

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

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Date of decision: 30th September, 2014

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LPA No.605/2014

**MOTHER TERESA INSTITUTE
OF MANAGEMENT**

.... Appellant

Through: Mr. R.K. Saini, Adv.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR**

..... Respondents

Through: Mr. Mukul Talwar, Mr. Sradhananda
Mohapatra & Mr. Vipin Singh, Adv.
for GGSIPU.

Ms. Anjana Gosain & Mr. Pradeep
Desodya, Adv. for R-2 GNCTD

AND

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W.P.(C) No.4875/2014 & CM No.9732/2014 (for stay)

**MOTHER TERESA INSTITUTE
OF MANAGEMENT**

...Petitioner

Through: Mr. R.K. Saini, Adv.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR.**

..Respondents

Through: Mr. Mukul Talwar, Mr. Sradhananda
Mohapatra & Mr. Vipin Singh, Adv.
for GGSIPU.

Ms. Anjana Gosain & Mr. Pradeep
Desodya, Adv. for R-2 GNCTD.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The intra-court appeal, being LPA No.605/2014, was preferred impugning the order dated 8th September, 2014 of the learned Single Judge in W.P.(C) No.4875/2014 adjourning the hearing to 3rd November, 2014, without considering the application of the appellant / writ petitioner for interim relief. The said appeal came up before us on 16th September, 2014 when the contention of the counsel for the appellant / writ petitioner was that 30th September, 2014 being the last date for admission, the writ petition would become infructuous unless decided before that date; the counsels for the respondent no.1 Guru Gobind Singh Indraprastha University (GGSIPU) and the respondent no.2 Government of National Capital Territory of Delhi (GNCTD) appeared on advance notice; being of the opinion that the decision of the appeal would *inter alia* entail the decision of the writ petition also, we, with the consent of the counsels, ordered the writ petition also to be considered by us. We have on 25th September, 2014 heard the counsels for the parties.

2. The writ petition was filed impugning the letter dated 15th July, 2014 of the respondent no.1 University declining grant of provisional affiliation for the academic session 2014-15 to the appellant / writ petitioner for imparting education in Bachelor of Computer Applications (BCA) course / programme as well as the letter dated 23rd July, 2014 of the respondent no.2 GNCTD declining to issue No Objection Certificate (NOC) to the appellant / writ petitioner for conducting the said BCA course / programme; consequently, the reliefs of mandamus, directing the respondent no.2 GNCTD to issue NOC and directing the respondent no.1 University to continue the affiliation of the appellant / writ petitioner for conducting the BCA programme, were claimed.

3. The writ petition came up first before the learned Single Judge on 4th August, 2014 when notice thereof was issued for 11th August, 2014 when, on the application of the appellant / writ petitioner for interim relief, it was ordered “*lis pendens* to apply”. It appears that on 8th September, 2014 when the writ petition was listed before the learned Single Judge, it did not reach for hearing resulting in the adjournment to 3rd November, 2014.

4. The position which emerges is as under:

- (a) that the respondent no.2 GNCTD, on 28th February, 2000 issued NOC to the appellant / writ petitioner, run by Mother Teresa Institute of Management Society, Delhi, valid for a period of three years, for conducting the BCA course at the premises at C-Block, Preet Vihar, Delhi on the condition that during the said period of three years, the appellant / writ petitioner will make permanent arrangement for running the institution;
- (b) it appears that the plot of land underneath the aforesaid premises of the appellant / writ petitioner at Preet Vihar, Delhi had been allotted by the Delhi Development Authority (DDA) to Secular Educational Society (Regd.), only for setting up a school thereon and prohibiting use thereof for any other purposes; the said Secular Educational Society (Regd.) also, on 9th February, 2000, applied to the DDA to use the building constructed on the said land besides for operating therefrom a Senior Secondary School under the name and style of Mother Teresa Public School, also courses in Information Technology at the post-school level;
- (c) on the basis of the NOC aforesaid of the respondent no.2 GNCTD, the respondent no.1 University vide letter dated 17th July, 2000 granted provisional affiliation to the appellant / writ petitioner for conducting the said BCA course / programme then known as Bachelor of Information Systems (Hons.); it was

inter alia the term of the said letter that the appellant / writ petitioner Institute should run independently, and not as a wing of the Society and that the appellant / writ petitioner Institute should shift to its permanent site by 31st July, 2002;

