

(2012) 08 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 20540 of 2008

Dalit Christians Educational and Development Trust

APPELLANT

Vs

The Vice Chancellor and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

National Commission For Minority Educational Institutions (Amendment) Act, 2006 — Section 10A

National Commission for Minority Educational Institutions Act, 2004 — Section 10, 10(1), 10(A), 10A(1)

Pondicherry Universities Act, 1985 — Section 5(17), 7

Citation : (2013) WritLR 581

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A.R.L. Sundaresan, S.C. for N. Edwin Jeyakumar, for the Appellant; A.V. Bharathi for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This writ petition is filed by the petitioner Trust seeking to challenge an order of the third respondent Assistant Registrar

(Academic), Pondicherry University, dated 18.2.2008 and after setting aside the same, seeks for a direction to continue the affiliation granted to

the petitioner college and permit to admit students and appoint staff of the petitioner's educational and development trust. This writ petition when it

came up for admission on 22.08.2008, it was admitted and notice was ordered. Pending the writ petition, in the application for an interim direction

for extending the affiliation, only notice was ordered. Subsequently on 25.11.2008, it was held that the interim order seeking for direction to extend

the affiliation cannot be granted and that the main matter was directed to be posted for final disposal. Subsequently, the petitioner had impleaded

the Deputy Registrar (Academics) and the Controller of Examination of the University on 14.09.2010.

2. When the matter came up on 20.10.2011, it was brought to the notice of the court that a letter was sent by the District Collector, Kanyakumari

District, dated 11.08.2011, stating that in the address given by the petitioner trust, i.e., No. 22/17, SUS Building where the Trust is said to be

functioning, there is an advertisement board showing the name of the college and that no college was functioning in the said address. Since the

petitioner had disputed the same, this court directed the University to depute the officers of the University in the rank of Deputy Registrar and

Assistant Registrar to inspect the petitioner institution in the name and address of the Chairman/Managing Trustee, Dr. Noble Memorial Christian

College of Arts and Science, Yesuraj Campus, Dr. Yohannan Nagar, Padmanabhapuram, Thuckalay, Kanyakumari District, in the presence of the

petitioner and to file a detailed report about the existence of the college in that place.

3. Pursuant to the direction issued by this court, the Deputy Registrar and the Assistant Registrar were directed to inspect the college. The officials

had proceeded to Thuckalay on 02.11.2011. The committee when it went to Muttakadu Junction, the locals were not able to identify the college.

Based on the landmark given by the Correspondent, the committee came to a building. In a huge building, there was a small name board containing

the name of the college. There was no other name board in the building bearing the name of Dr. Yohannan Nagar. On 03.11.2011, the Revenue

officials accompanying with the officials of the University visited the place where there was a partially completed structure in the back of the same

building on the first floor shown as the office of the Principal and the rooms for the lecturers and a hall said to be the library. The Principal and the

librarian were not available. A woman was introduced as an Office Assistant. In the second floor, there was one lecturer (who was taking classes

for 7 students). The entire structure housing the so-called college was a make shift arrangement. The walls were not plastered and whitewashed

and the flooring was not finished. The Correspondent had introduced two teachers, i.e., Ms. Jeslin and Mr. Justus Rajan. The so-called two faculty

members were entrusted the job of taking classes for the entire semester comprising of 4 papers. When asked how they could be admitted without

affiliation, it was stated that the entire records were with the counsels at Chennai. The eight students were admitted without any admission letter for the academic year 2009-2010, but they were said to be undergoing the V semester. Only 7 students were present. They also informed that they were not paying any fees. The students also informed that they were not provided with any books. In the computer room where the students were given computer practice, there was only one computer available. The said computer did not have any Tally software which was required as per the syllabus. The college was not able to produce any documents relating to the building occupied by them. Therefore the committee had finally stated that there was no semblance of any college and it was only a make shift arrangement and did not have any basic facilities and atmosphere for running the college. The report was not contradicted by the petitioner to prove contrary.

4. Subsequent to the report filed, when the matter came up on 19.12.2011, it was informed that the petitioner educational institution was already affiliated to the respondent Pondicherry University and they are bound to continue the affiliation. Even by the amendment made to the National Commission for Minority Educational Institutions Act, 2004, the amendment came into existence on 29.3.2006. The newly introduced Section 10(A) deals with the right of the minority institution to seek affiliation to any university of its choice subject to such affiliation if permissible under the Act under which the university was established. It was stated that since they were already an affiliated institution, it will not have any retrospective effect. In the light of these facts, this court held that the matter will have to be heard at an early date.

