

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.09.2022
DELIVERED ON : 15.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.15548 of 2013
and
M.P(MD)No.1 of 2013

The American College (Autonomous),
Represented by its Principal and Secretary,
Alagar Koil Road, Tallakulam,
Madurai.

... Petitioner

Vs.

1.All India Council for Technical Educational,
7th Floor, Chandralok Building,
Janapath,
New Delhi-101 001.

2.The Madurai Kamarajar University,
Represented by its Registrar,
Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned proceedings issued by the first respondent to File No.SRO/1-522890691/AB/348, dated 29.05.2013 and quash the same as illegal and consequently forbear the respondent from any

way interfering with the petitioner's right to offer MBA Degree course with a sanctioned strength of 60 seats, as per the order of affiliation issued by the second respondent, dated 19.08.2005.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For R-1 : Mr.N.Dilip Kumar
For R-2 : Mr.T.Sakthi Kumaran

ORDER

The present Writ Petition has been filed seeking to quash the impugned show cause notice issued by the first respondent herein and for a consequential Mandamus, forbearing the respondents from any way interfering with the petitioner's right to offer MBA Degree course with a sanctioned strength of 60 seats, as per the order of affiliation issued by the second respondent, dated 19.08.2005.

2. The learned Senior Counsel for the writ petitioner has made the following submissions:

(i) The petitioner's Institution is an Autonomous Minority Institution established in the year 1881 at Madurai. It was affiliated to the second

respondent University from the year 1966 onwards and it was granted Autonomous Status in the year 1978. The petitioner's College was also accredited with five star status by the National Board of Accreditation in the year 2000.

(ii) The learned Senior Counsel further submitted that the petitioner College started MBA (Master of Business Administration) Post Graduate degree course in the year 1995. The first respondent had granted approval for the same with an intake of 60 students. Thereafter, every year, the said approval was extended. He further contended that the second respondent University has also granted approval for the said course with a sanctioned regular strength of 60 students.

(iii) According to the learned Senior Counsel the sanctioned strength of the petitioner college to the above said course was suddenly reduced from 60 to 30 for the academic year 2007-2008 by the first respondent herein. The said order was challenged before this Court in W.P(MD)No. 3854 of 2007. By way of an interim order, 60 students were regularly admitted to the said course. The writ petition was dismissed on 25.08.2010.

He further contended that the petitioner college had also filed W.P(MD)No. 5403 of 2008, seeking a Mandamus forbearing the first respondent herein from disturbing the petitioner college in admitting 60 students for the academic year 2008-2009. The said writ petition was closed on 03.04.2013.

(iv) The learned Senior Counsel further contended that the present impugned show cause notice has been issued by the first respondent herein on 29.05.2013. In the show cause notice, it has been alleged that after reduction in the intake of students from 60 to 30, the petitioner college had continued to admit 60 students from the academic year 2008-2009 onwards in violation of the (All India Council for Technical Education) AICTE regulations. The show cause notice called upon the petitioner college to offer their explanation within a period of 10 days, why action should not be initiated against them. The said order is under challenge in the present writ petition.

(v) According to the learned Senior Counsel, AICTE regulations do not cover MBA (Master of Business Administration) Course. It is not a technical education and hence, AICTE does not have any jurisdiction to

grant approval or initiate his any action as against the petitioner college. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.1145 and 5736 to 5745 of 2004, dated 25.04.2013. The learned Senior Counsel specifically relied upon paragraph Nos.43 and 44 of the said judgment and contended that the Hon'ble Supreme Court has held that the MBA course does not fall within the definition of 'technical education' as contemplated under Section 2(g) of the AICTE Act and hence, approval of AICTE is not required for starting or running an MBA course by the appellant colleges. Hence, according to the learned Senior Counsel when the Hon'ble Supreme Court has categorically found that MBA course is not a 'technical education' as per the AICTE Act and hence, the first respondent has no jurisdiction whatsoever to issue a show cause notice. Hence, according to the learned Senior Counsel a show cause notice is clearly without jurisdiction.

(vi) The learned Senior Counsel further contended that the AICTE had flagged certain deficiencies which were rectified from the academic year 2018-2019 onwards. The intake of student has been restored to 60, subject to rectification of certain defects. From the academic year

2020-2021 onwards, no defects have been pointed out by the first respondent herein and the intake is continued as 60 students.

(vii) The learned Senior Counsel further contended that the first respondent herein had reduced the intake of students from 60 to 30 only from the academic year 2007-2008. However, the students who are admitted from the said academic year till 2013 have already passed out and hence, no purpose would be served in conducting any enquiry as against the petitioner college.

