

(1991) 10 MAD CK 0073
In the Madras High Court

Dr. Alexander Educational Foundation	APPELLANT
Vs	
University of Pondicherry and Another	RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Pondicherry Universities Act, 1985 — Section 32(5)

Citation : (1992) 2 MLJ 97

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—These two writ petitions are by Dr. Alexander Educational Foundation, Tambaram, against the Pondicherry University and the Government of Pondicherry.

2. The abovesaid foundation runs an educational institution by name "Pant Institute of Technology" from the year 1987. The 1st respondent-university granted to the said institution provisional affiliation to start B. Pharm. course, B.Sc. Nutrition course and B.Sc. (M.L.T.) course in 1987. On 9.4.1991, the 1st respondent-university sent two impugned show cause notices under Statute 32(5) of the Pondicherry University Act, 1985, one in respect of B. Pharm course and the other in respect of the two B.Sc. courses. With reference to B. Pharm course, the notice stated that the petitioner was given an opportunity to defend itself as to why the said B. Pharm course should not be de-affiliated from the academic year 1991-92 onwards. With reference to the other two B.Sc. course also, the notice stated that the petitioner was given an opportunity to defend itself as to why the provisional affiliation granted should not be withdrawn from the academic year 1991-92 onwards. W.P. No. 7725 of 1991 has been filed for the issuance of certiorarified mandamus to quash the above said show cause notice relating to B. Pharm course and direct the 1st respondent not to interfere with the affiliation already granted for six years with regard to B. Pharm course. This provisional affiliation for 6 years was granted on 21.11.1988 by the 1st respondent-university pursuant to the order of this Court dated 27.10.1988 in

W.A. No. 1110 of 1988, about which further details are given in paragraph 5 below. W.P. No. 7726 of 1991 has been filed praying for issuance of a writ of certiorarified mandamus to quash the said show cause notice relating to the said B.Sc. course and direct the 1st respondent to continue the affiliation for the said courses without any further interference.

3. In the stay petitions filed in the above writ petitions, on 14.5.1991, this Court ordered that "further proceedings may go on in the matter, but final orders passed should not be given effect to until further orders of this Court". While so, two final orders have been passed by the Vice-Chancellor of the 1st respondent-university under Statute 13(3) of the Pondicherry University Act, 1985, pursuant to the above referred to two show cause notices. One order is dated 10.5.1991 relating to the above said B.Sc. courses, stating that the Vice Chancellor decides not to renew the provisional affiliation in respect of the above said B.Sc. courses in the Pant Institute of Technology from the academic year 1991-92 onwards. The other order is dated 19.8.1991 and it states that the Vice Chan cellor decides to de-affiliate the abovesaid B. Pharm course in the Pant Institute of Technology from the academic year 1991-92 onwards.

4. Since the said final orders have been passed, the writ petitioner has filed W.M.P. No. 13173 of 1991 in W.P. No. 7726 of 1991 and W.M.P. No. 17947 of 1991 in W.P. No. 7725 of 1991. W.M.P. No. 13173 of 1991 seeks to substitute the prayer in the writ petition for quashing the abovesaid final order dated 10.5.1991 and directing the 1st respondent to continue the affiliation for the abovesaid B.Sc. courses. This writ miscellaneous petition was ordered as prayed for, on 12.8.1991. W.M.P. No. 17947 of 1991 is for quashing the abovesaid final order dated 19.8.1991 and directing the 1st respondent to continue the affiliation as already ordered in W.A. No. 1110 of 1988 for the B. Pharm course to the petitioner's institution. Though this petition has not already been disposed of, it is obvious that this writ miscellaneous petition has also to be ordered, just as the abovesaid W.M.P. No. 13173 of 1991. Accordingly, W.M.P. No. 17947 of 1991 is also hereby ordered as prayed for.

