

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 955 of 2018

In SPECIAL CIVIL APPLICATION NO. 7860 of 2018

With

CIVIL APPLICATION NO. 1 of 2018

With

R/LETTERS PATENT APPEAL NO. 954 of 2018

In

SPECIAL CIVIL APPLICATION NO. 7860 of 2018

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SHREE SAMANVAY INSTITUTE OF PHARMACEUTICAL EDUCATION AND
RESEARCH

Versus

ALL INDIA COUNCIL FOR TECHNICAL AND EDUCATION

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Appearance:

MR DC DAVE, SENIOR COUNSEL WITH MR. RAHIL P JAIN(7305)

for the PETITIONER(s) No. 1

DS AFF.NOT FILED (N)(11) for the RESPONDENT(s) No. 2

MRS NISHA M PARIKH(2397) for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY**
and
HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 23/08/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI)

1. Both these appeals are filed under Clause 15 of Letters Patent. Letters Patent Appeal No.955 of 2018 has been filed against the order dated 29.06.2018 passed by the learned Single Judge in Special Civil Application No.7860 of 2018, by which, the learned Single Judge has refused to grant interim relief in favour of the appellant - petitioner, whereas, Letters Patent Appeal No.954 of 2018 is filed against the order dated

06.07.2018 passed by the learned Single Judge in Civil Application No.1 of 2018 in Special Civil Application No.7860 of 2018, by which, the learned Single Judge has rejected the Civil Application which was filed for grant of stay of the operation of the orders dated 30.11.2017 and 10.04.2018 passed by the respondent authorities.

2. As the issue involved in both these appeals is similar, both these appeals are taken up for hearing.

3. When these appeals were listed for hearing on 23.07.2018, this Court passed the following order:

"1. Notice. Ms. Nisha Parikh, waives service of notice on behalf of respondent No.1. Notice to 2nd respondent returnable on 30.07.2018.

2. The Letters Patent Appeals are filed under Clause 15 of the Letters Patent by the original petitioner in Special Civil Application No.7860 of 2018, in which, the appellant - original petitioner has challenged the order dated 30.11.2017 passed by the All India Council for Technical Education and further order of the appellate authority dated 10.04.2018 of the All India Council for Technical Education.

3. The petitioner is an Educational Institution which is imparting education in Pharmacy course. It is the respondent AICTE, which has permitted the appellant

College to run Pharmacy programme from the academic year 200607.

Since then it is running such courses.

4. By order dated 30.11.2017 passed in Proceedings F.No. AICTE/AB/CR/PID 16020193/ 201718, the appellant college was placed under 'No Admission' category, on the ground that it has not fulfilled certain conditions as per the provisions of the Approval Process Hand Book for the academic year 201718 and also conditions of the Letter of Approval. Aggrieved by the said order of the primary authority, the appellant petitioner has filed appeal before the Appellate Forum of All India Council for Technical Education.

5. The order dated 30.11.2017 passed in Proceedings F.No. AICTE/AB/CR/PID 16020193/ 201718 and order dated 10.04.2018 passed in Proceedings F.No. AICTE/AB/CR/PID 16020193/ 201819 of the appellate authority are placed on record.

6. From a perusal of the order of the appellate authority, it appears that while noticing certain deficiencies with regard to infrastructure etc., the appellate authority primarily recommended to keep the appellant college in 'No Admission' category, on the ground that the Institute is not having regular qualified Principal for more than 12 years.

7. Heard learned Senior Counsel Mr.Dhaval Dave for the appellant and learned counsel Ms.Nisha Parikh for respondent No.1 AICTE.

8. It is contended by learned Senior Counsel Mr.Dhaval Dave that the appellant college was granted permission in the year 200506 and since then appellant college is being run continuously, and fulfilled all

the conditions as and when pointed out by the Inspecting Team of the AICTE.

9. Further, it is submitted that there was a regular Principal, who has resigned only on 24.11.2017 and such resignation came to be accepted on 01.01.2018. Earlier to the date of resignation, the inspection was made on 30.10.2017 and on the said date, a regularly appointed Principal was there, who subsequently resigned. It is submitted that after accepting the resignation of the earlier Principal, new Principal is appointed and he will take charge on 09.08.2018.