5. The contention of the petitioner was that though the petitioner college comes within the jurisdiction of Manonmaniam Sundaranar University, there is no bar of affiliating the college with any other university. The Pondicherry University being the Central University can affiliate any institution and any minority college and has jurisdiction all over India except Jammu and Kashmir. The college was already running B.Com (Foreign Trade) course. By the impugned order dated 18.2.2008, the college was informed that they cannot grant any affiliation for the academic year 2007-2008.

If they fulfill all deficiencies, then they can apply for affiliation for the academic year 2008-2009. The college was also informed that despite an

undertaking given on 5.5.2006, the college was not shifted to a regular building and that the faculty members were not equipped with any facility.

There was no infrastructure for running the college. Even the teachers who were appointed did not have the minimum qualifications prescribed by

the university. The Principal who was appointed had not even submitted the experience certificate as required by the UGC norms.

6. It was the stand of the petitioner that they had admitted students in the Foreign Trade for the academic year 2005-2006, 2006-2007, 2007-

2008. A provisional affiliation was granted for 2005-2006 and that extension of affiliation was issued for each year. The students were attending

their respective examinations and results were also published. The college also had submitted an application to the university on 28.9.2007. u/s

10(1) of the National Commission for Minority Educational Institutions Act, 2004, they made a request by their application dated 24.6.2005 for

the grant of provisional affiliation and thereafter for extension of affiliation, they filed a renewal application u/s 10A of the Amendment Act

18/2006. The rejection of their affiliation was done without notice to them.

7. In the counter affidavit filed by the respondent University, it was stated that u/s 5(17) of the Pondicherry University Act, which was created by

the Act of the Parliament, it empowers the university to admit to its privileges colleges and institutions. Section 7 deals with the territorial

jurisdiction of the university and it extends upto the Union Territory of Puducherry, Andaman and Nicobar Islands and the Union Territory of

Lakshadweep. The statutes were framed under the Act. The Statute No. 32 enables the university to affiliate the colleges and other institutions

within the territorial jurisdiction of the university. The petitioner trust had applied for provisional affiliation for the academic year 2005-2006 on

24.6.2005, but the cut-off date for receipt of the application was 01.10.2004. The college was started from 29.9.2005 without getting a valid

provisional affiliation in the guise of minority status granted by the National Commission for Minority Educational Institutions. The affiliation was

considered u/s 10(1) of the National Commission for Minority Educational Institutions Act, 2004, wherein it was stated that notwithstanding

anything contained in any other law for the time being in force, a minority educational institution may seek recognition as an affiliated college of a

scheduled university of its choice. The Pondicherry University is one of the university found in the schedule. Therefore, the affiliation was

considered for the college for 2005-2006 though the college was not coming within the territorial jurisdiction. The order of affiliation was issued

only on 10.1.2007 as the college did not create endowment for grant of affiliation within the time.

8. It was further stated that the Act has been amended by the Central Act 18 of 2006 with effect from 29.3.2006. As per the amended provisions

of the Act, Section 10A(1), it was stated that the minority educational institutions can seek for affiliation to any university of its choice subject to

such affiliation being permissible within the Act under which the said university is established. Therefore, the petitioner college cannot seek for any

affiliation to the respondent university as u/s 7 of the Pondicherry University Act, it can only affiliate the college coming under the Union Territory of

Puducherry and Andaman Nicobar Islands. The affiliation earlier granted was only for the academic year 2007-2008 since students were

undergoing the course at that time. The university had also informed the college on 18.2.2008 that they should seek for affiliation to the

jurisdictional university from the academic year 2008-2009 as it cannot grant any further affiliation. The university had repeatedly sent

communications to the petitioner on 09.11.2007, 18.2.2008, 07.04.2008 and 21.4.2008 that it was not possible to grant affiliation to the college

in the light of the amendment made by the Parliament to the National Commission for Minority Educational Institutions Act. Further letters were

also sent on 15.5.2008, 18.6.2008 and 07.07.2008. The university had informed the college that those students who were admitted with the

affiliation of the university upto 2007-2008 would be allowed to continue with the university so that they can complete the course. The college was

not affiliated to the university to admit new students. Unless the petitioner college had affiliation, they have no right to admit students.

9. In support of the stand taken in the counter affidavit, the University had also filed two typed sets dated 07.04.2009 and 07.12.2009 containing

documents. The petitioner has not chosen to challenge any of these communications. Therefore, as on date, the petitioner college did not have any

subsisting affiliation in respect of students who were already admitted to the college.