5 The above referred to W.A. No. 1110 of 1988 is the writ appeal filed by the petitioner herein against the order dated 8.8.1988 in W.M.P. No. 11323 of 1988 in W.P. No. 7798 of 1988 on the file of this Court. The said W.P. No. 7798 of 1988 was also filed by the petitioner herein praying for a direction to the 1st respondent-university to continue the affiliation for the abovesaid B. Pharm and B.Sc. courses. The abovesaid W.P. No. 7798 of 1988 was filed in the following circumstances:- Originally, the provisional affiliation referred to in para 2 above was granted only for one year. The said grant was communicated to the petitioner by letter dated 30.7.1987 in respect of B. Pharm and B.Sc. Nutrition courses and by letter dated 27.10.1987 in respect of B.Sc. (M.L.T.) course. The said grant was also subject to the condition that the petitioner agreed to fulfil all the conditions laid down by the Inspection Commission, based on whose report, the said grant was made. But, on the ground the said conditions were not

complied with, after show cause notice and personal hearing, the 1st respondent-university, by its letter dated 25.2.1988, informed the petitioner that the provisional affiliation for B.Sc. Nutrition and M.L.T. courses, automatically ceased since it was granted only for one year. A similar letter dated 2.7.1988 was also sent to the petitioner with reference to B. Pharm course also. So, the petitioner filed the above W.P. No. 7798 of 1988 and it is said to be pending.

6. In the abovesaid writ petition, the abovesaid W.M.P. No. 11323 of 1988 prayed for an interim direction, directing the 1st respondent to permit the petitioner to admit students for the abovesaid B. Pharm and B.Sc. courses pending disposal of the abovesaid W.P. No. 7798 of 1988. The said writ miscellaneous petition was dismissed and against the dismissal, the above said writ appeal was filed. In the said writ appeal, by order dated 27.10.1988, the 1st respondent was directed to accord provisional affiliation for a period of six years in respect of B. Pharm course alone, commencing from the academic year 1988-89, subject to the condition that the petitioner should create an endowment to the tune of Rs. 15,00,000 within a period of five years in five specified yearly instalments. Admittedly, the said condition of creating the endowment is being fulfilled in terms of the abovesaid order. The abovesaid affiliation for six years also had been granted as stated above on 21.11.1988. It may also be stated here that by order dated 12.8.1991 in W.M.P. No. 9235 of 1991 in W.A. No. 1110 of 1988, it has also been clarified that the abovesaid order dated 27.10.1988 does not bar the 1st respondent-university to take appropriate action against the petitioner in accordance with law. It may also be stated that the 1st respondent has also granted to the petitioner affiliation to the above said B.Sc. course also once again for 1989-90, after another inspection commission and recommended such affiliation.

7. However, since the abovesaid show cause notices dated 9.4.1991 have been issued, these two writ petitions W.P. Nos. 7725 and 7726 of 1991 have been filed by the petitioner and since subsequently the abovesaid final orders dated 10.5.1991 and 19.8.1991 have been passed, the above referred to substitution of prayer in the respective two writ petitions, have been sought for and have also been granted as stated above.

8. Now, apart from the original common affidavit filed in support of both the present writ petitions and the separate counter affidavits filed by the 1st respondent in the respective two writ petitions, the 1st respondent has also filed two additional counter affidavits dated 21.8.1991, one in W.P. No. 7725 of 1991 and another in W.P. No. 7726 of 1991, and on behalf of the petitioner, an affidavit dated 25.8.1991 styled as "Common counter affidavit" was also filed. Further, subsequently on behalf of the petitioner, a common supplementary affidavit dated 4.9.1991 has been filed. Thereafter a common counter affidavit dated 8.9.1991 was also filed on behalf of the 1st respondent.

