

MC 2366/2007

BEFORE

THE HON'BLE MR. JUSTICE D. BISWAS

THE HON'BLE MR JUSTICE HRISHIKESH ROY

Heard Mr. Shanti Bhusan, the learned senior counsel appearing for the applicant/writ appellant. Also heard Mr. P.K. Goswami, learned senior counsel appearing for the respondent/writ petitioner.

2. This application has been filed seeking modification of the interim order dt. 1.6.07 passed in CM Application No. 68/07 arising out of Writ Appeal No. 47/07 and for passing necessary orders suspending the order dt. 28.5.07 of the learned Single Judge passed in CM Application No. 90/07 arising out of Writ Petition(C) No. 73/07.

3. A Writ Petition being WP(C) No. 73/07 came to be filed by the Institute of Chartered Financial Analysts of India University, Tripura and another (hereinafter referred to as the writ petitioners) making the allegation that the respondent No.10, the CFA Institute of Charlottesville, USA through its collaborator respondent No. 11 the Indian Association of Investment Professionals are operating their educational programme in India, without obtaining registration under the AICTE Regulation for Entry and Operation of Foreign Universities Imparting Technical Education 2005 (for short The Regulation 2005). The further grievance raised by the writ petitioners was that although attention of All India Council of Technical Education (AICTE) (hereinafter referred to as the Council) was drawn on the activities of respondents No. 10 and 11, the council failed to prevent the respondents No. 10 and 11 from operating in India in breach of the requirement of registration under the Regulation 2005.

4. On 12.3.07 returnable notice of motion on the aforesaid writ petition was issued and it was further directed that pendency of the writ petition shall not be a bar for the respondent authorities to take such action as may be considered appropriate in the matter.

Thereafter a show cause notice dt. 22.3.07 was issued against the writ appellant/respondent No.11 by the AICTE. In their reply to the show cause notice, it was claimed by the writ appellant that the provisions of Regulation 2005 do not apply to them as they are not imparting technical education and that they are not a Technical Institution and they are merely a testing and certifying organization.

5. But the AICTE by issuing the order dt. 18.5.07 rejected the explanation furnished by the writ appellant and held that the writ appellant must obtain approval of the AICTE as per the notified Regulation to carry on their activities in India.

By the said order dt. 18.5.07, the council intimated the writ appellant the CFA Institute of Charlottesville, USA that as they had failed to obtain the mandatory approval of the AICTE under the Regulation notified by the Council on 16.5.05 they are not competent to carry on their operation and accordingly advised the writ appellant to cease the operation of the writ appellant Institute, in respect of conduct of CFA programme in India, with immediate effect.

6. The writ appellant being aggrieved by issuance of the cease operation order dt. 18.5.07, filed Writ Petition No. 4037/07 before the Delhi High Court challenging the order dt. 18.5.07 passed by the AICTE.

7. While the matter rested thus, a supplementary affidavit dt. 28.5.07 was filed in the Gauhati High Court by the writ petitioner on 28.5.07 wherein the information about passing of the cease operation order dt. 18.5.07 issued by the AICTE was furnished. By filing the said supplementary affidavit on 28.5.07, the writ petitioner sought restraint order on respondents No. 10 and 11 from operating in India including admitting students, conduct of examinations and awarding charters and/or degrees and/or diplomas etc.

Incidentally the W.P(C) No. 73/07 was posted for orders on 28.5.07 and the case was otherwise scheduled to be taken up by the Gauhati High Court

8. Although prayer for adjournment on behalf of the respondents No. 10 and 11 with regard to the supplementary affidavit filed on that very day (28.5.07) was made, the said prayer was not acceded to and the learned Single Judge ordered that the respondents No. 10 and 11 are to restrain from carrying out an

y programme relating to the aforesaid CFA course in India and also restrained them from carrying out any activities whatsoever relating to the CFA course.

The learned Single Judge further ordered that after passing of the order dt. 18.5.07 all admissions, registrations and other activities including examinations being conducted by respondents No. 10 and 11 shall have no value and force in the eye of law.

9. Being aggrieved by the aforesaid order of the learned Single Judge passed on 28.5.07, a Writ Appeal being WA No. 47/07 was preferred. The said Writ Appeal was considered by the Division Bench of this Court on 1.6.07.

It was contended in the Writ Appeal that by passing the impugned order dt. 28.5.07, the Writ Court has been converted into an Executing Court for execution of the order dt. 18.5.07 passed by the AICTE, which was not the subject matter of the writ petition filed. It was further contended that as the said order dt. 18.5.07 was already under challenge before the Delhi High Court, the order passed by the learned Single Judge on 28.5.07, was without jurisdiction.

