

(2006) 12 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 41049 of 2004 and W.P.M.P. No. 1 of 2006

I. Elangovan

APPELLANT

Vs

The Thiruvalluvar University and Others

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226
National Council for Teacher Education Act, 1993 — Section 14, 14(1), 17(1)
National Council for Teachers Education (Recognition, Norms and Procedure)
Regulations, 2002 — Regulation 8
Thiruvalluvar University Act, 2002 — Section 10(3), 24(49), 38, 61(3)

Citation : (2007) 3 LW 755

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; G. Masilamani for M. Sekar, for Respondent-1, M. Sekar, Spl. G.P. for Respondent-2, N.R. Chandran for R. Suresh Kumar, for Respondents-3 and 5, R. Muthukumarasamy for R. Suresh Kumar, for Respondents-7 and 10, V. Sanjeevi, for Respondents-4, 8 and 9 and B. Rabu Manohar, for Respondent-6, for the Respondent

Judgement

V. Ramasubramanian, J.—½Education is the manifestation of perfection already in man½ said Swami Vivekananda. But if he were alive

today, he would have said ½Education is the manifestation of perversion already in man½. This is the stage to which the field of education has

been brought into. This is why the Supreme Court observed in State of Maharashtra Vs. Vikas Sahebrao Roundale and others, as follows:

Obviously, the field of education is found to be fertile, perennial and profitable business venture with least capital outlay.

2. The case on hand has been filed by an Academician, who is a member of the Academic Council of Thiruvalluvar University, the first respondent

herein. The respondents 3 to 10 are Private Self-financing Colleges imparting teacher education and training affiliated to the first respondent-

University. All the respondents 3 to 10 were granted affiliation only for the academic year 2006-2007, though they had obtained recognition from

the National Council for Teacher Education for the academic year 2005-2006 and applied for affiliation for the academic year 2005-2006.

3. On the basis of the recognition granted by the National Council for Teacher Education for the academic year 2005-2006 and also on the

ground that they sought for affiliation only for the academic year 2005-2006, the respondents 3 to 10 moved the first respondent-University to

alter the affiliation granted for 2006-2007 to 2005-2006.

4. The request of the respondents 3 to 10 was circulated under Agenda Item No. 11 to the members of the Syndicate of the University, for

consideration, in its meeting proposed to be held on 27.10.2006. Contending that such a move amounted to retrospective affiliation, in violation of

the statutes of the University, the petitioner has filed the present writ petition, praying for a Writ of Mandamus to direct the first respondent-

University to forbear from granting retrospective affiliation to respondents 3 to 10 with effect from the academic year 2005-2006.

5. On 27.10.2006, notice was ordered in the writ petition and a direction was issued by this Court that any action taken on 27.10.2006 in the

meeting of the Syndicate will be subject to the result of the writ petition. Consequently, the meeting of the Syndicate was held as scheduled on

27.10.2006 and in respect of the disputed Agenda Item No. 11, the Syndicate passed a resolution, resolving not to grant affiliation for 2005-2006

to the respondents 3 to 10, but to permit the students to appear for B.Ed., degree examination in November/December 2006. In other words, the

request of the respondents 3 to 10 to grant affiliation from the academic year 2005-2006 has been turned down by the first respondent-University

and the prayer in the writ petition, on a cursory glance, appears to have been conceded by the University.

6. However it is not so. Even while rejecting the request of respondents 3 to 10 to grant affiliation with effect from 2005-2006, the Syndicate of

the University permitted the students to appear for B.Ed., examination subject to three conditions viz.,:

(a) that a panel consisting of Registrar and a subject expert nominated by the Vice Chancellor would verify the details of enrollment of students

admitted in the year 2005-2006 for satisfying themselves that theory and practical classes and the teaching experience have been conducted as per procedure;

(b) that the permission to write the exam would be subject to the result of the writ petition; and

(c) that the managements of the respondents 3 to 10 shall remit a penal fee of Rs. 5,000/- per candidate.

