

SUPREME COURT OF INDIA

Om Sai Punya Educational and Social Welfare Society

Vs.

All India Council for Technical Education

WP(Civil) No.571 of 2017

(Dipak Misra and A.M.Khanwilkar,JJ.,)

16.08.2017

JUDGMENT

A.M. Khanwilkar,J.,

1. The petitioners have filed this writ petition under Article 32 of the Constitution of India for issuing a writ of mandamus or any other appropriate writ directing respondent No.1 to immediately issue a Letter of Approval permitting petitioner No.1-society to start its college, namely Anant Institute of Business Studies from the academic year 2017-2018. The petitioner No.1-society applied in February, 2017 to respondent No.1-All India Council for Technical Education (for short “AICTE”) for its approval to establish Anant Institute of Business Studies (for short “AIBS”). The Scrutiny Committee of AICTE (for short “SC”) tendered a report dated 01.03.2017. The petitioners assert that the report did not point out any deficiency and recommended grant of Letter of Approval to the petitioner No.1-society.

2. The said proposal was processed by different committees between March 2017 and April 2017, such as Expert Visit Committee (for short “EVC”) and the Standing Appellate Committee - Scrutiny Committee (for short “SAC - SC”). As the petitioners entertained some apprehension that there would be delay in processing the application, petitioner No.1-society rushed to the High Court of Madhya Pradesh Bench at Gwalior by way of Writ Petition No. 2793 of 2017. They prayed for a direction against the respondents to process the application as per the procedure given in Approval Process Handbook 2017- 18 and consider the report of SC which has clearly mentioned that the two different institutes of the petitioners were on different patches of land and therefore to issue a Letter of Approval without any further delay and, in any case, to complete the process of approval before 30th April, 2017. The respondent No.1-AICTE, however, issued a letter of rejection on 30th April, 2017. As a result, the writ petition filed by the petitioners before the High Court came to be dismissed on 16th May, 2017, as having become infructuous. The petitioners challenged the said decision before this Court by way of SLP (C) No.15799 of 2017 which was disposed of on 22nd June, 2017, in the following terms:

“O R D E R

By two letters dated 30.04.2017, the first respondent rejected the applications submitted by the petitioners for setting up an Institute of Management and an Institute of Business Studies. The ground on which the rejection took place was primarily that when the EVC team proceeded to inspect the institutions, it was not allowed to do so. When this petition came up before the court on 19.06.2017, a submission was made on behalf of the petitioners that having regard to the ground which weighed with the first respondent, the petitioners are ready and willing to submit themselves to a fresh inspection by an EVC team to be constituted by the first respondent. The hearing was adjourned to enable counsel for the first respondent to take instructions.

During the course of the hearing learned counsel appearing on behalf of the first respondent states, on instructions, that an EVC Team shall be constituted expeditiously and a fresh inspection shall be carried out within a period of two weeks from today. This, it has been submitted, is subject to two conditions; firstly, that the petitioners shall pay the usual charges and expenses for the inspection; and secondly, that one EVC team shall inspect both the Institutions. Both these conditions are acceptable to the petitioners.

We accordingly take on record the statement which has been made on behalf of the first respondent and direct that in consequence the earlier rejection of the proposal submitted by the petitioners shall not come in the way of the EVC team while carrying out a fresh inspection, as agreed.. Thereupon, the first respondent shall take a fresh decision in accordance with law expeditiously uninfluenced by the earlier order of rejection. If the petitioners are aggrieved by the fresh decision, they will be at liberty to pursue the remedies available in law.

The special leave petition is accordingly disposed of.

Pending applications, if any, shall stand disposed of”

3. The petitioner No.1-society thereafter decided to withdraw the application for grant of approval for its other institute Anant Institute of Management (for short “ AIM”) vide Application ID No.1-3395565031, as it was not possible for them to get affiliation from the Jiwaji University, Gwalior for the academic year 2017-18. This decision was communicated to AICTE vide letter dated 5 th July, 2017.

