

\$~1366 and 1370 (2021 Cause List)

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision 9th August, 2021

+ W.P.(C) 7426/2021 & CM APPL. 23411/2021 (for directions)

SHRI JEET RAM SMARAK INSTITUTE OF ENGINEERING
AND TECHNOLOGY Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

..... Respondents

Through: Mr. Anil Soni with Mr. Devesh
Dubey, Advocate.

1370.

+ W.P.(C) 7551/2021 & CM APPL. 23657/2021 (for directions)

SHRI JEET RAM SMARAK INSTITUTE OF
POLYTECHNIC Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

..... Respondents

Through: Mr. Anil Soni with Mr. Devesh
Dubey, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 10.08.2021

09:47:40

W.P.(C) 7426/2021 and connected matter

Page 1 of 9

1. These writ petitions under Article 226 of the Constitution have been filed by sister institutions, assailing identical show cause notices dated 08.06.2021 and orders dated 23.07.2021 passed by the respondent-All India Council for Technical Education [“AICTE”], declining the petitioners’ request for Extension of Approval [“EOA”] for the year 2021-22 for conducting their engineering and polytechnic courses.
2. The petitioners established their courses, with AICTE approval, in 2009-10 [in W.P.(C) 7426/2021] and 2012-13 [in W.P.(C) 7551/2021]. Both the institutions were granted EOAs annually, including for the year 2020-21.
3. For the 2021-22 session, they submitted their applications in March, 2021. Although the applications remained pending, the AICTE, in the meanwhile, received a reference from the Central Vigilance Commission [“CVC”] regarding a complaint of one Mr. Sunil Kumar. The AICTE thereafter issued a show cause notice dated 08.06.2021 to the petitioners. The AICTE also apparently referred the case to its Standing Appellate Committee [“SAC”], which purported to give the petitioners an opportunity of hearing.
4. The AICTE ultimately declined the EOAs to both the petitioners. Although the decisions were made on 11.07.2021, they were communicated to the petitioners vide orders dated 23.07.2021.
5. As there was a dispute with regard to the effectiveness of the hearing which had been granted by the AICTE, while issuing notice in these petitions on 03.08.2021, the AICTE was directed to consider the replies submitted by the petitioners to the show cause notices and

grant them a further opportunity of hearing.

6. Pursuant to this order, the petitioners were granted a hearing before the SAC on 04.08.2021 and it passed orders on the same date, recording a conclusion that the institutions were being run without following the AICTE's norms. The SAC reiterated the earlier orders wherein "no admission" was recommended for these two institutions for the academic year 2021-22.

7. It appears from the orders of the SAC dated 04.08.2021 that it has considered seven deficiencies on the basis of the complaint forwarded by the CVC. The SAC has proceeded on the basis that the petitioners were unable to produce the relevant documents for the period before March, 2021. It further appears that several documents were sought in the meeting of the SAC itself without prior notice, which the petitioners were unable to produce.

8. Mr. Sanjay Sharawat, learned counsel for the petitioners, submits that several of the deficiencies enumerated in the orders dated 04.08.2021 are entirely misconceived, inasmuch as the points raised are not applicable to the petitioners at all. He submits that the original show cause notices dated 08.06.2021, as also the communication dated 05.07.2021, by which the contents of the complaint were forwarded to the petitioners, were generic and vague, making it impossible for the petitioners to satisfy the queries raised, without further opportunity being given after specifying the documentation required. Mr. Sharawat submits that the SAC has misguided itself in considering the cases of both the institutions together, although the particulars of each institution relating to building plans, fire safety regulations, electricity

connections etc. are different.