10. The Division Bench of this Court admitted the aforesaid Writ Appeal No. 47/07 and took note of the order passed by the Delhi High Court on 31.5.07 in WP(C) No. 4037/03. The Delhi High Court by its interim order dt. 31.5.07 in CM Application No. 7602/07 ordered suspension of the order dt. 18.5.07 passed by the AICTE till disposal of the writ petition to the extent that the petitioner No. 1 was permitted to go ahead with the examination in India scheduled on 3.6.07.

The learned Division Bench while issuing notice on 1.6.07 passed interim order in tune with the order passed by the Delhi High Court, meaning thereby that the writ appellant was permitted to go ahead with the examination scheduled on 3.6.07 subject to the result of the Writ Appeal.

11. However, since the Division Bench on 1.6.07 had not suspended/ stayed the operation of the order passed by the learned Single Judge, three contempt proceedings came to be initiated against the writ appellant for acting contrary to the order dt. 28.5.07 passed by the learned Single Judge who directed the writ appellants to comply with the cease operation order passed on 18.5.07 by the AICTE.

12. It appears that appropriate intervention has been made by this Court in the contempt proceedings initiated, for alleged violation of the learned Single Judge's order dt. 28.5.07. However, since the said order dt. 28.5.07 has not been stayed by the Division Bench while entertaining the Writ Appeal on 1.6.07, because of further possibility of similar contempt proceedings being initiated, the present application for stay of the order dt. 28.5.07 of the learned Single Judge is being pressed into service.

13. Mr. Shanti Bhusan, the learned senior counsel appearing for the writ appellant has made it clear that he is not seeking a stay of the cease operation order dt. 18.5.07 passed by the AICTE against the writ appellant but he is making submissions for suspension of the order dt. 28.5.07 of the learned Single Judge, which is under challenge in the Writ Appeal.

It is submitted that the learned Single Judge passed the order dt. 28.5.07 absolutely without any jurisdiction and by passing the said order, the Writ Court has been reduced to an Executing Court and also an implementing agency for ensuring compliance of the order passed by the AICTE.

It is further contended that the order dt. 18.5.07 of the AICTE is already under challenge before the Delhi High Court and the Delhi High Court is seized of the matter. Therefore, the order passed by the learned Single Judge of the Gauhati High Court on 28.5.07 would amount to prejudging the issue, even before the Delhi High Court has the occasion to deal with the challenge to the AICTE's order on merits.

The learned senior counsel appearing for the applicant/writ appellant next contends that the appellant is not involved with any activity of imparting technical education or running of technical Institute and since the Regulation 2005 applies to all such Institutions and such Foreign University/Institutions imparting technical education and operating in India, the requirement of registration of the writ appellant under the Regulation is not warranted.

It is further submitted by Mr. Shanti Bhusan that the writ appellant is a reputed organization which offers the designation of Chartered Financial Analyst to Professionals in the field by determining their entitlement for grant of such designation, by holding test to assess their ability and competence and on their ethical and professional standards and as such, it cannot be said to be an organization imparting technical education within the meaning of Section 2(g) of The All India Council for Technical Education Act, 1987 (hereinafter referred to as the Act ) and the writ appellant cannot be described as a Technical Institute within the meaning of Section 2(h) of the said Act.

It is further submitted that the writ appellant has been designating Chartered Financial Analyst throughout the World since last over 20 years and since its status and competence to conduct its programme is already under examination by Delhi High Court, while examining the challenge made to the order dt. 18.5.07 of the AICTE, there should not have been an order passed on 28.5.07, whereby the order dt. 18.5.07 of the AICTE has been given the status of an order of a High Court, the violation of which would lead to contempt proceedings.

14. Appearing for the writ petitioners, Mr. P.K. Goswami, learned senior counsel, on the other hand, has submitted that the present Misc. Application is not liable to be entertained by this Court inasmuch as, the writ appellant by obtaining stay of the learned Single Judge's order dt. 28.5.07 of this High Court, would be at liberty to carry on its activities in the country which has been ordered to be stopped by the AICTE.

It is further contended by the learned senior counsel that the Division Bench of this Court on 1.6.07 did not deem it appropriate to grant full stay of the impugned order of the learned Single Judge passed on 28.5.07 and accordingly the present application should not be entertained to enable the writ appellant to seek a stay of the said order through the circuitous process of this Misc. Application.