4. In the meantime, in deference to the observation made by this Court in its order dated 22nd June, 2017, EVC conducted a fresh inspection in respect of AIBS and submitted its report on 1st July, 2017 pointing out the deficiencies. The petitioners then rushed to this Court by way of present writ petition filed on 22nd July, 2017, but before that the proposal for grant of Letter of Approval to the petitioners’ institution was referred to SAC-SC, which finally submitted its recommendations and observations to AICTE. The respondent

No.1-AICTE, vide letter dated 21st July, 2017 informed its decision to the Principal/Chairman of the petitioner No.1-society. The said communication reads thus:

“ALL INDIA COUNCIL FOR TECHNICAL Education (A Statutory Body of the Govt. of India) Ministry of Human Resource Development, Govt. of India Nelson Mandela Marg, New Delhi - 110067 Phone: 011-26131576, 77, 78, 80 Website: www.aicte-india.org

F.No. AICTE/AB/CR/PID 1-3404613481 Date: 21.07.2017

To,

The Principal/Chairman,
Om Sai Punya Educational and Social Welfare Society,
404, Suparsvnath Apartment, A-8, Silicon City,
Madhya Pradesh – 452012

Sir,

This has reference to Hon’ ble Supreme Court order dated 22.06.2017 regarding conduct of a fresh Inspection in respect of Anant Institute of Business Studies, M.P. (AID 1-3404613481) and 2. Anant Institute of Management, M.P. (AID 1-3395565031). The EVC was conducted on 01.07.2017 to both institutes. The EVC has reported deficiencies in respect of both Institutes. The matter was placed before the SAC on 13.07.2017 for recommendation. The representative of the Institute presented the case before the SAC.

The recommendation and observation of SAC in respect of Anant Institute of Business Studies, (AID 1-3404613481) are as under:

S.No.	Deficiencies noted by EVC	Observation of SAC dated 13.07.2017
	Other Institution (AICTE approved/ not under AICTE ambit) are being run/proposed to be run in the same patch of land of land shown for the present Institution. - Proposed to run in the new Anant Institute of Management.	<i>Documents for closure are submitted & accepted.</i>
	<i>Amenities Area: Boys Common Room</i>	<i>Architects certificate & Affidavit are submitted & Accepted.</i>

	<i>Girls Common Room</i>	
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Recommendation:

“The SAC recommends LOA for starting Anant Institute of Business Studies from the Academic year 2018-19. The above recommendation of SAC has been approved by the Competent Authority in the Council. You are hereby intimated to comply with the recommendation of SAC for starting Anant Institute of Business Studies from the Academic year 2018-19.

Sd/- Advisor (Approval Bureau)”

5. Notably, the petitioners have not claimed any relief with reference to the aforementioned communication. The relief in the writ petition, however, is to issue a writ in the nature of mandamus to respondent No.1-AICTE, to immediately issue a Letter of Approval and permit the petitioner No.1-society to start its college AIBS from the academic year 2017-18. Absence of challenge to the communication dated 21st July, 2017 even if overlooked, the moot question is whether in the fact situation of the present case the petitioners can succeed in getting the relief as claimed in the writ petition. Indubitably, it is not open to AICTE to breach the timelines specified in the AICTE Act and the Regulations framed thereunder for processing the proposal for grant of a Letter of Approval. It is well settled that the schedule specified in the Regulations has statutory backing. Its adherence is mandatory and not directory. As per the said schedule, AICTE does not have any jurisdiction or authority to issue approval for commencement of a new course or for additional intake of students beyond 30th April of the year immediately preceding the commencement of an academic year. In the case of *Parshvanath Charitable Trust Vs. All India Council for Technical Education*¹, 4t has been made amply clear that even the order granting recognition by the Appellate Committee of AICTE should not fall foul of the admission schedule. The admission schedule for academic year 2017-18 has already commenced and been substantially completed. The academic year has also commenced and the last date for completing the admission process is August 15th, 2017. The dates and timelines are provided in the Regulations and reiterated by this Court in the aforementioned decision. The same are inviolable.