(viii) The learned Senior Counsel further contended that it is a settled position of law that a show cause notice can be challenged only on the limited ground of jurisdiction or malice in law in issue in the show cause notice. In the present case, the petitioner college has clearly projected the case that the first respondent do not have any jurisdiction to issue the impugned show cause notice, in view of the judgment of the Hon'ble Supreme Court, dated 25.04.2013. In fact one month after the judgment of the Hon'ble Supreme Court, the impugned show cause notice has been issued by the first respondent herein on 29.05.2013. Hence, the learned

Senior Counsel prayed for allowing the writ petition.

3. The learned Counsel appearing for the first respondent had made the following submissions:

(i) The petitioner college was originally granted approval for the intake of 60 students for the MBA course on 05.06.1995 for the period covering 1995-1997. The extension of approval was granted to the petitioner college for the academic year 2005-2006, on condition that all the deficiencies should be rectified by the end of August 2005. However, when the deficiencies were not rectified the intake of students for the academic year 2007-2008 was reduced from 60 to 30. Even thereafter, the petitioner college through their website had invited applications for the intake of 60 students in the academic year 2008-2009, when the original intake of 60 students was not restored by AICTE. Hence, the first respondent was constrained to issue the impugned show cause notice.

(ii) The learned Counsel for the first respondent further contended that the judgment cited by the learned Senior Counsel for the petitioner in Civil Appeal Nos.1145 and 5736 to 5745 of 2004, dated 25.04.2013, was

passed, considering the AICTE regulations of the year 1994 and 1997. In the said regulations, there was no specific reference about the MBA program. Hence, based upon the said regulations, the Hon'ble Apex Court had arrived at a finding that AICTE does not have any jurisdiction to compel the colleges to get approval for the said course. However, the regulations issued in the year 2010 and 2012 will clearly indicate that the definition of 'program' in 2.22 clearly includes Management-MBA. The show cause notice having been issued on 29.05.2013 are clearly governed by the regulations of the year 2010 and 2012. Hence, the contentions of the learned Senior Counsel is not legally sustainable.

(iii) The learned Counsel for the first respondent had contended that the regulations of the year 2010 and 2012 empower the first respondent herein to impose penalty for admitting students in excess of the sanctioned intake. Hence, the first respondent is having jurisdiction to impose penalty on the petitioner college for intake of excess students in violation of the approved strength.

(iv) The learned Counsel for the first respondent relied upon the judgment of the Hon'ble Supreme Court reported in **2019 (7) SCC page 168** (**Foundation for Orgnizational Research and Education (Fore) School of Management through its Director Vs. All India Council for Technical Education through the Member Secretary**). He relied upon paragraph Nos. 11 and 12 which are extracted as follows:

"11. This brings the question as to whether the penalty imposed is proper or not. The Approval Process Handbook (2016-2017) of AICTE itself provides the penalties in case excess admissions are carried out. Chapter IV deals with actions in case of violation of regulations. Clause 3.1 of Chapter IV of this Handbook reads as follows:

"3. Excess admissions

3.1. Excess admissions over the sanctioned intake shall not be allowed under any circumstances. In case any excess admission is reported to / noted by the Council, appropriate penal action will be initiated against the Institution. The Institution shall be liable to following punitive action from any one or more of the following by the Council:

(i) Penalty for excess admission amounting to five times the total fees collected per student shall be levied against each excess admission;

(ii) Suspension of approval for supernumerary seats for one academic year;

(iii) Reduction in sanctioned intake;

- (iv) No admission status in one / more courses for one academic year;*
- (v) Withdrawal of approval for program / course;*
- (vi) Withdrawal of approval of the Institution;"*

12. AICTE can impose any one or more of the aforesaid prescribed penalties. In this case, AICTE has only imposed the financial penalty which is the first penalty prescribed. It is the admitted case of the petitioner that it was charging Rs.11,00,000/- as fees for the entire course from each student. In terms of Clause 3.1 of Chapter IV of Approval Process Handbook, 5 times penalty for each student works out to Rs.55,00,000/- and for 42 students it works out to Rs.23,10,00,000/-, which is the penalty imposed by AICTE. AICTE has no discretion to award a lesser penalty and, in fact, the petitioner has been let off lightly since only one penalty has been imposed whereas AICTE could have imposed more than one penalty prescribed. However, we make it clear that the amount of Rs.4,00,00,000/-, which is deposited, shall be adjusted towards the penalty and the petitioner is directed to deposit the balance amount of Rs.19,10,00,000/- with AICTE within 8 weeks from today failing which AICTE shall be at liberty to take appropriate action in accordance with law".