7. In the scenario that changed as aforesaid, the writ petition came up for hearing. I heard Mr. D. Hariparanthaman, learned Counsel appearing for

the petitioner, Mr. G. Masilamani, learned senior counsel appearing for the first respondent-University, Mr. M. Sekar, learned Special

Government Pleader appearing for the second respondent, Mr. N.R. Chandran, learned senior counsel appearing for the respondents 3 and 5,

Mr. R. Muthukumaraswamy, learned senior counsel appearing for the respondents 7 and 10, Mr. V. Sanjeevi, learned Counsel appearing for the

respondents 4, 8 and 9 and Mr. B. Rabu Manohar, learned Counsel appearing for the 6th respondent.

8. In view of the change in the complexion of the game after the resolution passed on 27.10.2006, a preliminary objection was raised by Mr. G.

Masilamani, learned senior counsel appearing for the first respondent-University and Mr. N.R. Chandran, learned senior counsel appearing for the

respondents 3 and 5 that the writ petition had actually become infructuous, in view of the resolution passed by the University on 27.10.2006.

However, I am unable to accept the said contention in view of the following:

(a) At the time of ordering notice in the writ petition, on 27.10.2006, this Court passed an order to the effect that any action taken on 27.10.2006

will be subject to the result of the writ petition and that it was open to the petitioner to bring to the notice of the Court, the question whether the

grant of retrospective affiliation is legal. Even the resolution of the University makes it clear that the students are permitted to write the examination

subject to the result of the writ petition.

(b) Moreover, as rightly contended by Mr. D. Hariparanthaman, learned Counsel for the petitioner, though the University passed a resolution on

27.10.2006, refusing to grant retrospective affiliation to the respondents 3 to 10, the University has permitted the students to write the

examinations, thereby conferring the benefit of retrospective affiliation to the students, even while depriving the said benefit to the managements of the institutions.

Therefore, I am unable to reject the writ petition as having become infructuous.

9. Mr. G. Masilamani, learned senior counsel for the first respondent-University contended that the writ itself was not maintainable inasmuch as the

petitioner had no locus standi to challenge an Agenda placed before a meeting of the Syndicate and that since the petitioner had not filed the

present writ petition as a Public Interest Litigation, he was not entitled to maintain the writ petition without seeking a relief for himself. But the said

contention is far from convincing. The petitioner is an Academician. He is a member of the Academic Council of the University and the Vice

President of the Association of the University Teachers and the Secretary of Thiruvalluvar University Co-ordination Council. In para-3 of the

affidavit filed in support of the writ petition, the petitioner has claimed that he is one of the ten teachers elected to the Academic Council of the

University on 23.9.2006 and that from among the ten Academic Council members, two persons are due to be elected to the Syndicate. The

schedule for the election to the Syndicate had already been notified and the last date for filing the nomination was 30.10.2006. The grievance of the

petitioner is that when the schedule for election to the Syndicate has already been announced, the University ought not to have brought the matter

for the consideration of the Syndicate. The petitioner has filed his nomination and if such a person is said to have no locus standi to question the

action of the University, I fail to understand who else will be entitled to question the same. Merely because the petitioner did not describe the writ

petition as a Public Interest Litigation, it does not mean that the writ petition ought to be thrown out on the ground that the petitioner was not

seeking a relief for himself. As a matter of fact, the case of the petitioner in the writ petition is that the University Syndicate which is supposed to

have 14 members, was functioning only with just seven members, out of whom four are ex-officio members and that after announcing an election to

the Syndicate from among the members of the Academic Council, the University

ought not to have rushed through, with an Agenda to grant

retrospective affiliation to respondents 3 to 10. Therefore, the writ petition cannot be rejected on the ground that the petitioner was not seeking a relief for himself.

