
(1999) 01 MAD CK 0032

In the Madras High Court

Case No : Review Application No. 2 of 1999 in Writ Petition No. 18569 of 1998

All India Council for Technical Education

APPELLANT

Vs

Sri Devi Karumari Amman and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10

Citation : AIR 1999 Mad 206

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Santhanam, Addl. Central Govt. Standing, for the Appellant; K. Doraiswami for Muthumani Doraiswami and Ors., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—This is an application to review my order in W.P. No. 18569 of 1998, dated 8-12-1998.

2. While disposing of the writ petition, I directed the respondents therein to pass orders on the application of the writ petitioner for issuance of

Viability Certificate within a period of three months from the date of my Order, i.e., 8-12-1998. I further declared in my Order that the petitioner

herein shall not insist as a condition precedent for the issuance of Viability Certificate, No Objection Certificate from the University or from the

State Government. In this Review Application, it is stated by learned Standing Counsel that the State Government as well as the University will

have to be consulted and their views also will have to be ascertained for taking any further action, and my order should not stand in the way of the

AICTE ascertaining their views also while passing Orders on the application of the petitioner-Trust. Learned counsel relied on two decisions in

support of his argument. They are: (1) The Commissioner and Secretary to Govt. Higher Education Dept. Vs. Jaya Gokul Educational Trust and

Another, and (2) Government of Andhra Pradesh and Another Vs. J.B. Educational Society, Hyderabad and Another, . On the basis of these

decisions, he submitted that the State Government has got a say in the matter and their views also will have to be taken into consideration in regard

to the establishment of technical institute.

3. Even though learned standing counsel for the petitioner herein strenuously argued the matter in detail, he did not say that there is any error

apparent on the face of the records or any other sufficient cause so as to review my Order dated 8-12-1998. Under the, guise of Review, the

petitioner is not entitled for a re-hearing of the entire matter over again. He has to substantiate that on a mere reading of the Order, there is a

mistake or error in the order under Review.

4. It is further submitted by learned counsel that even as per the Regulations framed by the AICTE, they have got time till 15th April of every year

for passing Orders. In this case, I have fixed a time of three months from 8-12-1998. Learned counsel submitted that this goes against the

provisions of the Statute.

5. I do not find any substance in the said argument. It is true that 15th April is the deadline fixed by the AICTE for passing Orders on such

applications. But it does not mean that no order could be passed before that time. It is also most unreasonable on the part of the petitioner-Council

to say that it will pass Orders only on 15th April and not before that, while a time is fixed by this Court. In paragraph 5 of my Order, I have taken

into consideration the fact that the application itself was made by the writ petitioner in August 1998, and the Council did not make any attempt to

dispose of the same. The direction given by me is that the petitioner herein shall dispose of the application in accordance with law taking into

consideration the Regulations.

6. Now I will come to the two decisions relied on by learned counsel for petitioner-AICTE.

7. In The Commissioner and Secretary to Govt. Higher Education Dept. Vs. Jaya Gokul Educational Trust and Another, , a Division Bench of the

Kerala High Court held thus (at page 170) :--

.....The object of the Central Act is only to determine and co-ordinate the need of technical education throughout the country to ensure har-

monisation of the standards of technical education and not to lay down the policy as to where and in which academic year, a college for technical

education is to be set up.

It was further stated by the Bench that even after enactment of the AICTE Act, the State Government was not completely denuded of the power

of taking a policy decision. With great respect to the Division Bench, I do not think that I should accept the same. The Division Bench has not

taken into consideration the decision in *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, .

In paragraph 34 of the judgment, various questions came for consideration as to whether the State Government can decline permission on the basis

of any policy decision. Paragraph 34 reads thus (at page 2394 of AIR):--

It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the

conditions for the qualifying criteria laid down is that essentiality certificate regarding disability and feasibility of having the proposed college at the

proposed location should be obtained from the State Government. The said condition about obtaining an essentiality certificate from the State

Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior

permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University

Act. For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State

Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The

essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of

a new medical college now rests with the Central Government alone.

8. While declaring the law, the Honourable Supreme Court said that the right of the Government is only to consider the Essentiality Certificate,

and, for the said purpose, the Government is required only to consider the desirability and feasibility of having a proposed medical college at the

proposed location. The power of the Government is limited to that extent. Unfortunately this decision of the Honourable Supreme Court was not taken into consideration by the Division Bench.

9. In this connection, though not under the same Act, our High Court had occasion to consider as to what is the effect of the National Council for

Teachers Education Act, and how far the State Government can decline permission on the basis of any policy decision. The same is reported in

1997 WLR 129, Emmanuel Teacher Training Institute, etc. v. The Regional Director, etc., wherein, a Division Bench of our High Court has held

that after the NCTE Act came into force, the policy decision of the Government not to establish any Training Institute is not valid and that the

Government have to decide the desirability of establishing a Training Institute, taking into consideration the provisions of the Act.

10. The other decision relied on by learned Counsel for petitioner herein is Government of Andhra Pradesh and Another Vs. J.B. Educational

Society, Hyderabad and Another, . I do not think that the said decision is also in any way helpful to the petitioner-AICTE. In fact, in para 48 of the

judgment, it has been held thus :--

As (on Point No. 1) we have held that Section 20(3) (a)(i) of the State Act is repugnant to Section 10(1)(a) of the Central Act and the

Regulations framed thereunder, we hold that the State Government has no legislative competence to refuse withhold permission for establishing

private Engineering Colleges in covered Revenue Division as per the State Government's policy after the Council grants approval.

The same has been reiterated in paragraph 57 of the judgment also. It is true that in para 56 of the Order, the Division Bench has said that the

question of establishment of a private engineering college by the respondent without permission of the State Government does not arise. The scope

of this permission has also been dealt with in the earlier portion of the judgment, taking into consideration the desirability or feasibility of establishing

a College in a particular location. That means, the State Government will have to consider each and every application independently on merits as to

the desirability of establishing a college in the proposed location, and they cannot take a policy decision and refuse permission merely on that

ground. As was held in Thirumuruga Kirupananda Variyarthavathiru Sundara

Swamigalme Vs. State of Tamil Nadu and Others, , that power is now vested with the Central Government. The decision in Kirupanandavariar's case (supra) was not brought to the notice of the Division Bench of the Andhra Pradesh High Court also. But, in spite of the same, Their Lordships have held that after AICTE Act came into force, the Government cannot take a policy decision for refusing permission. I do not find any ground to review my Order, and consequently the Revision Application is dismissed. No costs.