10. Knowing the status of the petitioner college, Mr. A.R.L. Sundaresan, learned Senior counsel appearing for Mr. N. Edwin Jeyakumar

attempted to make legal arguments by stating that since the college was affiliated earlier to the date of amendment (Amendment Act 18/2006 with

effect from 23.1.2006), the present stand of the university is not valid. In essence, the earlier affiliation with the university of its choice can continue

notwithstanding the amendment.

11. In view of the above, it is necessary to refer to the crucial provisions of the National Commission for Minority Educational Institutions Act,

2004. Section 10 before amendment read as follows:

10. Right of a Minority Educational Institution to seek affiliation to a Scheduled University.-(1) Notwithstanding anything contained in any other law

for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

(2) The Schedule University shall consult the Government of the State in which the minority educational Institution seeking affiliation under sub-

section (1) is situate and views of such Government shall be taken into consideration before granting affiliation.

(Emphasis added)

12. The newly introduced provision, Section 10A reads as follows:

10-A. Right of a Minority Educational Institution to seek affiliation.-(1) A Minority Educational Institution may seek affiliation to any University of

its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to

a University in the manner prescribed by the Statute, Ordinance, rules or regulations of the University:

Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of

such application.

(Emphasis added)

13. Admittedly, in the present case, the college was having only the provisional affiliation and not permanent affiliation. Even the provisional

affiliation was only confined to passing out of the existing students. The application for renewal of affiliation or for the grant of permanent affiliation

can be treated only as a new application in terms of the Act. Therefore, the argument that the amendment cannot have any retrospective effect

does not stand to reason. After the amendment and introduction of Section 10A, any college seeks for affiliation whether permanent or renewal

has to seek affiliation only with the jurisdictional university to grant affiliation.

14. However, Mr. A.R.L. Sundaresan, learned Senior counsel placed reliance upon two judgments of the Supreme Court. The first judgment

relating to Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd., for contending that the amendment cannot be retrospective. Since the date of arbitration

proceedings was before coming into force of the Arbitration and Conciliation Act, 1996, only the 1940 Act will apply. It was held that the

amendment cannot be retrospective.

15. The learned Senior Counsel also referred to a judgment of the Supreme Court in State of Kerala and Another Vs. Peoples Union for civil

Liberties, Kerala State Unit and Others, for contending that the repeal of the statute is not a matter of mere form but one of substance. It depends

upon the intention of the legislature. If by reason of a subsequent statute, the legislature intended to abrogate or wipe off the former enactment,

wholly or in part, then it would be a case of total repeal. If the intention was to modify the former enactment by engrafting an exception or granting

an exemption, then it would not amount to a repeal. Therefore, the learned Senior counsel contended that the intention of the amendment

introduced u/s 10A was not a total repeal of the earlier provision. Under these circumstances, they can continue to seek for affiliation from the

same university even though the amendment restricts the university which has got jurisdiction to grant affiliation.

16. Per contra, Ms. A.V. Bharathi, learned Standing Counsel for the University brought to the notice of this court that the very trust itself had filed

a writ petition in W.P. No. 24970 of 2009 seeking for a direction to the university to permit B.Com (Foreign Trade) 1st year students who were

studying in the institution, to write their I semester examination. That writ petition was dismissed by this court by an order dated 07.12.2009. In

paragraphs 3 and 4, this court had observed as follows:

3. On the other hand, the learned counsel appearing for the respondent University has brought to the notice of this Court that subsequent to 2007,

affiliation was not granted to the petitioner institution. That apart, according to the learned counsel for the respondent University, by letters dated

09.11.2007, 18.02.2008, 07.04.2008, 21.04.2008, 15.05.2008 and by subsequent letters upto 10.11.2009, the petitioner was informed of the

fact that since, as on date, the petitioner does not come within the territorial jurisdiction of Pondicherry University, affiliation for the academic year

2008-2009 could not be granted. Apart from this, the petitioner was also advised to approach the appropriate University for getting affiliation.

According to the learned counsel for the respondent University, inspite of the warning given, the petitioner institution has admitted students and it is

the further stand of the learned counsel that as far as the students, who were admitted upto 2007-2008, are concerned, they will be permitted to

continue with the Pondicherry University and write the examination.

4. Relying on the unamended National Commission for Minority Educational Institutions Act, 2004, the learned counsel for the petitioner has

submitted that as per the above said Act, as far as minority institutions are concerned, they can apply to any University seeking affiliation, however,

learned counsel for the respondent University has brought to the notice of this Court that as per the National Commission for Minority Educational

Institutions (Amendment) Act, 2006, a Minority Educational Institution may seek affiliation from any University of its choice subject to such

affiliation being permissible within the Act under which the said University is established and as per Section 7 of the Pondicherry University Act,

affiliation can be granted only to those institutions that come under the jurisdiction of Pondicherry University. As far as the petitioner institution is

concerned, since the same is located in Kanyakumari District, as per the new Regulations, affiliation cannot be granted by the Pondicherry

University. Though the learned counsel for the petitioner has taken a stand that already that Act is under challenge, based on the said stand, in this

writ petition, this Court cannot grant the relief sought by the petitioner institution. Hence, the writ petition is dismissed....