6. The grievance of the petitioners is that the petitioners had submitted their application for grant of approval within the specified timeline and also completed all the necessary formalities. As a matter of fact, it was the inaction of the AICTE which resulted in delay and the petitioners cannot be held responsible for that and moreso, after having made huge investment upto rupees four crores for establishing the college. This plea has been countered by respondent No.1 by filing the affidavit of Assistant Director to oppose this writ petition, dated 9th August, 2017. It is asserted by the respondents that in terms of the statutory obligation cast on the respondent No.1, the proposal submitted by the petitioner No.1-society

for starting two new institutes namely AIBS and AIM for the academic year 2017-18 was processed in right earnest. Further, it is only on 5th July, 2017 the petitioners withdrew their proposal in respect of AIM, whereafter the deficiency of sharing the same land and other infrastructure between the two institutes stood removed. Only then it became possible to issue a Letter of Approval to AIBS and was so issued on 21st July, 2017, for the academic year 2018-19. It is asserted by the respondents that the SAC-SC on 15th April, 2017 had found something amiss and noted that AIBS has a common building plan and land, for which a fresh scrutiny of the proposal was essential by a single committee. As a result, fresh scrutiny was undertaken by a common EVC for both institutes. As directed, on 25th April, 2017 EVC went for inspection of the institutes. The team of EVC, however, was not allowed to enter the approach road of the institutes for reasons best known to the petitioners. This fact was intimated to petitioner No.1-society by the AICTE vide letter dated 30th April, 2017. Finally, after the direction given by this Court on 22nd June, 2017, EVC proceeded to take inspection in the presence of the representative of petitioner No.1-society and inspection was conducted on 1st July, 2017. As apprehended earlier by the authorities, it was noticed that both the institutes were situated on the same patch of land and shared various other common facilities. This deficiency could not be condoned under the Rules. Presumably, realising this position, the petitioners were advised to withdraw the proposal relating to AIM and gave in writing in that behalf to AICTE only on 5th July, 2017. It is only thereafter the respondent No.1 could process the proposal of the petitioners to start AIBS, which was so accorded on 21st July, 2017 for the academic year 2018- 19. The respondents have relied on the exposition in Para 46.6 of the decision in Parshvanath Charitable Trust (supra), which reads thus:-

“46.6. If the appellate authority decides the matter prior to 30th April of the year concerned and grants approval to a college, then alone such institution will be permitted to be included in the list of colleges to which admissions are to be made and not otherwise.

In other words, even if the appellate authority grants approval after 30th April, it will not be operative for the current academic year. All colleges which have been granted approval/affiliation by 10th or 30th April, as the case may be, shall alone be included in the brochure/advertisement/website for the purpose of admission and none thereafter.”

7. In the backdrop of the aforementioned facts, it is unfathomable as to how respondent No.1-AICTE can be held responsible for the delay in issuing the Letter of Approval in respect of AIBS for the academic year 2017-18. It is obvious that the petitioners having realised that because of inspection by one EVC, their claim of no deficiency at all will be exposed were advised to withdraw the proposal in respect of another institute (AIM) which shared the same plot of land and common facilities. This deficiency was then removed by the petitioners only in July, 2017, by sending communication dated 5th July, 2017 for that purpose. The fact that the petitioners have already made huge investments per se cannot be the basis to overlook the statutory timelines specified for grant of approval, which this Court

has authoritatively held to be mandatory and not directory. Any indulgence shown to the petitioners would inevitably affect the larger public interests, as the academic course has already commenced for the current academic year from 1st August, 2017 and the last date up to which the students can be admitted against the seats available in any recognised college, is specified as 15th August, 2017.