- (d) that the respondent no.2 GNCTD re-validated the NOC issued to the appellant / writ petitioner, which was valid for three years, also for the years 2003-04 and 2004-05 and on the basis thereof the respondent no.1 University also, year to year, renewed the provisional affiliation of the appellant / writ petitioner;
- (e) the appellant / writ petitioner claims to have applied to the DDA for allotment of land in its own name for housing itself for imparting education in the BCA programme and to which application of the appellant / writ petitioner, the respondent no.2 GNCTD gave sponsorship;
- (f) it is the case of the appellant / writ petitioner that though the DDA proposed to allot a plot of land to the appellant / writ petitioner in Karkardooma but revoked the said proposal and which revocation was challenged by the appellant / writ petitioner by filing W.P.(C) No.11455-56/2004 which was allowed vide order dated 29th September, 2004; however notwithstanding the same, land was not allotted to the appellant / writ petitioner and which resulted in the appellant / writ

petitioner filing another writ petition being W.P.(C) No.18504/2004;

- (g) that the DDA did not grant permission as sought to Secular Educational Society (Regd.) for allowing the land allotted to it for the purpose of school to be used for imparting education in the BCA course; DDA vide its letter dated 19th October, 2005 asked the respondent no.1 University to not allow the BCA course to be run on the land allotted for school purposes;
- (h) On the basis of the aforesaid letter of the DDA, the respondent no.1 University vide its letter dated 5th December, 2005 informed the appellant / writ petitioner that the provisional affiliation earlier granted to it shall not be continued from the academic session 2006-07;
- (i) aggrieved from the aforesaid letter dated 5th December, 2005 of the respondent no.1 University, the appellant / writ petitioner filed W.P.(C) No.24104/2005; vide interim order dated 20th December, 2005 therein, the operation of the letter dated 5th December, 2005 of the respondent no.1 University was stayed;
- (j) that the respondent no.1 University continued to grant provisional affiliation to the appellant / writ petitioner year after year, till the academic year 2013-14;
- (k) that W.P.(C) No.24104/2005, vide interim order dated 20th December, 2005 wherein, the operation of the letter dated 5th

December, 2005 of the respondent no.1 University was stayed, was vide order dated 20th November, 2013 dismissed in default;

- (l) the respondent no.1 University vide impugned letter dated 15th July, 2014 refused to renew the continuation of provisional affiliation to the appellant / writ petitioner for the year 2014-15;
- (m) the respondent no.2 GNCTD also vide impugned letter dated 23rd July, 2014 refused to issue NOC to the appellant / writ petitioner for the academic session 2014-15.

5. The counsel for the appellant / writ petitioner has argued:-

- (i) that the NOC and provisional affiliation to the appellant / writ petitioner having been granted / renewed from year to year, for 13 years since the year 2000, the respondents have acted arbitrarily in not granting / renewing the same for the academic session 2014-15;
- (ii) attention is invited to the report of the Joint Assessment Committee (JAC) of the respondents which had inspected the premises of the appellant / writ petitioner on 5th June, 2014 and therefrom it is shown that the appellant / writ petitioner had procured 53.8% marks as against the minimum of 50% required for grant of NOC / renewal of provisional affiliation; it is argued on the basis of the report of JAC with respect to the inspection on 21st May, 2013 that the situation is the same as for the academic year 2013-14 and when NOC and affiliation

were granted for the year 2013-14, there is no justification for not allowing them for the academic session 2014-15;

- (iii) that other Colleges / Institutes which had procured lesser marks than the appellant / writ petitioner for the academic year 2014-15 have been granted NOC and extension of provisional affiliation;
- (iv) that the respondent no.1 University has acted mechanically, on the dictates of DDA and without application of its own mind as it is required to do;
- (v) that if DDA has any grievance with respect to the use of the land allotted by it for school purposes for conducting post-school course / programme in BCA, DDA should have taken action and has not done so and cannot be permitted to coerce the appellant / writ petitioner through the medium of respondent no.1 University;
- (vi) that the position remains the same as existing earlier; though the appellant / writ petitioner has applied for land of the DDA but has till date not been allotted land.