10. Mr. N.R. Chandran, learned senior counsel appearing for the respondents 3 and 5 also questioned the maintainability of the writ petition on two grounds viz.,:

(a) that a person, who is a part of a Commission or any other System, is not entitled to challenge the very Act of the System, as has been laid

down by the Supreme Court in Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, ; and

(b) that even before the Syndicate could meet and take a decision, the writ petition ought not to have been filed, as laid down by the Supreme

Court in G. Sarana Vs. University of Lucknow and Others, , especially when in fact, the petitioner also had a right of appeal to the Chancellor of

the University u/s 10(3) of the Thiruvalluvar University Act, even if the Syndicate passed a resolution, as anticipated.

11. However, I am unable to countenance the said contentions on account of the following reasons:

(a) The case in Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, arose out of the denial of certain privileges

and perquisites attached to the Post of the Member of Public Service Commission in Bihar. But without confining himself to the reliefs sought for in

the writ petition, the member of the Public Service Commission questioned the validity of the actions of the Public Service Commission itself. In

that context, the Supreme Court held that "discretionary remedy vested under Article 226 cannot be allowed to be invoked by a member of the

Public Service Commission to question the correctness or validity of functions performed or duties discharged by the Public Service Commission

as a body". The rationale behind such a conclusion was also spelt out by the Supreme Court in para-28 of the said judgment, that a member

questioning the action must be regarded as a party to the function required to be performed, even though he might be a dissenting member or a

member in minority or a member who abstained from taking part. Thus, the said case was one in which a member of the Commission itself, chose

to challenge the validity of the action of the Commission. In the present case, the petitioner is not a member of the Syndicate. He has just filed his

nomination from the Academic Council for an election to the Syndicate. As on date, he is not a member of the Syndicate and hence his right to

question the proposed action of the Syndicate cannot be curtailed when he has not yet become a member of the Syndicate.

(b) The second decision relied upon by Mr. N.R. Chandran, learned senior counsel, in G. Sarana Vs. University of Lucknow and Others, , arose

out of non-selection of a candidate to a Post of Professor. After participating in the selection process and finding himself not selected, the

unselected candidate approached the Court even before the selection was accepted by the Executive Council of the University. Therefore, the

Supreme Court held that the writ petition was not maintainable at that stage when the Executive Council was still to scrutinize the recommendation

of the Selection Committee. But, in the present case a truncated Syndicate consisting of only seven members out of the total strength of fourteen

was to consider the Agenda and even out of those seven members, four were ex-officio members. The language in which the Agenda Item No. 11

was couched, also left no room for any doubt and hence the petitioner had no option except to rush to Court at this stage. Therefore, the writ

petition cannot be said to be not maintainable.

12. Coming to the merits of the case, the only grievance of the petitioner is that the University cannot and shall not grant retrospective affiliation.

Though there was an attempt by the learned Senior Counsel appearing for the respondents, to play the game of Su do ku, with the word

“retrospective”, I do not propose to go into the same for the simple reason that both the petitioner as well as the first respondent-University

have used the words “retrospective affiliation” only with reference to the request of the respondents 3 to 10 to grant affiliation from the year

2005-2006 instead of the year 2006-2007. Retrospective affiliation in simple terms would only mean the grant of affiliation in a particular academic

year, with effect from the previous academic year. In other words, if an order granting affiliation is passed in 2006-2007 with effect from 2005-

2006 then it is retrospective affiliation. It is on such understanding of the term “retrospective affiliation” that the petitioner has approached this

Court with the present writ petition.

13. Fully understanding and realizing the significance of the objections raised by the petitioner with reference to retrospective affiliation, the first

respondent-University not only passed a resolution on 27.10.2006 but also filed a counter-affidavit, which makes an interesting reading. The

resolution passed on 27.10.2006 by the Syndicate of the University under Agenda Item No. 11 begins with the following words:

RESOLVED that as there is no provision in the Thiruvalluvar University Act for affiliating the educational institutions retrospectively, the Syndicate

is of the view that the affiliation for 2005-2006 need not be considered.