9. Mr. Sharawat has also drawn my attention to the Approval Process Handbook, 2021-22 [“the Handbook”], read with Regulation 12 of the AICTE Regulations, 2020, which admittedly govern the petitioners. In the Handbook, Chapter VIII deals with “Penal Action in case of Violation of the Norms and Regulations”. Clauses 8.1 and 8.17 are relevant for the adjudication of the present cases:-

“8.1 Introduction

a. An Institution offering any Programme/ Course in Technical Education in violation of Regulations/ Approval Process Handbook, shall be liable to appropriate Penal action including fine/no admission/ reduction in "Approved Intake"/Withdrawal of Approval/ criminal action by the Council against defaulting Trust/Society/Company/ Associated individuals/ the Institution, as the case may be.

b. If any Technical Institution contravenes any of the provisions of relevant Regulations, the Council after making appropriate inquiry through Standing Hearing Committee and after providing an opportunity of being heard through the Standing Appellate Committee shall withdraw the approval granted. In case of Withdrawal of Approval of the Institution, the Technical Institution/Trust/Society/ Company shall apply afresh for approval after completion of two Academic Years for setting up a new Technical Institution with a different name as per the procedure defined in the Approval Process Handbook

c. Further that, the students admitted to the Institution whose approval has been withdrawn for the current Academic Year shall be redistributed to other AICTE approved Institutions in the jurisdiction of the affiliating University/ Board by the Competent Authority of the respective State Government/UT. AICTE approval given to the Course(s) in the previous Academic Year(s), If any,

to such Institution against which the admitted students shall be treated as AICTE approved Course(s) only.

d. If any of the information mentioned in the Affidavit is proved as false, penal action shall be Initiated on the Deponent.

e. If any Institution is found offering Technical Programmes without the approval of the Council, it shall be declared as unapproved Institution and necessary punitive action shall be initiated such as the Council shall inform respective State Government/UT to initiate appropriate penal, civil/ criminal action against such defaulting Institutions/Trust/Society/ Company/Associated Individuals as the case maybe.

xxxx

xxxx

xxxx

8.17 Complaint Cases

a. All Institutions shall have Grievance Redressal mechanism as notified by the Council.

b. In case of receipt of any Complaint(s) about an Institution, the same shall be processed by Public Grievance Redressal Cell (PGRC) of AICTE.

c. The Complaint shall be placed before a Standing Complaint Scrutiny Committee (SCSC) for further necessary action. If necessary, the complainant may be called to appear before SCSC at his/her own cost. Based on the recommendation of SCSC, a Warning or Show Cause Notice may be issued to the Institution or Expert Visit Committee may be conducted through Approval Bureau.

d. The report of the Expert Visit Committee/ Show Cause notice, if issued shall be placed before the Standing Hearing Committee.

e. Two representatives of the Institution (Chairman/ Secretary of the Trust/ Society/ Company or Principal/ Director/ Faculty of the institution/ Trustee duly authorized by them) along with Photo ID proof shall present their case along with the compliance and supporting documents before the Standing Hearing

Committee. If necessary, the complainant may be called to appear before Standing Hearing Committee at his/her own cost.

f. The recommendations of the Standing Hearing Committee shall be placed before the Executive Committee for approval.

g. The decision of the Executive Committee shall be uploaded in the Web-Portal by a detailed Speaking Order. If the Institution is aggrieved by the decision of the Executive Committee, the Institution shall have the right to appeal as per Clause 1.10 of the Approval Process Handbook.

h. As per CVC guidelines, Anonymous/ Pseudonymous Complaints shall not be processed.

g. Each Institution shall upload the number of Complaints and Grievances received and action taken in their Web site and update AICTE through the monthly online status report.”

10. On the basis of these provisions, Mr. Sharawat submits that in the case of any allegation based on a complaint made to the AICTE, the matter is to be heard before the Standing Hearing Committee [“SHC”] under Clause 8.17(e). The recommendations of the SHC are required to be approved before the Executive Committee and the institution has a right to appeal to the SAC. In the present cases, Mr. Sharawat submits that the procedure of Clause 8.17 has not been followed, and instead the matter has been referred directly to the SAC.

11. Without prejudice to the contentions of the AICTE on merits, Mr. Anil Soni, learned counsel for the AICTE, submits that the matters may be remanded to the AICTE for compliance with the procedure of Clause 8.17 to the cases of the petitioners.

