

(2009) 03 BOM CK 0138

Bombay High Court

Case No: Writ Petition (Lodg.) No. 351 of 2009

Thane Belapur Industries
Association Technical Institute,
Dr. S.L. Patil, Principal of Thane
Belapur Industries Association
Technical Institute and Secretary
General of the Thane Belapur
Industries Association

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: March 17, 2009

Acts Referred:

- Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 - Section 38
- Constitution of India, 1950 - Article 226
- Dock Workers (Safety, Health and Welfare) Regulations, 1990 - Regulation 93
- Factories Act, 1948 - Section 40B

Citation: (2009) 3 BomCR 183

Hon'ble Judges: Swatanter Kumar, C.J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: E.P. Bharucha and Sanaya Dadachanji, instructed by M.K. Ambalal and Co, for the Appellant; M.D. Naik, Assistant Government Pleader, for the Respondent

Judgement

D.Y . Chandrachud, J.

Rule, by consent of the learned Counsel made returnable forthwith. Counsel appearing for the Respondents waive service. With the consent of the learned Counsel and at their request, the matter is taken up for hearing and final disposal.

2. The First Petitioner is an institute of technical education that was established in 1986 by an association of industries in the industrial belt of Thane Belapur. The First

Petitioner conducts an advance diploma course in Industrial Safety, Health and Environment. Permission to commence the course was granted by the Directorate of Technical Education in the State Government on 23rd October, 1985 with an intake capacity of sixty students from the academic year 1986-87. The course is recognized by the State Government and by its instrumentalities - the Directorate of Technical Education and the Maharashtra State Board for Technical Education. In June 2007, the Petitioner submitted a proposal for an increase in the intake capacity for the course to a hundred students commencing from the academic year 2007-08. The proposal made by the Petitioner for enhancement of the admissions was not dealt with during the academic year 2007- 08 for, the Directorate of Technical Education issued an affiliation certificate for the year on the existing intake of sixty students. Prior to the academic year 2008-09 the Petitioners approached the Directorate and the Maharashtra State Board for Technical Education (the Second and Fifth Respondents) and requested them to consider the pending proposal. The Petitioners were informed that the proposal would be considered at a forthcoming meeting of the Board and accordingly the Petitioners addressed a recording letter dated 21st April, 2008. It has been averred by the Petitioners that they held a meeting with the Director of the State Board on 12th June, 2008 following which on 18th June, 2008 a letter was addressed to him for approval of the enhancement of the intake capacity from 60 to 90 students.

3. On 26th August, 2008 the Directorate of Technical Education forwarded to the State Government proposals of several institutions, with a request for the grant of sanction from the academic year 2008-09. This list of institutes included the First Petitioner whose proposal for increase in the intake capacity to ninety students was endorsed by the Directorate of Technical Education. On 27th August, 2008 an application was moved by the Petitioners to the Fifth Respondent for continuation of affiliation for the academic year 2008-09 with an intake of ninety students. On 17th September, 2008 the Petitioner submitted a merit list consisting of ninety students who had been admitted for the advanced diploma course in Industrial Safety for the academic year 2008-09 to the Joint Director of Technical Education for approval.

4. From the record before the Court it emerges that on 26th September, 2008 the Joint Director of Technical Education granted approval only for sixty out of ninety students who were admitted for the course. This appears to have been on the basis that the State Government had not approved the enhancement in the admissions" strength. However, on the same day - 26th September, 2008 - the State Government issued a resolution granting permission to the First Petitioner to increase its intake capacity to ninety students for the academic year 2008-09. The Petitioner addressed a representation to the Director of Technical Education on 30th September, 2008 followed by a representation dated 14th October, 2008 to the Joint Director. The Fifth Respondent had in the meantime issued a circular on 24th October, 2008 addressed to institutions affiliated to the Board, stipulating 5th November, 2008 as the date for the submission of applications for enrollment of additional candidates

duly approved by the Joint Director. The circular stated that the first and second term examinations of the students would be jointly taken during the summer examinations of 2008. On 4th and 15th November, 2008 the Petitioners addressed a representation to the Joint Director seeking approval of the list of thirty additional students in order to facilitate the enrollment of the students with the Fifth Respondent in accordance with the circular dated 24th October, 2008. By then, it has been stated the students had completed the 16 weeks' term and had appeared for two unit tests as required under the rules framed by the Fifth Respondent. The Joint Director of Technical Education addressed a communication on 6th December, 2008 to the Director in order to seek advice on whether the request made by the Petitioners for the approval of an additional batch of thirty students should be granted for the academic year 2008-09, as the last date for the grant of approval was 6th September, 2008. The Petitioners addressed further representations dated 31st December, 2008 and 12th February, 2009. The Fifth Respondent issued a circular on 7th February, 2009 setting out the guidelines for the filing of examination forms for the ensuing examinations.

5. The Petitioners moved these proceedings under Article 226 since the last date for the submission of examination forms was approaching and until the institution of the Petition, the thirty additional students had not been approved by the Joint Director of Technical Education.