9. Though the averments and counter averments are so voluminous, we think, the following brief statement of some further material facts, as borne out by the

abovesaid affidavits and relevant documents, which are germane to the arguments made by both the counsel, and to the discussion that follows, is sufficient. The abovesaid show cause, notices of 9.4.1991 were preceded by an inspection commission appointed by the 1st respondent-university on 25.3.1991. To this inspection, the 1st respondent gave notice to the petitioner by its letter dated 12.3.1991, to which, the petitioner replied by its letter dated 16.3.1991. In the said reply, though the petitioner expresses that the staff and students are busy preparing for the final examination to be held a week thereafter and that it failed to understand the necessary purpose of the inspection, it however states finally "We would welcome the Inspection Committee and show them of our facilities but it is only our expression of an apprehension that this Inspection Committee should not be a weapon of harassment. "However, on 23.3.1991, the petitioner sent a telegram stating "regarding sudden inspection of Pant Institute of Technology as usual goondas appeared at the institution and broken the cafeteria and threatened to burn the institution by local vandals.... Institution closed temporarily till law and order improves.... Inspection may be taken up later". (underline is ours). This telegram has reached the 1st respondent only at 10.30 a.m. on 25.3.1991, the date of inspection. But, however, since the Inspection Commission had already arrived at the petitioner-institution on 25.3.1991, it went on with the inspection, though no responsible person on behalf of the petitioner was present there to give them the necessary information, etc. The inspection report submitted by the Commission strongly recommends that the provisional affiliation for B.Sc. courses be not renewed from 1991-92, and that with reference to B. Pharm course, there may be de-affiliation from the said year. Based on the said report, the abovesaid show cause notices were issued, though a copy of the said report was not furnished to the petitioner. In the abovesaid show cause notice with reference to B.Sc. courses, inter alia, it is stated as follows:

The Commission have given a formal recommendation that the provisional affiliation for B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses be not renewed on the ground of the deficiencies and violations as briefly mentioned below:

- (i) Except two class rooms, the rest are all housed only in temporary sheds;
- (ii) The laboratories are inadequate for the sanctioned strength of different courses, and while there should be at least 6 well equipped labs, the number of labs available in the Institute is totally inadequate. Further the same labs, are being utilised for the students enrolled in Community Polytechnic housed in the same building for Diploma in Pharmacy and certificate course in Radiology and thereby making it almost impossible to conduct the practical courses as per time-table. Further, the labs do not have space to conduct practicals for the sanctioned strength at any given time.
- (iii) No hostel facilities. Students are accommodated in rented buildings far away from the College campus and have to walk a long distance for all their meals in the Institute Canteen.

(iv) The Institute Canteen is in a dilapidated condition;

(v) No play ground;

(vi) With regard to the teaching staff available in the Institute, the list of books available in the Library and particulars of equipments, the Commission was not in a position to report as necessary information was not made available by the Institute. However, the commission noted that students present on the spot complained that there was no permanent Principal and sufficiently qualified teachers in different major subjects, that they have paid heavy capitation fees, and that all the financial transactions are maintained in Tambaram which is outside the jurisdiction of this University causing great inconvenience to the students and parents.

4. In view of the above grave inadequate and gross lack of teaching, physical and laboratory facilities the inspection Commission has "strongly recommended" that provisional affiliation for B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses be not renewed from the academic year 1991-92.

5. As provided in the Statute 32(5) of the Pondicherry University Act, you are given an opportunity to defend yourself as to why the provisional affiliation of B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses not be withdrawn from the academic year 1991-92 onwards. Your explanation will be placed before the Executive Council of this University.

Likewise, in the other show cause notice relating to B. Pharm course, almost the abovesaid same allegations are mentioned with one additional deficiency or violation as follows:

While the Pharmacy College must possess at least 10 acres of land, (as per the affiliation condition) the land available for the use of the Institute appears to be less than 5 acres and even this is not in the name of the Institute or Society but in the name of private individuals which is highly objectionable.

10. To these two show cause notices, the petitioner replied by two letters both dated 21.4.1991, though the one relating to B.Sc. courses was addressed to the Vice Chancellor of the University, the other relating to the B. Pharm course was addressed to the Deputy Registrar of the University. In the former reply, without specifically adverting to any of the abovesaid deficiencies and violations pointed out in the relevant show cause notices, the petitioner, after mentioning about the previous, Inspection Committee's report, only stated generally thus:

The institution is being run with good standard by competent teachers without any complaint from any quarters and is sending periodical reports to the University regarding its staff position and the academic matters....The management is willing to comply with any additional infrastructural facilities as may be pointed out by the University.

