is not available, person running home for aged can privately purchase land to the extent of five acres and Government then reimburses that amount to that person. Said land would continue with such person or Society till home for aged is operational. It will revert back to Government after such home is discontinued. This is further followed by stipulation that those who do not need land would be given amount of Rs.Five Lakhs in city and Rs. Three Lakhs in rural area. This fund is not to be spent but invested and through interest earned, expenditure for home for aged is to be adjusted.

Thus, in entire Schedule-A, there is no clause, which in present facts enables the State Government to insist that name of owner of land can be deleted and its name can be substituted. Here, land to the extent of five acres admittedly belongs to petitioner and also amount of Rs.Three lakhs provided to it has been kept intact in terms of Government Resolution.

The payment of amount of Rs. Forty Five Lakhs for raising construction is also in accordance with the scheme. The activity of home for aged is going on. It is not the case of the respondent before this Court that said activity is discontinued or then in a very same structure polytechnic or any similar institute has been started by the petitioner.

We, therefore, find that impugned communication dated 5th February 2013 at Annexure-15 as well as consequential communication are unsustainable. If State Government has disbursed amount of Rs. Forty five lakhs and through it construction has come on land, it is open for the respondents to seek creation of a Charge or encumbrance on the property in accordance with law or in accordance its scheme but this also can only be done after extending opportunity to the petitioner. Similarly, if the Government finds that home of aged is not

*being run or polytechnic college is being run in same building,
it is open for the Government to take necessary action.”*

Therefore, the Division Bench has found that the disbursal of the funds, if misused, the State Government can recover the funds by creating a charge or any other condition is violated is open to the Government to take necessary action. There is no reference in this order to extinguish the Petitioner's title to the land and verify the same with Government.

18. That being the position and the registered Sale-Deeds is being on record, it is unwarranted for the Respondent-AICTE to carry out any further inquiry. If there is a breach of any condition by the Petitioner qua the State Government, liberty is already granted to the State Government to take action. The learned Senior Advocate for the Petitioner points out that in spite of the liberty given by the Court in the year 2014, no action is taken by the State Government. Regardless, it is not a matter for the Respondent- AICTE, as it is a dispute between the State Government and the Petitioner. As long as registered Sale Deeds, which have created the title in favour of the Petitioner has not been set aside by any Court, the requirement for the grant of approval/recognition should stand satisfied. No provision of law is shown to us that in the circumstances after the order passed by the Division Bench, in Writ Petition No. 1728 of 2013 that the factum of title to the land can still be disputed by the Respondent-AICTE.

19. In these circumstances, the Petition deserves to be allowed, and the impugned order dated 7 April 2015 is required to be set aside. It is accordingly quashed and set aside. Since no other shortfall have been pointed out to us, Respondent-AICTE will proceed to examine the aspect of approval of the Petitioner based on the sale deeds placed on record by the Petitioner. The Respondent-AICTE will take the necessary action as per law within three weeks from the date the order is uploaded.

20. Rule is made absolute in the above terms. No costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]