
(1989) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Misc. Petition No. 14390 of 1989

Dar-us-Salam Educational Trust

APPELLANT

Vs

Osmania University

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 225, 226
Writ Proceedings Rules, 1977 — Rule 24

Citation : AIR 1990 AP 380

Hon'ble Judges : Ramaswamy, J

Bench : Single Bench

Advocate : K. Pratap Reddy, for the Appellant; H.S. Gururaja Rao for Osmania University, for the Respondent

Judgement

1. This is one of the rarest of rare cases to oppose tooth and nail by the respondents for amendment of the relief in the writ petition. The petitioner is indisputably a minority institution. It had applied for and obtained in G.O.Ms. No. 255 dated September 7, 1984, permission to establish Deccan College of Engineering and Technology. It also sought affiliation to the respondent-University. Provisional permission was accorded on November 8, 1984 to admit students of four sections pursuant to which students have been admitted from year to year. It is not in dispute that two batches of students have passed final year and were conferred degrees in Engineering and the other three batches are now in the fourth, third and second year respectively. For the academic year 1988-89, the petitioner has admitted students in three sections and by letter dated July 18, 1988 they had reported to the University and permission was granted to continue the students. A report by the Inspection Committee has been submitted pursuant to which the petitioner had complied with the deficiencies pointed out therein and has sought for permanent affiliation. In the meanwhile, the University has sent a letter on February 6, 1989, requesting the Principal of the College to send on or before February 20, 1989 and the latest being before

March 13, 1989 with late fee, the application forms for examinations, of all the students i.e., first year to fourth year. Time was extended up to March 25, 1989. The Principal of the College has sent the applications on February 27, 1989. Thereafter, on March 21, 1989, the applications of the first year students have been returned on the ground that the College has not been affiliated, but accepted the applications of the students of the second to fourth years. At that stage the petitioners filed the writ petition to issue Mandamus or any other direction declaring the action of the University in refusing to accept the examination-fee and forms of first year as illegal with a direction to allow the students to appear for the written examinations on April 3, 1989 and practical on April 17, 1989. After hearing both sides, my learned brother, M. N. Rao, J. by order in W.P.M.P. No. 5695/89 dated March 27, 1989 granted interim direction to the University to allow the 180 students of First Year B.E. Course for the year 1988-89 to sit for the examinations on those days, by receiving back the application form and examination fee, etc. On appeal in W. A. No. 545/89 the Division Bench by order dated April 3, 1989, modified it and has given directions as follows :

"(a) The writ petitioner will, within two weeks from today make an appropriate application for affiliation to the University together with a detailed reply to the deficiencies point out earlier with particulars and dates and manner of their rectifications, if any. On receipt of this the concerned University authorities will have the facts verified and processed and give a decision within eight weeks of the date of receipt of the said application;

(b) The question whether a direction to hold a separate examination is to be given or not will be considered after the aforesaid period or earlier, if any decision is given by the University;

(c) The writ petitioner shall not make any further admissions for the next year without a decision by the University about the question of affiliation (Provisional or permanent) or provisional permission and also the method and manner of admissions. The writ petition itself is to be posted for hearing on 12-6-1989."

In pursuance thereof, the petitioner made an application to the respondent on April 10, 1989 with all material particulars and the financial resources of the petitioner College and requested grant of permanent affiliation. By letter dated June 28, 1989, the Registrar of the University has stated that the Executive Council based on the report of the Inspection Commission and the recommendation of the Academic Senate, has rejected the petitioner's application for affiliation of First Year course during 1988-89. As such the College will not have II year of B.E. Course during the academic year 1989-90, III year during 1990-91 and IV year during 1991-92. Further, the College was also not permitted to admit fresh batch of students during the academic year 1989-90. However, the students who were admitted during 1988-89 were permitted to appear for the First Year examinations subject to the condition that the students giving undertaking individually to the effect that they have no objection to their

allotment to the Civil Engineering Branch in any other engineering college affiliated to Osmania University from II year onwards, irrespective of their admission to branches other than Civil Engineering in the petitioner-College. Thereafter, arguments were addressed by both sides, and my learned brother, M.N. Rao, J. by order dated July 3, 1989 directed the Principal to give an undertaking on behalf of the students and it will be subject to the orders to be passed in the writ petition. Accordingly, the writ petition has been posted for final hearing. In the meanwhile, the petitioner has filed an additional affidavit on July 4, 1989 assailing the legality and correctness of the decision taken by the Executive Council and the authorities, for which an additional counter-affidavit has been filed by the respondents on July 7, 1989. When the matter came up for final hearing before me on August 2, 1989, during the course of arguments Sri Gururaja Rao, learned standing counsel for the respondent has raised an objection that the relief sought for has worked itself out by permitting the students to sit for the examination and the necessary consequential directions having been given, the lis in the writ petitioner no longer subsists. Sri Pratap Reddy, learned counsel for the petitioner has taken time to file an application for amendment of the relief, in view of the direction given by the Division Bench. Thus this matter has come up in this form.