14. Throughout the counter-affidavit filed by the first respondent-University, they have taken a positive stand that there is no provision in the

Thiruvalluvar University Act for the grant of retrospective affiliation. In view of a totally contradictory stand taken by the University at the time of

hearing of the writ petition, it has become necessary to extract the relevant portions of the counter-affidavit of the first respondent-University as

follows:

(a) In para-4 of the counter-affidavit, the first respondent-University has stated as follows:

As there is no provision in the Thiruvalluvar University Act for affiliating the educational institutions retrospectively, the Syndicate has declined to

consider their requests for grant of affiliation of those Colleges for 2005-2006.

(b) In para-5 of the counter-affidavit, the first respondent-University has stated as follows:

As there is no provision in the Act for granting affiliation with retrospective effect, the request of the Colleges for grant of affiliation for the year

2005-2006 was not placed before the Affiliation Committee.

(c) In para-8 of the counter-affidavit, the first respondent-University has stated as follows:

However, the University has not granted affiliation for the year 2005-2006 since there is no specific provision in the Act for granting retrospective

affiliation.

(d) In para-10 of the counter-affidavit, the first respondent-University has stated as follows:

In the meeting of the Syndicate held on 27.10.2006, the request of the colleges for grant of retrospective affiliation has not been considered as

there is no provision in the Act to give retrospective affiliation.

As there is no provision in the Thiruvalluvar University Act for granting retrospective affiliation, the request of the Colleges for grant of

retrospective affiliation has not been considered by the Syndicate in its meeting held on 27.10.2006.

Further, there is no question of granting retrospective affiliation to the Colleges since there is no provision in the Act to give retrospective affiliation.

Since there is no provision in the Act for grant of affiliation with retrospective effect and as there is only one member in the Affiliation Committee,

the request of the Colleges for grant of affiliation for the year 2005-2006 was not placed before the Affiliation Committee.

15. Despite such a categorical stand taken by the first respondent-University both in the resolution passed as well as in the counter-affidavit, the

University took an abhorring stand during the course of the hearing of the writ petition that the University has sky high powers to grant

retrospective affiliation and even to permit the students without any affiliation or approval also to write examinations and take degrees. To drive

home such a contention, my attention was drawn to the provisions of Sections 24(49), 38 and 61(3) of the Thiruvalluvar University Act, 2002.

16. Section 24(49) of the Thiruvalluvar University Act, 2002 enables the Syndicate to exercise such other powers and perform such other

duties as may be conferred or imposed on it by this Act or the Statutes, Ordinances and Regulations. Section 61(3), is a transitory provision

making the Statutes, Ordinances and Regulations of the Chennai University Act, 1923 to be applicable to the Thiruvalluvar University until they are

replaced by its own Statutes, Ordinances and Regulations. Therefore, the power of the Syndicate could be traced both to the Act and to the

Statutes.

17. Chapter XII of the Statutes of the Madras University dealing with the Syndicate confers certain powers under Clause 2 upon the

Syndicate. Clause 2 (w-2) of Chapter XII of the Statutes of the University reads as follows:

(w-2) subject to the provisions in the laws, to dispense with a strict compliance

with the laws of the University with reference to the time, place and manner of Examinations, hours of transaction of business in the Office of the Registrar, the dates for payment of Examination fees or fees for Convocation, for submission of applications for Examination, and for Convocation, and of attendance certificates, the recognition of Examinations, and exemption from the production of attendance certificates, submission of theses for Research Degrees, applications for certificates of having passed any Examination, applications for recognition, affiliation or approval of colleges in subjects or courses in which no colleges is already recognized, affiliated or approved; provided that any resolution of the Syndicate passed in reference to such departure from prescribed procedure shall be reported to the Senate at its next meeting.

18. Therefore, it was contended that by virtue of the aforesaid Clause 2 (w-2) of Chapter XII of the Statute, the Syndicate has the power to grant retrospective affiliation. But the said contention has no force or basis, for the following reasons:

(a) Clause 2(w-2) begins with the words "subject to the provisions in the laws". Therefore, any deviation from the strict compliance with the laws of the University should also be subject to certain provisions in the laws, and the power to deviate cannot be exercised without specific authority of the laws.