Then, in the other reply, in relation to B. Pharm course, it is stated that in view of

the abovesaid order dated 27.10.1988 in W.A. No. 1110 of 1988, "the University of Pondicherry has no jurisdiction to send another inspection committee to inspect the Pant Institute of Technology.... In terms of the judgment you are entitled to verify only as to whether the management has remitted the endowment amounts as stipulated by the High Court and without getting any permission for sending another inspection committee, from the Honourable High Court, Madras, the University has no jurisdiction to do the same and consequently no reply need be sent by the management for your notice issued under reference cited above. The issuance of the above notice is an act of Contempt of Court". In this reply, there is no denial at all regarding the specific allegations made against show cause notice Further, in neither of the said replies, there is any complaint that copy of the inspection report was not given to the petitioner and by reason of that, they could not make their full representations.

11. However, as already stated, on 10.5.1991, the 1st respondent passed the above said impugned order dated 10.5.1991, in relation to B.Sc. courses, which, inter alia runs as follows:

Whereas a number of petitions have been received from members of the public, parents and students alleging irregularities in the functioning of the Pant Institute of Technology and the conduct of B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses... whereas the explanation offered by the Institute was placed before the academic council as envisaged under the Statute 32(5) of Pondicherry University Act and the matter was discussed and deliberated through Agenda Item No. 91.15.58 in its meeting held on 6.5.1991; And whereas the Academic Council has resolved to recommend de-affiliation, discontinuance, withdrawal and non-renewal of the provisional affiliation in respect of B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses from the academic year 1991-92 onwards; Now, therefore, in the interest of good standards of education, the students and parents, immediate action should be taken, the Vice Chancellor in exercise of powers vested in him by virtue of Statute 13(3) of the Pondicherry University Act, hereby decides not to renew the provisional affiliation in respect of B.Sc. (M.L.T.) and B.Sc. (Nutrition) courses in the Pant Institute of Technology from the academic year 1991-92 onwards....

12. Likewise, in respect of B. Pharm course also, the impugned order dated 19.8.1991 was passed by the 1st respondent, containing almost similar expressions, as found in the other impugned order.

13. Now, the main submissions of Mr. Kapil Sibal, learned Senior Counsel for the petitioner are as follows: The 1st respondent has violated the principles of natural justice in passing the impugned orders in not having furnished a copy to the petitioner, of the abovesaid inspection report, based on which the abovesaid show cause notices were issued and the subsequent impugned orders were passed. In the circumstances (as narrated earlier) in para 9 above) the inspection on 25.3.1991 should not have taken place, but it should have been postponed. As per Statute 32(5) under the above said Act, affiliation can be

withdrawn only if conditions, on the fulfilment of which, the institute was affiliation, are not satisfied. The allegation that the petitioner's institution has not fulfilled the said conditions, is not correct. As per Statute 32(5), only the Executive Council can withdraw the affiliation. But, in the present case, the Vice Chancellor has done it. The Vice Chancellor has no such power u/s 13(3) of the Pondicherry University Act. The said Section 13(3) no doubt says "The Vice Chancellor may, if he is of opinion that immediate action is necessary on any matter exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter". But, in view of the second proviso therein, "any matter" spoken to in Section 13(3) would relate only to service matters and not withdrawal of affiliation. The Court cannot validate the impugned orders on reasons not disclosed therein even though they are disclosed in other records of the 1st respondent.