6. Even without considering the stand of the respondent no.1 University, we may at the outset state that in our opinion, the appellant / writ petitioner is not entitled to any relief and the writ petition is liable to be dismissed only on the ground that the grant of relief under Article 226 of the Constitution of India is a discretionary one and it is the settled position of law that such

discretion is not to be exercised in favour of a person who has not approached the Court with clean hands and who is found to have indulged in misrepresentation. We find the appellant / writ petitioner to have not made a clean breast of the state of affairs in this regard.

7. Though the position which has emerged on carefully going through the records is that the Society which is stated to be running the appellant / writ petitioner is distinct from the Society which was allotted the land at Preet Vihar, Delhi from where the appellant / writ petitioner has been carrying on the BCA course / programme but what is portrayed in the writ petition is that the appellant / writ petitioner as well as the school for establishment whereof the said land was allotted by the DDA, are being run by the same Society. Not only so, the appellant / writ petitioner while filing Annexure-P3 and its typed copy at pages 38 and 39 of the writ petition, being the letter dated 9th February / September, 2000 written to the DDA for permission to, from the school land run the post-school course in BCA, has deleted the name of the Society which sent the said letter. The only reason therefor could be to perpetuate the impression that the same Society was running the school as well as the BCA course. It is only from a copy of the letter dated 15th June, 2000, Annexure-P4 to the writ petition at page 41 of

the paper book which is reminder to the earlier letter dated 9th February, 2000, that it transpires that the Society running the School is different from the Society running / operating the appellant / writ petitioner. Not only so, while seeking the permission of DDA also, full facts were not disclosed. It was not disclosed that the BCA course / programme was proposed to be run / imparted by a different Institute set up by a different Society. Even to the DDA, the impression sought to be given was of the Society which had been allotted the land for school purposes, itself wanting to impart education in BCA course / programme also. It appears that an unfair advantage was sought to be taken, of the name of the Society running the BCA course / programme being the same as the name of the school being run by the Society to which the land had been allotted.

8. We also find the appellant / writ petitioner to be indulging in re-litigation. The appellant / writ petitioner had earlier filed W.P.(C) No.24104/2005 impugning the refusal of the respondent no.1 University to consider the continuation of provisional affiliation to the appellant / writ petitioner for conducting the BCA programme on the ground of the appellant / writ petitioner being not entitled to impart education in the said course / programme from the land allotted for the purpose of a school. The said writ

petition was dismissed in default and which order has attained finality. The question for adjudication in the present writ petition is the same. It is not as if the DDA has since granted permission to run / operate BCA course / programme from the same land. It has been held in ***K.K. Modi Vs. K.N. Modi*** (1998) 3 SCC 573 that re-litigation, being contrary to justice and public policy is an abuse of the process of the Court. On this ground also, the appellant / writ petitioner is not entitled to any discretionary relief.

9. As would be obvious from above:-

- (a) the initial grant of NOC by the respondent no.2 GNCTD and provisional affiliation by the respondent no.1 University to the appellant / writ petitioner in the year 2000 itself, was on the condition of the appellant writ petitioner shifting to its permanent abode; the same has not happened till now; and,
- (b) the refusal of NOC / affiliation impugned in the writ petition is on the ground of the appellant / writ petitioner being not entitled to continue operating the course / programme from the land allotted expressly for the purpose of establishing a school and having not, inspite of condition imposed in the year 2000

to, in two / three years acquiring a place of its own, not having acquired its place till now.

10. No error is found on the aforesaid grounds for refusing NOC / affiliation; to be fair to the counsel for the appellant / writ petitioner, he has not even urged any argument challenging the said ground.