12. Having regard to the submissions of learned counsel for the parties, the course suggested by Mr. Soni is appropriate. Rather than

an examination of the merits of the matter by the writ court, the procedure laid down in the Handbook ought to be followed at this stage.

13. Mr. Sharawat submits that although the normal period for grant of EOA for the year 2021-22 has expired, this Court may pass orders for extending the time in the facts of the case. He refers to a judgment of the Division Bench of this Court in *Guru Teg Bahadur Institute of Technology & Ors. vs. All India Council for Technical Education & Ors.* [LPA No. 451/2016, decided on 11.08.2016] in this connection. The Division Bench affirmed the order of the learned Single Judge dated 02.08.2016, which *inter alia* held that the writ court would have the power in the facts of a case to direct the AICTE to grant approval and permit intake of students after the scheduled date. The specific findings of the Single Judge to this effect are quoted in the judgment of the Division Bench also. Although Mr. Soni states that this issue is pending before the Supreme Court in another case, it is not disputed that the judgment of the Division Bench today holds the field.

14. In view of these submissions, the writ petitions are disposed of with the following directions:-

- a) The impugned communications of the AICTE dated 23.07.2021 [communicating the decisions dated 11.07.2021, declaring 2021-22 as a “No admission” year for the petitioners], and the orders dated 04.08.2021 [passed pursuant to the order dated 03.08.2021 in these petitions] are set aside, and the matter is remanded to the AICTE for disposal in accordance with Clause 8.17 of the Handbook.

- b) In view of the fact that the normal schedule for issuance of EOA for the year 2021-22 has already passed and the issue of affiliation is now imminent, the procedure before the Public Grievance Redressal Cell and the Standing Complaints Scrutiny Committee may be dispensed with, in the interest of expedition. However, the hearing before the SHC is required to be given so that the petitioners are not deprived of an opportunity of appeal before the SAC.
- c) The SHC will accord the petitioners a hearing by video-conference on 12.08.2021 and/or 13.08.2021.
- d) The AICTE will supply to the petitioners by 10.08.2021, a list of documents which they are required to produce in order to satisfy the queries raised in the show cause notices dated 08.06.2021. In the said communication, the AICTE will also communicate the date of hearing before the SHC.
- e) The SHC will consider the material produced by the petitioners and will give its recommendations to the Executive Committee by 17.08.2021 for approval.
- f) The Executive Committee will pass the final orders by 21.08.2021. Mr. Soni states that if the Executive Committee is not in session, the Chairman is vested with emergent powers to pass orders on behalf of the Executive Committee. The decision may be taken in accordance with the prevailing regulations.
- g) The petitioners will have a right to appeal the decision taken by the SHC before the SAC. Mr. Soni states that in such an event, the matter will be placed before an SAC of a different

composition from the SAC which has passed the impugned orders. In the event the petitioners are required to file appeals before the SAC, the SAC will also endeavor to dispose of the petitioners' appeals as expeditiously as possible, having regard to the time frame for the year 2021-22.

- h) Keeping in mind the judgment of the Division Bench of this Court in *Guru Teg Bahadur Institute of Technology* (supra), in view of the fact that the orders of the SAC are being set aside by virtue of this order, it is directed that in the event the petitioners succeed before the SHC or the SAC, the AICTE will issue the EOA for the academic year 2021-22.
- i) Mr. Sharawat also submits that the impugned decisions to subject the petitioners to a "no admission" year are disproportionate to the violations alleged. The petitioners are at liberty to make their submissions in this regard before the AICTE, pursuant to the above remand.

15. The writ petitions, and pending applications, are disposed of with the above directions. No order as to costs.

AUGUST 9, 2021/ 'vp'

PRATEEK JALAN, J

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 10.08.2021

09:47:40

W.P.(C) 7426/2021 and connected matter

Page 9 of 9