10. On the other hand, learned counsel for respondent No.1 AICTE has submitted that in view of the number of deficiencies which are mentioned in the orders of the primary authority and appellate authority dated 30.11.2017 and 10.04.2018, the appellant Institution was kept under 'No Admission' category for the academic year 201819. Further, it is brought to our notice that as per the judgment of the Hon'ble Supreme Court in the case of Parshvanath Charitable Trust and others Vs. All India Council for Technical Education and others reported in (2013) 3 SCC 385, last date for counselling for allotment of seats is 20th July, last date for admitting candidates in seats other than allotted is 30th July and last date up to which the students can be admitted against the vacancies arising due to any reason is 15th August, as such, there is no case made out for directions as prayed for.

11. This appeal is directed against the refusal to grant interim relief directing the respondents to allow the appellant Institution to grant admission for the academic year 201819. From a perusal of the order of the appellate authority of

the AICTE, it appears that mainly on the ground that regular qualified Principal is not available for more than 12 years, recommendation is made to place the appellant College in 'No Admission' category for the academic year 201819. The appellate authority also noticed certain other deficiencies but recommendation is made only on one ground that the appellant Institution is not having regular Principal. As much as it is submitted by learned Senior Counsel Mr.Dhaval Dave that all the deficiencies are rectified and the appellant Institution is prepared to rectify any other deficiencies to be pointed out by the Inspecting Committee. Further, as it is submitted that the regular qualified Principal is already appointed, who will be taking charge on 09.08.2018, we deem it appropriate and fit case to issue directions directing the respondents to send Inspection Team for making immediate inspection on the deficiencies pointed out in the order dated 10.04.2018 so as to examine whether the appellant Institution has rectified such deficiencies and appointed the Principal, as alleged. As much as it is brought to our notice that as the schedule for admission and counselling in Pharmacy and Engineering courses comes to an end by 15.08.2018, we permit the appellant Institution to make a representation by sending a copy of the same by way of Email today itself and to bear the cost of the Inspection Committee, which may notify the expenditure to be incurred by it. The appellant shall transfer necessary charges to AICTE by RTGS. On receipt of the same, the respondents are directed to take steps to inspect the college of the appellant Institution immediately and verify whether the appellant Institution has rectified the deficiencies or not and prepare a

fresh report. Such inspection is to be carried out within a period of 3 days from the date of the deposit of the required inspection fees and other charges of the Committee. Based on such inspection, decision shall be taken forthwith and such decision be communicated to the appellant Institution at an earliest possible time. Direct Service is permitted."

4. After the order dated 23.07.2018 came to be passed, the inspection team of All India Council for Technical Education (hereinafter referred to as 'the Council' for short) had carried out the inspection and submitted report to the Council. However, the decision was not taken by the Council at the relevant point of time pursuant to the order dated 23.07.2018 and therefore this Court passed an order on 07.08.2018, which reads as under:

"1. We have heard Mr. Dhaval Dave, learned Senior Counsel along with Mr. Rahil P. Jain, learned counsel for the appellant, Mrs. Nisha M. Parikh, learned counsel for the All India Council for Technical Education and learned Assistant Government Pleader for the Admission Committee for Professional Courses Technical.

2. On instructions, it is submitted by learned Assistant Government Pleader that, the second round of counseling for admissions to Pharmacy course, is not yet notified and that it would take about 23 weeks. Further, learned counsel appearing for the 1st respondent All India Council for Technical Education has submitted

that, pursuant to order dated 23.7.2018 passed by this Court, inspection is already made, reports are prepared and the Council has to take decision. It is further submitted that, representative of the petitioner institute was called by the Council to appear on 13th August, 2018.