2. The contention of Sri Pratap Reddy is that after the order passed by the Division Bench there is a change in the circumstances; the University has permanently rejected the affiliation; the petitioner has no option but to amend the relief sought for in the writ petition so as to continue the first year students who were already admitted and undergone the studies for the first year; no new facts have been stated except the facts already mentioned in the additional affidavit for which additional counter has already been filed; this Court, under Art. 226 of the Constitution, can take note of the subsequent events while granting the relief and there is no necessity for filing any express application for amendment of the relief. In support thereof, he placed reliance on *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, . Sri P. L. N. Sarma, learned counsel appearing for the Parents' Association, in support of the petitioner's claim, has also argued that subsequent events can be taken note of and the relief can be moulded based thereon and it is not even necessary to file any application for amendment. This was resisted by Sri Gururaja Rao. It is contended that the original relief is only for a direction to permit the students of the first year to sit for the examinations on the specified dates after receiving their applications and examination fee; that relief has already been given by the University itself by conducting examinations. Pursuant to the direction given by the Division Bench, the University has considered and rejected permanent affiliation to the petitioner. Therefore, if any amendment is made, it will be introducing a new cause of action which is not initially available. Except by filing a separate writ petition, the relief cannot be granted which alters the character of the relief in the writ petition and therefore the relief in this regard is misconceived.

3. The question for consideration is whether the amendment of the relief sought for, could be permitted. This Court framed Rules in exercise of the power vested under Art. 225 of the Constitution, as a court of record, regulating the proceedings under Art. 226. Rule 24 of the Writ Proceedings Rules, 1977, provides that :

"All other rules relating to causes and matters coming before the Original Side and Appellate Side of the High Court and the provisions of the Code of Civil Procedure, 1908 Will apply to the writ petitions and writ appeals in so far as they are not inconsistent with these rules."

There is no inconsistency between the writ proceedings rules and the Code of Civil Procedure. Order 6, R. 17, C.P.C. relates to the amendment of pleadings and relief, which postulates that -

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

Thereby, the Court has got ample power and jurisdiction to permit the parties at any stage to amend the pleadings. The grant of relief is always one of the jurisdiction of this Court under Art. 226 of the Constitution. It has power to issue any one of the prerogative writs or any other order or directions not only for the enforcement of any of the fundamental rights in Part III, but also for any other purpose. The question therefore is whether the amendment could be ordered in the facts and circumstances. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders, and Rameshwar and Others Vs. Jot Ram and Another*, the Supreme Court has held that the subsequent events can be taken note of. In *Bai Dosabai Vs. Mathurdas Govinddas and Others*, , it was held that the relief could be moulded based upon the subsequent events without any amendment. That was reiterated in *Hasmat Rai and Another Vs. Raghunath Prasad*, . In *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, the same ratio has been reiterated. The rules of procedure are only handmaid to advance the cause and subserve substantial justice. Unless the amendment takes away either vested right or abridges, which cannot be suitably compensated, the amendment could always be granted. The Full Bench of this Court in *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, (to which I am also a Member) has held that-

"It is settled law that this Court in applications filed under Art. 226 of the Constitution, has power to mould the relief taking into account the totality of the circumstances and the exigencies of the situation."

In the light of this law, the immediate question is whether the amendment could be considered. It is undoubtedly true, as contended by Sri Gururajarao, that if the cause of action originally laid was not available but it prejudicially affects the rights of the parties by way of amendment of the subsequent cause of action, amendment under O.6, R. 17 could be refused. But the facts constituting cause

of action should be the foundation. In that regard, there is no quarrel with the propositions laid in Addanki Lakshmanacharyulu Vs. Madduri Venkataramanujacharyulu, ; Kokamal Madhoram Vs. Gulabsing Gurudatsing, and Mashwe Mya v. Maung Mo Hnaung AIR 1922 PC 249 cited by the learned counsel not only in the counter-affidavit but also across the bar, do apply to the situations therein and the relief cannot be granted by way of amendment. But that situation has been changed by reason of the direction having been issued by the Division Bench to the petitioner to make an application for permanent affiliation with material particular which was in fact made as directed and the authorities have considered and rejected the application. As a result, the petitioner is now driven to file the application for amendment. It is undoubtedly true that it is always open to the petitioner to file a separate writ petition, but the first year students are now in the mid-stream of their career -- the first year study is already over and examinations have been held and the results are yet to be announced and as per the directions issued by the University they are to be shifted to some other colleges changing even the course for which they were admitted. The petitioner's right to admit the students has been permanently freezed, putting an end to the existence of the institution. Therefore, instead of filing a separate writ petition, if the amendment is ordered, it will not only shorten the litigation but also facilitates to decide the controversy expeditiously so that the students would know where they would stand. It is no doubt true that in B. N. Saoji v. State of M. P., AIR 1956 Nag 128 the Division Bench consisting of Hidayatullah, C.J. (as he then was) and Mangalamurti, J. have refused permission for amendment on account of the subsequent events and directed to file a separate writ petition. In view of the march of law made of moulding the relief under Art. 226 due to change of circumstances it is trite to refuse the relief and I hold that the above ratio no longer holds the field. There- fore, with due respect, I am unable to subscribe to the view taken by the Division Bench. Accordingly, I hold that in view of the subsequent events, pursuant to the directions issued by the Division Bench and with a view to shorten the litigation and dispose of the mater expeditiously I find that it is just and proper to allow the application for amendment so that the petitioner could seek appropriate relief available at law. It is made clear that we are not concerned at this stage with the merits of the writ petition. The W.P.M.P. is accordingly ordered. No costs.

4. Amendment application allowed.