11. The ground taken of NOC / affiliation having been granted since the year 2000 till 2013-14 and the appellant writ petitioner being thus entitled thereto for the year 2014-15 also, is absolutely misconceived. The respondents had, as far back as for the year 2006-07, refused NOC / affiliation to the petitioner. The grant of NOC / affiliation if at all thereafter was on account of interim order dated 20th December, 2005 in W.P.(C) No.24104/2005 (supra) earlier filed by the appellant / writ petitioner. No advantage can be taken, of what the respondents did in compliance of the Court order.

12. The respondents, immediately after the dismissal in default of the aforesaid writ petition on dated 20th November, 2013, have for the next academic year 2014-15 denied NOC / affiliation to the appellant / writ petitioner.

13. Upon our putting this to the counsel for the appellant / writ petitioner, the counsel stated that since the letter dated 5th December, 2005 of the respondent no.1 University impugned in the earlier W.P.(C) No.24104/2005 was of refusal of affiliation for the year 2006-07 only, the grant of NOC / affiliation for the year 2007-08 till 2013-14 cannot be presumed to be under Court order, is also fallacious. We rather enquired from the counsel for the petitioner that if according to the appellant / writ petitioner, the earlier W.P.(C) No.24104/2005 was only for the year 2006-07 why did the appellant / writ petitioner continue pursuing the same till the year 2013 when it was dismissed in default. Again an obviously misconceived argument, of the writ petition having been admitted for hearing and having not been listed, is given.

14. The relevant portion of the letter dated 5th December, 2005 of the respondent no.1 University impugned in earlier W.P.(C) No.24104/2005 filed by the appellant / writ petitioner is as under:-

“Under the circumstances, it is intimated to you that the University shall not be able to consider continuation of provisional affiliation of your institute to conduct BCA programme for the academic session 2006-07.”

15. The reason given as aforesaid was that the appellant / writ petitioner being not entitled to conduct BCA course / programme from the land allotted for the purposes of a school. The said reason continued for the subsequent years also. It cannot be said that the reason given in the letter dated 5th December, 2005 was for the academic session 2006-07 only.

16. The argument, of the respondents having merely acted at the behest of DDA and the DDA, inspite of itself not taking any action for misuse of school land coercing the appellant through the respondents, is also meritless. It is not controverted that, for the grant of NOC and affiliation the ownership of the appellant / writ petitioner of a plot of land and requisite infrastructure is a must. The appellant / writ petitioner admittedly does not have it. It is thus not entitled thereto. As far as DDA having not taken any action for misuse of land allotted for school, DDA is not a party hereto and we do not know whether any action has been taken. Similarly, the Society which was allotted that land is also not before us.

17. The only other argument of the counsel for the appellant / writ petition, of others similarly placed as the appellant / writ petition having been granted affiliation is equally misconceived. As held in *State of U.P.*

Vs. Raj Kumar Sharma (2006) 3 SCC 330 and *UOI Vs. M.K. Sarkar* (2010) 2 SCC 59, Article 14 of the Constitution of India does not envisage negative equality. In fact when we put to the counsel for the appellant / writ petitioner that if the respondents have wrongfully granted NOC / affiliation to any other Institute / College, we can initiate inquiry in public interest, the counsel stated that the appellant / writ petitioner does not want so.

18. We may in this regard also notice that it is the case of the respondents that the others on the basis of grant of affiliation to whom the plea of discrimination is taken, are not similarly placed as the appellant / writ petitioner. It is informed that while the appellant / writ petitioner has finally lost its battle against the DDA for allotment of land in its own name (*inter alia* on the ground of the policy of the DDA qua allotment having undergone a change in the year 2004 and the disposal of institutional land being now only by auction), the litigation of the others whose cases are cited is still continuing and the Society running the school as well as the post-school course / programme in those cases being one and the same. It is also stated that the area of land for school allotted in one of the other cases is 3.9 acres as against the 2 acres plot of land on which the appellant / writ petitioner was running the course / programme.

19. We therefore find no merit in the writ petition. Resultantly, the writ petition as well as the appeal are dismissed with consolidated cost of Rs.30,000/- on the appellant / writ petitioner payable to the respondent no.1 University within six weeks from today.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

SEPTEMBER 30, 2014
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