6. On behalf of the Petitioners it has been urged that the course in Industrial Safety is conducted by the Petitioners in order to enable industries functioning in the Thane Belapur Industrial Belt to fulfill statutory requirements u/s 40-B of the Factories Act, 1948, Regulation 93 of the Dock Workers (Safety, Health and Welfare) Regulations 1990 and Section 38 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 which prescribe the appointment of safety officers. The list of companies which have sponsored their employees is stated to include corporate bodies such as Larsen & Toubro Limited, Bharat Forge Limited, Siemens Limited, Cipla India Limited, Tata Consulting Engineers, Reliance Industries Limited and British Oil Company Limited. These bodies, it has been stated have sponsored students who have been enrolled by the Petitioners. All the students, it has been averred have on the date of the institution of the proceedings completed 28 weeks of the term. The contention of the Petitioners is that the cut off date of 6th September, 2008 would have no application when the Government Resolution enhancing the sanctioned strength was issued by the State Government on 26th September, 2008 increasing the intake of students from 60 to 90 for the academic year 2008-09. In the alternate, it has been urged that the cut off date would not apply to the Petitioners where the course is not in the nature of a polytechnic programme but is a specialized course in Industrial Safety vital to industries maintaining safety and health in accordance with statutory requirements. It has been submitted that the Petitioners are conducting the course on a no profit - no loss basis and the aim and object of the course is to impart

quality education and training in order to prepare students to act as safety officers in sectors where they are employed.

7. On the other hand, it has been submitted on behalf of the Respondents by the AGP that the grant of approval on 26th August, 2008 by the Directorate of Technical Education was subject to the State Government sanctioning the enhancement in the intake capacity and, as a matter of fact the Directorate had by its communication sought the sanction of the State Government. The sanction of the State Government was received on 26th September, 2008 which was after the cut off date of 6th September, 2008. In these circumstances, it has been submitted that the Petitioners would not be entitled to admit students in excess of the intake capacity of sixty students for the academic year 2008-09.

8. In dealing with the rival contentions it would be necessary to note that the record before the Court discloses that the course which has been conducted by the Petitioners is not regulated by the All India Council for Technical Education. A reference to this position is contained in the letter dated 26th August, 2008 of the Joint Director of Technical Education to the Principal Secretary in the Higher and Technical Education Department (Exhibit F) and in the Government Resolution dated 26th September, 2008 (Exhibit I-1). The fixation of cut off dates for admission to courses does not lie within the province or expertise of this Court in the exercise of its jurisdiction under Article 226 of the Constitution. The submission however that has been urged before the Court is that the Government Resolution dated 26th September, 2008 which sanctioned an enhanced strength of students to the Petitioner - from 60 to 90 specifically contemplated that the increase would be with effect from the academic year 2008-09 subject to compliance with the requirements spelt out in the resolution. The Learned Counsel for the Petitioners stated that the Petitioners have duly fulfilled all the requirements. Hence, when it issued the Government Resolution on 26th August, 2008, and gave it effect for 2008-09, the State Government obviously intended that the cut off date which had earlier been fixed would be extended. Otherwise, it is urged, there would be no practical content in applying the enhanced strength sanctioned in the Government Resolution for the year 2008- 09. Prima facie, this submission cannot be brushed aside as lacking in substance. On 26th September, 2008 the Joint Director of Technical Education endorsed his approval for sixty students admitted by the Petitioner for the academic year 2008-09 - perhaps unaware of the circumstance that by a separate Government Resolution of the same date the students' strength allowable to the Petitioners had been enhanced from 60 to 90 by the State Government. Both arms of the State Government appear not to have acted in co-ordination with each other. The Petitioners, as the record would show, addressed representations on 30th September, 2008, 14th October, 2008 and 31st December, 2008 to the Director and to the Joint Director of Technical Education. None of the representations met with any response from the Respondents. The Joint Director, however, in pursuance of the representation dated 15th November, 2008 addressed a communication to the

Director of Technical Education seeking guidance on whether the Petitioner should be allowed to admit ninety students for the academic year 2008-09 in consonance with the Government Resolution of 26th September, 2008. The record does not show that any response was communicated to the Petitioners thereafter, on a decision that was to be taken by the Director of Technical Education. Whether there is any merit in the circumstances that have been adverted to in several representations addressed by the Petitioners is a matter which ought to have received the urgent attention of the Director of Technical Education and the State Government. Evidently, that has not been done.

9. Hence, we are of the view that it would be appropriate and proper to direct that a decision be taken by the State Government in consultation with the Directorate of Technical Education within a period one week from today on the representations submitted by the Petitioners for allowing the thirty additional students admitted for the academic year 2008-09 in terms of the Government Resolution dated 26th September, 2008 to appear for the examinations. We hope and trust that a final decision shall be taken after considering the matter in its full perspective including in the backdrop of the circumstances which have been highlighted by the Petitioner both in these proceedings and in the representations filed before the Government. We direct that the Petitioners be provided an opportunity of a brief meeting to put forth their contentions before the First and Second Respondents. This exercise as noted earlier shall be carried out expeditiously and a final decision shall be arrived at within a period of one week from today. In the event that the request made by the Petitioners is considered favourably, the First and Second Respondents shall thereupon issue necessary consequential orders in implementation of the decision so as to facilitate the batch of students in consonance with the enhanced sanctioned strength to appear for the ensuing examinations.

The Petition shall stand disposed of in terms of the aforesaid directions. There should be no order as to costs.