(b) The list of items contained in Clause 2(w-2) with regard to which, a strict compliance with the laws can be dispensed with, does not include retrospective affiliation. The matters listed out therein include the time, place and manner of examinations, the method of transaction of business in the Office of the Registrar certain items relating to the submission of applications and fees for examination and Convocation, Attendance Certificates, Recognition of Examinations, submission of theses for research etc. In so far as the recognition of affiliation or approval of colleges is concerned, Clause 2(w-2) restricts the power of the Syndicate to dispense with a strict compliance with the laws of the University, only in respect of "subjects or courses in which no colleges is already recognized, affiliated or approved". Thus the power to deviate from the laws is circumscribed very well, in so far as the issue of affiliation is concerned. Clause 2(w-2) is not a blank uncrossed bearer cheque made available to

the Syndicate to encash.

19. In so far as Section 38 of the Thiruvalluvar University Act, 2002 is concerned, that also does not deal with the grant of retrospective affiliation.

The said Section reads as follows:

38. No candidate shall be admitted to any University examination unless he is enrolled as a member of University college or laboratory or of a

constituent college or an affiliated college or approved college and has satisfied the requirements as to the attendance required under the

regulations for the same or unless he is exempted from such requirements of enrollment or attendance or both by an order of the Syndicate passed

on the recommendation of the Academic Council made under the regulations prescribed. Exemptions granted under this section shall be subject to

such conditions as the Syndicate may think fit

A reading of Section 38 would show that it relates only to admission of a student to the University examination and it has nothing to do with a

retrospective affiliation.

20. Therefore, I find from the provisions of the Thiruvalluvar University Act and the Statutes that they do not provide for a retrospective affiliation.

The confession made in the counter-affidavit filed by the Registrar of the first respondent-University to this effect, is in tune with the provisions

contained in the Act and the Statute and hence the arguments advanced to the contrary cannot be accepted.

21. It is well settled that a power should be conferred by Statute and cannot be made out by inference. Even if a power conferred by Statute

requires any interpretation, such interpretation should actually subserve the cause for which the Statute was enacted and it should not subvert the

process of law.

22. The matter relating to affiliation and approval of colleges is dealt with only under Chapter XXVI of the Statutes. Clause 46 and 47 of Chapter

XXVI of the Statute of the University reads as follows:

46. Affiliation or approval shall in no case be granted with retrospective effect. Attendance at courses of instruction provided in colleges or in

subjects before affiliation or approval is granted shall not qualify for the grant of certificates of attendance; and such attendance shall not entitle any

candidate to exemption from the production of certificates of attendance.

47. No college/management of college shall advertise new courses or invite, in any other manner, applications for admission to new courses or

admit students to new courses before any actually get the affiliation for these courses from the University. If any college/management of college

does so applications for affiliation for further courses shall not be entertained from such erring college(s) for a period of five years, and such

college(s) shall be liable for any other penal action deemed fit as indicated in Statute 44 of this Chapter.

23. That a college does not have the right to admit students even before the grant of affiliation, has been clearly laid down by the Division Bench of

this Court in *The University of Madras v. Loordhu Ammal Educational Trust* 2005 W.L.R. 395. In para-18 of the said judgment, the Division

Bench held as follows:

18. We are of the opinion that any college or institution admitting students for a degree in a University even before the University accords it

affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in

the lurch if ultimately affiliation is not granted.

24. In *Sree Arumugam Teacher Training College v. Thiruvalluvar University* W.P. Nos. 8685, 8687, 8869 and 8186 of 2006 dated 4.4.2006,

Mr. Justice D.MURUGESAN, considered the effect of Clause 46 Chapter XXVI of the Statutes of the Madras University and held that there

cannot be any retrospective affiliation and that the attendance before affiliation would not be taken into consideration. In para-12 of the said

judgment, the learned Judge referred to the provisions of Section 14 of the National Council for Teacher Education Act and held as follows:

12. The power to grant recognition to start Teacher Training Course including the degree level shall vest only with the National Council for Teacher

Education (in short NCTE). The National Council for Teacher Education Regulations and the conditions on which the recognition is granted in

terms of Section 14(1) of the National Council for Teacher Education Act are binding on the institutes availing such recognition. Condition No.