3. As much as the Council is to take decision, pursuant to order dated 23.7.2018 passed by this Court, based on the inspection made, this matter may be placed on board on 16th August, 2018. In the meanwhile, it is open for the All India Council for Technical Education to take decision, based on the inspection reports, whether the admissions are to be permitted for the academic year 201819 or not. It is made clear that, it is open for the All India Council for Technical Education to take appropriate decision and to pass orders, on its own merits, by imposing any conditions, if necessary."

5. Heard learned Senior Counsel Mr. D.C.Dave assisted by learned advocate Mr. Rahil P. Jain for the appellant - petitioner and learned advocate Ms. Nisha Parikh for respondent No.1 - Council.

6. Learned Senior Counsel Mr. Dave for the appellant pointed out that the Expert Visiting Committee carried out inspection of the premises of the petitioner during which certain deficiencies were noticed with regard to infrastructure. However, during the course of personal hearing granted to the representative of

the petitioner, necessary documentary evidences were produced before the Council. However, the respondent Council, by an order dated 14.08.2018, though accepted that the appellant - petitioner has removed certain deficiencies, made certain recommendations and thereafter once again the petitioner has been placed in No Admission Zone for the academic year 2018-19. Learned counsel has referred the order dated 14.08.2018 passed by the respondent Council and contended that the first recommendation mentioned in the said order is in fact accepted by the Standing Hearing Committee on the basis of the documentary evidences produced by the petitioner and therefore it cannot be said that the deficiency still exists. It is further contended that certificate of barrier free environment is submitted by the petitioner which is not disputed by the concerned committee. However, it is observed that the same needs to be verified physically on site, at the cost of the institute. Further, it is submitted that the third recommendation is with regard to issuance of warning to the appellant - petitioner institution for proper maintenance and underutilized equipments and laboratories. However, the petitioner is ready and willing to maintain equipments and laboratories as suggested by the Council. Lastly, it is submitted that purchase

'proofs' for books volumes, language laboratory equipments were not satisfactory as per the recommendations of the Standing Hearing Committee and therefore it was observed that the deficiency still exists. For the said remark/recommendation, it is submitted that petitioner is ready and willing to file an undertaking to remove the said deficiency if the same is in existence within stipulated time limit. It is contended that no major deficiency is pointed out in the order dated 14.08.2018.

7. Learned Senior Counsel further contends that second round of admission in Degree/Diploma Pharmacy Course would begin from 24.08.2018 and therefore during the pendency of the petition as well as the present appeals, necessary directions be given to the respondents to permit the petitioner to admit the students in the petitioner institution.

8. On the other hand, learned advocate Ms. Nisha Parikh appearing for the respondent Council contended that as per the order dated 23.07.2018 passed by this Court, the Expert Visiting Committee visited the premises of the institute and thereafter submitted report to the Council and on the basis of the said report, respondent Council has passed an order on 14.08.2018, the

copy of which is placed on record at the time of hearing of these appeals. From the said order, it is pointed out that the Standing Hearing Committee of the Council has made certain recommendations and thereafter the respondent Council was of the view that petitioner is to be placed in No Admission Zone for the present academic year. Thus, there is no merit in these appeals and therefore the same be dismissed.

9. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also gone through the material produced on record. From the material placed on record, it is revealed that the respondent Council initially passed an order on 30.11.2017 by which the appellant - petitioner institute is placed in No Admission Zone for the academic year 2018-19 on the ground that when the Expert Visiting Committee has visited the premises of the appellant institute on 31.10.2017, certain deficiencies were found. Against the said order, an appeal came to be filed before the Standing Appellate Committee. The Standing Appellate Committee passed an order on 10.04.2018 in which only one recommendation was made that the institution does not have any regular qualified Principal for more than 12 months. Therefore, the Committee recommended for 'No Admission' for the

academic year 2018-19. Against the said order, the captioned petition is filed by the petitioner which is pending before the learned Single Judge. However, the learned Single Judge has not granted interim relief in favour of the petitioner.