(Emphasis added)

In the light of these facts, the learned counsel for the university sought for

dismissal of the writ petition.

17. Since the college had failed to get its students to write their examination, who were subsequently admitted when there was no affiliation, this

order operates as *res judicata* against the petitioner to contend to the contrary. Without prejudice to the above submission, the learned counsel

also referred to the order passed by the National Commission for Minority Educational Institutions in Case No. 1935 of 2006, i.e., Joseph

Shriharsha & Marry Indrāja Educational Society, Vanasthalipuram, Hyderabad, where the said college sought for affiliation to their P.G. Courses.

The Commission headed by a retired judge of the High Court as its Chairman, gave a ruling on 12.6.2007, disagreeing with the request in respect

of the college affiliation to the respondent university. The Commission had upheld the stand of the university and held as follows:

On a plain reading of Section 10A, it becomes clear that this Section confers a substantive right on a minority educational institution to seek

affiliation from any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

In the case of Sahib Shiksha Avam Samaj Kalyan Samiti Bhopal (*supra*), the M.P. High Court has held that the expression, "any university of its

choice" has not been used in total freedom of choice because it is subject to a rider, such affiliation being permissible within the Act under which

the said University is established. It needs to be highlighted that sub Section (2) of Section 10A clearly provides that the application for affiliation

under sub Section (1) has to be filed in the manner prescribed by the statute, ordinance, rules or regulations of such affiliating University. A conjoint

reading of sub section (1) and sub Section (2) of Section 10A clearly indicates that Section 10A of the Act is restrictive in operation and the

territorial jurisdiction of the respondent university does not get marginalized and lose its significance because of restrictive operation of Section

10A. The M.P. High Court has rightly held that Section 10A has not been couched in the absolute term and the expression "any university of its

choice" has not been used in Section 10A in total freedom of choice. Admittedly, the petitioner college does not fall within the territorial jurisdiction

of the respondent University. That being so, the impugned order of the respondent University declining to grant affiliation to the petitioner college

for want of territorial jurisdiction cannot be faulted on any valid ground.

18. The learned counsel further referred to a judgment of the Full Bench of this Court in Rukmani College of Education run by Rukmani

Educational and Charitable Trust Vs. The State of Tamil Nadu, and referred to the following passage found in paragraph 36, which reads as

follows:

36.....We may add that it would be permissible for the Court to permit the students of an unaffiliated institution to appear for the examination

conducted by the University under the interim orders of the Court or to direct the University to grant affiliation with retrospective effect, as it would

amount to directing the University to disobey the statute to which it owe its existence and the regulations made by the University itself.

19. She further referred to a judgment of the Supreme Court in Abhyudya Sanstha Vs. Union of India (UOI) and Others, for contending that if

there is any illegal admission done without getting approval by the competent authority, no direction can be given by courts to admit them to write

their examinations. In such circumstances, the institution which had admitted such students illegally, was directed to pay compensation.

20. In the present case, this court is clearly convinced that the request of the petitioner cannot be countenanced for more than one reason. First if

all, the inspection report submitted to this court after the direction issued clearly reveals that the petitioner college did not have any infrastructure to

run the college worth to its name. Secondly, as on date, the college did not enjoy any affiliation from the university. Even otherwise, since it was not

an affiliated college as on date and the request for renewal has been disagreed and the college did not also enjoy any permanent affiliation, the

theoretical arguments advanced by the learned Senior counsel cannot be countenanced. In any event, after amendment (which is only retro active),

the choice of seeking affiliation is now restricted in the university's statute, wherein the university must have the jurisdiction to affiliate the college. In

this case, the Pondicherry University Act clearly stipulates its territorial jurisdiction is applicable to the Union Territory of Puducherry and the

Andaman and Nicobar Islands. Further, the earlier writ petition itself seeking more or less similar relief was dismissed by this court. It is not as if

the petitioner cannot apply for affiliation to the Manonmaniam Sundaranar

University, Tirunelveli under which the territorial jurisdiction of the petitioner college comes. Therefore, if the petitioner satisfies the condition for affiliation, they can always make an application before them rather than seeking for affiliation to the respondent university which has no territorial jurisdiction. In view of the above, this court do not find any case is made out to entertain the writ petition. Accordingly, the writ petition will stand dismissed. No costs.