(v) The learned Counsel for the first respondent has contended that the procedure adopted by the AICTE for imposing penalty for intake of excess students has already been approved by the Hon'ble Supreme Court. Hence, the contentions of the learned Senior Counsel appearing for the petitioner contended that the first respondent do not have any jurisdiction is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

4. I have carefully considered the submissions made on either side.

5. There is no dispute that the petitioner college was granted approval for the intake of 60 students for MBA course by the first respondent on 05.06.1995 for the period from the year 1995-1997 up to the academic year 2006-2007. Only at the time of granting approval for the academic year 2007-2008, the first respondent has reduced the strength from 60 to 30.

6. The reduction in the intake of the students was challenged by the petitioner college in W.P(MD)No.3854 of 2007. However, the said writ petition was dismissed on 25.08.2010. The reduction in strength for the

subsequent academic year, namely, 2008-2009 was challenged in W.P(MD)No.5403 of 2008, which was closed by this Court on 03.04.2013. The petitioner college was enjoying the full intake of 60 students from the year 2007 till 2013. During the said period, in view of the interim orders passed by this Court, the full strength of 60 students got admitted and they have also passed out.

7. The learned Senior Counsel for the petitioner had relied upon the judgment of the Hon'ble Supreme Court made in Civil Appeal Nos.1145 and 5736 to 5745 of 2004 on 25.04.2013, to contend that the Hon'ble Apex Court has categorically held that MBA is not a technical course and hence, the question of seeking approval from the AICTE does not arise. The judgment of the Hon'ble Supreme Court is binding in view of the Article 141 of the Constitution of India. Once the Hon'ble Supreme Court has held that AICTE has no jurisdiction over an MBA course, they have no jurisdiction at all to issue the impugned show cause notice. However, as rightly contended by the learned Counsel appearing for the first respondent herein, a perusal of the judgment of the Hon'ble Supreme Court reveals that the Supreme Court was dealing with the AICTE regulations of the year 1994

and 1997. Admittedly, the regulations of the year 1994 and 1997 did not cover MBA course. Hence, the petitioner college cannot take advantage of the judgment of the Hon'ble Supreme Court when the show cause notice is issued in the year 2013, which is based upon the regulations of the year 2010 and 2012.

8. A perusal of the AICTE regulations of the year 2010 and 2012 clearly indicate as per 2.22 in both the regulations the expression “Program” clearly includes Management-MBA. Hence, at least from the year 2010 onwards AICTE will have a complete jurisdiction over the approval and regulations of MBA course all over India. The show cause notice having been issued on 29.05.2013 cannot be held to be without jurisdiction. It is a settled position of law that a show cause notice could be challenged only on the ground of lack of jurisdiction or it is actuated by malice in law. In the present case, no allegation of malice in law has been pleaded. In view of the above said discussion, it is clear that on the date of issuance of show cause notice, the first respondent had jurisdiction to issue the show cause notice.

9. The impugned show cause notice indicates that the allegation as against the petitioner College is that they have uploaded that their intake is 60 students for their academic year 2008-2009 at the time of applying for extension of approval online during the academic year 2011-2012. It has been further alleged that based upon the wrong information uploaded by the petitioner College, the respondent had issued approval letter for an intake of 60 students for the academic years 2011-2012, 2012-2013 and 2013-2014. The petitioner College was enjoying the interim order by this Court from 2007 till 03.04.2013. The petitioner College did not have either the benefit of interim order of this Court or extension of approval of AICTE for the academic year 2013-2014. However, they have chosen to upload that they have got an approved intake of 60 students for the academic year 2013-2014 also. Hence, the regulation of the year 2012 will certainly apply to the facts of the present case under which AICTE is empowered to impose penalty.

10. The Hon'ble Supreme Court in its judgment reported in **2019 (7) SCC page 168** has categorically upheld the power of the first respondent herein to impose penalty on the management for admitting excess students

in violation of the sanctioned strength.

11. Though the learned Senior Counsel for the petitioner has contended that the first respondent do not have any jurisdiction whatsoever to control the MBA course, but it is evident from the records that the petitioner college themselves have approached the AICTE for their approval in the year 1995 onwards and they are continuously seeking extension of approval till date. Hence, viewed from any angle, the submissions made relating to the lack of jurisdiction of the first respondent, the impugned show cause notice, is devoid of any merits.

12. In view of the above said facts, the writ petition is devoid of any merits and the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.09.2022

Index : Yes / No
Internet : Yes / No
btr

R.VIJAYAKUMAR, J.

btr

To

1.All India Council for Technical Educational,
7th Floor, Chandralok Building,
Janapath,
New Delhi-101 001.

2.The Registrar,
The Madurai Kamarajar University,
Madurai.

Order made in
W.P(MD)No.15548 of 2013

15.09.2022