Mr. P.K. Goswami further contends that any clarification which might be made by this Court on the interim order would be taken advantage by the writ appellant and on the strength of such clarifications, they would continue to function within the Indian Territory notwithstanding their lack of registration under the Regulation 2005, by defying the order passed on 18.5.07 by the AICTE.

15. From the submissions made by the learned counsels it appears that the entitlement of the writ appellant to carry on their activity of designation of Chartered Financial Analyst in India would be determined by a decision on the writ petition pending before the Delhi High Court wherein the cease work order dt. 18.5.07 issued by the AICTE is under challenge. The said order dt. 18.5.07 is not a subject matter of challenge either before the learned Single Judge or even before a Division Bench of this High Court.

16. There does not appear to be any dispute in the Bar that Delhi High Court is the competent Court to take a decision on the legality and validity of the order passed by the AICTE on 18.5.07.

If the writ appellants (Writ petitioner in Delhi High Court) are desirous of getting further interim protection then, what they obtained through the interim order passed by the Delhi High Court on 31.5.07, it would naturally be open for them to approach the Delhi High Court for such interim relief in respect of their programmes and examinations beyond 3.6.07.

17. It has been categorically submitted by Mr. Shanti Bhusan, the learned senior counsel that he is not seeking a stay of the order dt. 18.5.07 passed by the AICTE, whereby they have been directed to cease their operation. If the aforesaid order of 18.5.07 continues to operate, without any further interim order by the Delhi High Court, the writ appellant would have to abide by the cease operation order passed by the AICTE.

Even if we stay the operation of the learned Single Judge's order dt. 28.5.07, that by itself, would not enable the appellant to carry on with the operation in respect of conduct of CFA programme in India.

The apprehension expressed to the contrary by the learned senior counsel representing the respondent writ petitioner therefore appears to be unfounded.

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18. The legality of the order dt. 18.5.07 of the AICTE was not under challenge in WP(C) No.73/07 which is pending consideration before the Gauhati High Court. Accordingly there may not have been any legal justification for the learned Single Judge to pass the order dt. 28.5.07, which has the effect of making cease operation order issued against the writ appellant, to be orders passed by the High Court.

19. The challenge to the order dt. 18.5.07 is made and pending in the Delhi High Court which is examining the legality of the said order and it is for the Delhi High Court to pass such interim order as may be considered justified in the case. One such interim order has already been passed on 31.5.07. Now if this Court by its order dt. 28.5.07 revises the status of the cease operation order dt. 18.5.07 of the AICTE by clothing the same with its own supporting order, as a cease operation order of the Gauhati High Court, the Delhi High Court might consider it inappropriate to pass any further order, interim or otherwise, in the context of the cease operation order passed against the writ appellant by the AICTE.

20. It must also be kept in mind that the challenge made by the writ petitioner before the Gauhati High Court is against the activities of the writ appellants and the failure of the council to curb its alleged unauthorized activities in India. Now the Council is seized of the matter and has also passed the cease operation order on 18.5.07 against the writ appellants. No challenge to the order dt. 18.5.07 is being made or is pending before the Gauhati High Court. Therefore in so far as the said cease operation order is concerned, we are of the view that, it would be best left for consideration by the Court, before whom the legality of the said order is under challenge.

21. We are also conscious that we have already entertained the Writ Appeal against the order dt. 28.5.07 passed by the learned Single Judge. Considering the nature of the order and its effect, the balance of justice tilts in favour of an interim order staying the operation of the learned Single Judge's order dt. 28.5.07 by placing appropriate riders to allay the apprehension expressed on behalf of the writ petitioner/respondent.

22. In view of above and particularly in view of the fact that the challenge to the cease operation order dt. 18.5.07 is pending in the Delhi High Court, we consider it appropriate to suspend the order dt. 28.5.07 passed by the learned Single Judge of this Court, as the legality of the said order of the learned Single Judge is under examination by the Division Bench in Writ Appeal No. 47/07.

However, it is clarified that this order of ours should not be understood to mean that we have in any way interfered with the order dt. 18.5.07 passed by the AICTE, as the said challenge is under examination of the Delhi High Court and the Delhi High Court would be competent to pass any order, with regard to the aforesaid order dt. 18.5.07 of the AICTE.

23. In view of the above discussion, this Misc. Application is accepted and the operation of the impugned order dt. 28.5.07 of the learned Single Judge in CM Application No.90/07 arising out of Writ Petition(C) No.73/07 is hereby suspended subject to the aforenoted rider.

Misc. Case stands disposed of.