10. When the Expert Visiting Committee has visited the premises of the petitioner institution on 27.07.2018 as per the order dated 23.07.2018 passed by this Court, certain other deficiencies were found and therefore report was made to the respondent Council by the said Committee. At this stage, it is required to be noted that the hearing was given to the representative of the petitioner by the Standing Hearing Committee and in the order dated 14.08.2018, copy of which is produced during the course of hearing of these appeals, the said Committee has accepted that certain deficiencies which were pointed out by the Expert Visiting Committee in its visit dated 27.07.2018 have been rectified by the petitioner. However, the Standing Hearing Committee has observed as under:

"The recommendations are:

- 1) Land area, site plan, built-up area duly approved by competent authority (as pointed/noted by EVC dt. 27.07.2018 also) are not inline, as per AICTE norms, Deficiencies still exists.
- 2) Certificate of barrier free environment

is submitted, but same needs to be verified physically on site, at the cost of institute.

3) Warning shall be issued to institution for proper maintenance and underutilized equipments & laboratories.

4) Purchase "proofs" for book volumes, language laboratory equipments were not satisfactory, deficiency still exists.

In light of above "No Admission" for the AY 2018-19"

11. So far as the first recommendation made by the respondent Council is concerned, in column Nos. 1 and 2 of para 10 of the order dated 14.08.2018, the Standing Hearing Committee has accepted the notarized copy of gift deed and the notarized copy of land conversion certificate submitted by the petitioner as well as undertaking for allocation of 2 acres of land. Thus, the first recommendation is misconceived. So far as second recommendation made in the order dated 14.08.2018 is concerned, the certificate of barrier free environment is already submitted by the petitioner. However, it has been observed that the same needs to be verified physically on site, at the cost of institute. The concerned Committee may visit the site and verify the veracity of the said certificate produced by the petitioner but on that count, the petitioner cannot be placed in No Admission Zone. Further, so far as the third recommendation is concerned, warning is issued to the petitioner for proper

maintenance and underutilized equipments and laboratories. For the said recommendation, learned counsel for the appellant - petitioner has contended that petitioner is ready and willing to give an undertaking that the said recommendation will be complied with within stipulated time limit. So far as fourth and last recommendation with regard to 'purchase proofs for book volumes, language laboratory equipments were not satisfactory' is concerned, the learned counsel for the appellant has submitted that even the alleged deficiency can be removed within stipulated time limit.

12. In the aforesaid facts and circumstances of the present case, we are of the view that the recommendations made in the order dated 14.08.2018 are not the deficiencies which cannot be rectified/removed within stipulated time limit. On the grounds/recommendations mentioned in the order dated 14.08.2018, prima facie, we are of the view that the petitioner cannot be placed in No Admission Zone for the academic year 2018-19.

13. At this stage, it is required to be noted that the petitioner institution is started in the year 2006 and since then the respondent Council is granting permission to the petitioner to admit

the students. However, in November 2017, for the first time, certain deficiencies were found by the Committee and therefore the order dated 30.11.2017 came to be passed. While passing an order dated 10.04.2018, the Appellate Committee has given different reason for placing the petitioner in No Admission Zone and now certain other reasons are given by the respondent Council in the order dated 14.08.2018.

14. During the course of hearing, it is pointed out by the learned counsel appearing for the parties that first round of admission is already over. However, the second round of admission would start from 24.08.2018.

15. In the aforesaid facts and circumstances of the case, by way of this interim order, the implementation of orders dated 30.11.2017, 10.04.2018 as well as order dated 14.08.2018 is stayed till final disposal of these appeals. The respondent No.2 - Admission Committee shall allot the students to the petitioner institution in the second round of admission in pharmacy course. The petitioner is directed to file an undertaking before the respondent authority that the recommendations made in the order dated 14.08.2018 will be complied with, within a period of 4 weeks. It is open for the Expert Visiting

Committee to visit the premises of the petitioner institution, at the cost of the petitioner, and verify physically about the veracity of the certificate of barrier free environment submitted by the petitioner. It is also open for the Expert Visiting Committee to verify whether other recommendations are complied with by the petitioner or not.

The appeals be placed for further hearing after six weeks. Direct service permitted.

(R. SUBHASH REDDY, CJ)

(VIPUL M. PANCHOLI, J)

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