8. The petitioners would contend that the deficiencies noted in the EVC report dated 1st July, 2017 were contrary to the finding noted in its previous report dated 10th March, 2017 as also of SAC-SC report dated 19th April, 2017. The argument though attractive at the first blush deserves to be stated to be rejected. Inasmuch as, the earlier report of EVC and SAC-SC were based on the proposal and documents submitted by the petitioners. Notably, the EVC team which wanted to visit the site for inspection on 25th April, 2017 was obstructed from entering the college complex. On 15th April, 2017 the SAC-SC had already expressed apprehension about the factual position and had advised one EVC team to visit both the institutes so that the correct position could be ascertained. That became possible only after the direction given by this Court on 22nd June, 2017. The common EVC then inspected the site in the presence of the representative of the petitioner No.1- society and submitted its report dated 1st July, 2017 mentioning about the two deficiencies noticed during the said inspection namely, another institute of the petitioner No.1- society in the name of AIM was proposed to be run on the same land on which AIBS was situated and a fresh deficiency about the area of the Boys' Common Room and Girls' Common Room being less than the required area i.e. 75 sqm. This report must be taken as the final observation of the EVC which is based on inspection of the site. In other words, some noting made in the previous report submitted by EVC and SAC-SC would be of no avail to the petitioners.

9. It is next contended that as the deficiencies have since been removed, the AICTE was obliged to grant approval for the academic year 2017-18 as was the intent behind the order passed by this Court on 22nd June, 2017. Even this submission does not commend to us. For, on a fair reading of the order dated 22nd June, 2017, we find that no direction has been issued to AICTE to grant approval for the academic year 2017-18. Rather, it has been left open to the AICTE to take a fresh decision in accordance with law uninfluenced by the earlier order of rejection. As noted earlier, the deficiencies noticed in the EVC report dated 1st July, 2017 stood removed only after the petitioners withdrew their proposal relating to AIM vide letter dated 5th July, 2017. Since approval to be accorded by the AICTE was after the cut off date of 30th April, 2017 for the academic year 2017-18, it chose to issue approval for starting AIBS institute for the academic year 2018-19. No fault can be found with the AICTE in that regard, as even the order dated 22nd June, 2017 expected the AICTE to take a fresh decision in accordance with law. Suffice it to observe that the decision of this Court dated 22nd June, 2017 cannot be construed as a direction to AICTE to grant approval in breach of the statutory timelines specified in that behalf.

10. It is next contended by the petitioners that there is no other institute in the entire district of Ashok Nagar, Madhya Pradesh which imparts courses pertaining to Business Studies and therefore grant of approval for starting AIBS for the academic year 2017-18 will be in public

interest. This is an argument of desperation. For, the petitioners are responsible for the present situation. In the fact situation of the present case, we are not inclined to show any indulgence to the petitioners especially when the entire admission process has been substantially completed and the academic year has commenced from 1st August, 2017. Any indulgence shown to the petitioners would fall foul of the admission schedule for the academic year 2017-18.

11. A priori, in law, the petitioners are not entitled for the relief as claimed in the writ petition. Furthermore, from the facts which have now emerged it is noticed that the petitioners were fully aware of sharing of the same piece of land and some of the common facilities between the two institutes but did not disclose that fact in the original application (proposal). Whereas, the team of officers of EVC who had visited the site for inspection on the earlier occasion were obstructed from entering the building complex, obviously with ulterior design. Realising that the deficiency of two institutes sharing the same plot and some of the common facilities would come in the way of the petitioners, the petitioners have since been advised to withdraw the proposal in respect of AIM. That decision was taken by the petitioners on 1st July, 2017, which was communicated to AICTE only on 5th July, 2017. It is only after receipt of that communication, the AICTE proceeded on the assumption that the stated deficiency stood removed in respect of AIBS and accorded approval to the said institute on 21st July, 2017, but for the academic year 2018-19. Keeping in mind, the aforementioned factual position and in particular the conduct of the petitioners, the question of granting any relief to the petitioners much less by invoking plenary powers of this Court, in exercise of Article 142 of the Constitution of India, to condone or relax the timeline regarding grant of approval and to direct the respondent authorities to treat the approval for the academic year 2017-18 as prayed by the petitioners does not arise.

12. Accordingly, this petition being devoid of merits is dismissed with costs quantified at Rupees Fifty Thousand to be paid to the respondents within four weeks from today.

Judgment Referred.

¹(2013) 3 SCC 0385