14. Mr. P.D. Dinakar, learned Counsel for the 1st respondent University refuted these submissions and contended briefly as follows: There is no violation of principles of natural justice. The copy of the abovesaid inspection report need not be given to the petitioner in view of the First Ordinance of the University, viz., Rule 5(r) in Chapter VII therein. Even in the abovesaid replies to the show cause notices no such complaint was made that the said copy was, not furnished to the petitioner. Further, in the said replies, the specific allegations for withdrawal of the affiliation, made in the show cause notices, have not been specifically controverted at all. The above said telegram to postpone the inspection, reached only at 10.30 a.m. on 25.3.1991, the date of inspection and by then, the Inspection Commission had already reached the institute for making the inspection. The petitioner has certainly violated the conditions of affiliation. The Vice Chancellor is well within his rights in having invoked Section 3(3) of the Act, in view of the necessity for taking immediate action, since otherwise, the petitioner would admit new students for the current academic year and place them in difficulties. The expression "any matter" in that Sub-section, cannot be restricted to only service matters, No doubt, as per the second proviso therein, the appellate power is provided to the Executive Council. But that will not apply to the present case.

15. We have considered the rival submissions. Regarding the contention that copy of the inspection report was not furnished to the petitioner, we cannot accept the contention of the learned Counsel for the 1st respondent that in view of Rule 5(4) of Chapter VII of the First Ordinance, the said copy need not be communicated to the institute. The said Rule 5(4) relates to inspection done pursuant to an application by the institute for permanent affiliation to a course, which might be granted after provisional affiliation was granted for three academic years. In that context only the said Rule 5(4) says that the report of the Inspection Committee shall not be communicated to the institution, but shall be regarded as a confidential documents until it has first been considered by the University. But, the present case is an inspection to see whether the conditions of

provisional affiliation were complied with by the petitioner-Institution and whether the provisional affiliation could be renewed or the institute should be de-affiliated, as the case may be. The said Rule 5(4) would not apply to this case. So, the copy of the report should have generally been given to the petitioner along with the show cause notices. No doubt, the original of the said report has been produced before us and a copy thereof has also been now given to the petitioner.

16. But, the question is, whether the non-furnishing or the copy along with the show cause notice or atleast prior to the passing of the impugned orders, and not providing an opportunity to rebut that is contained in the said report, would vitiate the impugned orders in the present case. On the further facts of the present case, we think this question has to be answered in the negative since the abovesaid contention of the petitioner in this regard cannot be raised by the petitioner for the following reasons: We have already mentioned the specific deficiencies or violations of the petitioner's institute, contained in the two show cause notices. We have also already indicated that there was no denial in the abovesaid replies of the petitioner, of those specific allegations in the show cause notices. One such allegation is that the laboratories are inadequate for the sanctioned strength of different courses and while there should be at least 6 well equipped labs, the number of labs available in the Institute is totally inadequate and the same labs are being utilised for the students enrolled in community Polytechnic housed in the same building and thereby making it almost impossible to conduct the practical courses as per time-table. Another deficiency, the commission noted is that the students present on the spot complained that there was no permanent Principal and sufficiently qualified teachers in different major subjects. Further, with reference to pharmacy course, the additional allegation is that the Pharmacy College must possess at least 10 acres of land as per the affiliation condition and the land available for the use of the institute appears to be less than 5 acres. To these and other specific allegations, there is no specific denial at all in the replies sent on 21.4.1991, as already stated. Further, in those replies of 21.4.1991, there was no complaint about the non-furnishing of the copy of the report, nor there is an allegation that any prejudice has been caused to the petitioner on account of the non-furnishing of the said copy. Further, most of the findings of the report are engrafted in the show cause notices themselves. No doubt, the petitioner seeks to controvert some of those specific allegations found in the show cause notices, in the affidavits filed by it in support of the writ petition. But, those factual averments in the petitioner's affidavits having been disputed in the counter affidavits of the 1st respondent, we cannot go into those questions of fact in our present jurisdiction under Article 226 of the Constitution of India, particularly when the petitioner has not chosen to deny earlier specifically the various abovesaid allegations made in the show cause notices and not chosen to say earlier that any prejudice was caused to it on account of the non-furnishing of the copy of the said report.

17. Then, regarding the other submission also, that the abovesaid inspection on

25.3.1991 should not have taken place, but should have been postponed, we have come to the conclusion that in this regard also, there is no violation of principles of natural justice. As we have pointed out earlier, in its reply dated 16.3.1991, the petitioner, though expressed some apprehensions, welcomed the Inspection Committee and promised to show the Committee the facilities available in the petitioner's institute. No doubt, on 23.3.1991. it sent the above said telegram for postponement of the inspection scheduled to take place on 25.3.1991. But, as already stated, the said telegram reached only at 10.30 a.m. on the very date of inspection, viz., 25.3.1991 and by then, the Inspection Commission itself was at the premises of the petitioner itself for inspection. So the 1st respondent-University cannot be blamed in this regard. If really, on 23.3.1991, the petitioner genuinely wanted a postponement of the inspection, it could have phoned up to the University and also sent a special messenger with a written request for postponement.

18. That apart, the conduct of the petitioner does not also warrant the relief being given in its favour, under Article 226 of the Constitution of India. Even when the Inspection Commission, which was composed of very eminent personalities, came on the spot on 25.3.1991, there was not even a single responsible person to receive the Commission. Thus, the petitioner did not even show the ordinary courtesy to receive the commission when it arrived at its institute. If really, the petitioner's intentions are bona fide, it could have at least received the Commission and told them about the abovesaid telegram sent for postponement and also explained to them its alleged difficulties in allowing the inspection on that day. Further, the petitioner's conduct in one other aspect also may be noted in this regard. In the abovesaid telegram itself it is mentioned that "as usual goondas appeared at the institution". This also shows, even according to the petitioner's own telegram, that the goondas has appeared at the institution on many other earlier occasions also. This certainly does not speak well of the petitioner's institute and the way in which it is functioning. That apart, even in one of the abovesaid replies dated 21.4.1991 no doubt relating to B. Pharm course, (with reference to which the abovesaid order dated 27.10.1988 was passed by this Court) the petitioner even went to the extent of saying that the University had not jurisdiction to send another inspection committee and that in terms of the abovesaid order dated 27.10.1988, the University was entitled to verify only as to whether the management had remitted the endowment amounts as stipulated by the High court and no reply need be sent by the petitioner for the show cause notice. Such an attitude also does not speak well of the petitioner.

19. Then, in view of the non-denial in the abovesaid replies dated 21.4.1991, of the abovesaid specific charges in the show cause notices, it cannot be said that the conditions of affiliations have not been violated. Then, the other submission of the learned Counsel for the petitioner that the impugned orders could not have been passed by the Vice Chancellor u/s 13(3) of the said Act, is also not correct. The term "any matter" used in Section 13(3) is wide enough to include non

renewal affiliation or de-affiliation, as in the present case. In such a case, the Vice Chancellor can exercise the authority of the Executive Council provided under Statute 32(5). The second proviso of Section 13(3) cannot limit the scope or ambit of the wide expression "any matter" used in the main part of Section 13(3). As rightly contended by the learned Counsel for the 1st respondent, there was necessity for taking immediate action since otherwise, the 1st petitioner would admit new students for the current academic year itself and might place those students in difficulties.

20. With reference to the other submission of the learned Counsel for the petitioner that the court cannot validate the impugned orders on reasons not disclosed therein, we think there is no necessity for going into this submission, since we are upholding the impugned orders, not on any ground, or grounds urged by the learned Counsel for the 1st respondent, which were not disclosed in the abovesaid show cause notices which have been specifically referred to in the impugned orders and which resulted in the above said impugned orders.

21. In the view we have taken on facts, there is no necessity to deal with the applicability of the decisions cited by the learned Counsel for the 1st respondent excepting to quote the following passage in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, :

Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.

Here also, there is no allegation about the mala fides against the above said Inspection Commission.

22. No doubt, the impugned orders also direct the petitioner to ensure that the students already admitted in the above said courses, may be allowed to continue to complete their respective courses in the petitioner's institute. In this context, in case, the petitioner-institute is not able to continue to teach the said courses to those students, the University is directed to make other alternative arrangements for those students. In this regard, the learned Counsel for the 1st respondent has also assured us that the University would do so.

23. In the result, these writ petitions are dismissed. However, in the circumstances of the case, no costs.