3(a) of the conditions of recognition contemplates that the institution shall ensure that eight exclusive faculty members duly approved by the

affiliating University are in a position for an intake of 100 students and a report to this effect shall be sent to the Southern Regional Committee

immediately and in any case before commencement of admissions for the course. A plain reading of the above condition shows that before

admission to the course is commenced, the institution should get the approval of the affiliating University as to the faculty members. The fact of

approval shall be communicated to the NCTE by the colleges by way of reports. Unless these two conditions are complied, the institution cannot

admit the students. Condition No. 4 further contemplates that the recognition is subject to the fulfillment of all such other requirements as may be

prescribed by other regulatory bodies like the State Government, etc. So far as the grant of affiliation is concerned, the respondent University is

alone empowered. The grant of affiliation entitles the colleges not only to admit the students but also enables the students so admitted to write the

examination subject to the training in the prescribed syllabi and fulfilling the attendance norms. If both the Condition Nos. 3(a) and 4 are read

together, it is obvious that even as per the conditions of recognition, no student can be admitted before the approval of the faculty members and a

report to that effect is sent to the NCTE, and further no student would be entitled to write the examination unless he/she earns the minimum

attendance as per the norms. As per Condition No. 4, grant of affiliation is also one of the requirements and without which a mere attendance in

the class without there being a conferment of degree would be of no use.

25. Again in para-14 of the judgment, the learned Judge held as follows:

A mere grant of recognition or NOC would be of no use as students cannot be imparted training and consequently, obtain degree in the absence of

affiliation. A University which is obligated to its statutes shall ensure as to whether the students had put in minimum attendance and had undergone

the course in the prescribed syllabi and had been imparted training by qualified teachers before allowing such students to write the examination. It

would be only in conformity with the regulations of the University if the attendance secured by students, after the affiliation was granted is taken into

consideration to arrive the minimum required number of days to write the examination. Any other conclusion shall not be in tune to the object

requiring affiliation from the University for registering the candidates to write the

examination.

26. It is with a view to over come the law laid down in the aforesaid decisions, that an attempt was made by the learned senior counsel appearing

for the respondents, to fall back upon the power conferred upon the University u/s 38 of the Thiruvalluvar University Act, 2002, extracted in para-

19 above. Though, as I have held in para-19 above, Section 38 does not confer power upon the University to grant retrospective affiliation,

Section 38 certainly confers powers upon the Syndicate to grant exemption from the requirements of enrollment or attendance or both. Therefore

the argument advanced on behalf of the respondents was that the Syndicate has the power to permit students to write the examinations, as they

have done by the resolution dated 27.10.2006 in this case.

27. It is true that the directions contained in Clauses 46 and 47 of Chapter XXVI, are subject to the powers of the Syndicate conferred u/s 38.

But the power conferred upon the Syndicate is only with respect to the grant of exemption from the requirements of the enrollment or attendance

or both, of a student to be admitted to a University examination. Even this power to exempt is subject to a pre-condition contained in Section 38

itself viz., that there is a recommendation of the Academic Council made under the Regulations prescribed. In other words, the power to grant

exemption u/s 38, cannot be exercised by the Syndicate, except on the recommendations of the Academic Council made under the Regulations.

28. In this case, the resolution dated 27.10.2006 passed by the Syndicate of the first respondent-University, permitting the students to write

examinations, has not been passed in exercise of the power of exemption u/s 38 of the Act. There is no reference to Section 38 of the Act either in

the resolution passed or in the counter-affidavit filed by the University. It is a gate way or escape route now found out by the University at the time

of hearing of the writ petition, as a result of legal ingenuity, to tide over the crisis. Even assuming for the sake of argument that the resolution dated

27.10.2006 has been passed permitting the students to take the examinations, in exercise of the power conferred by Section 38 of the Act, it has

not been done on the recommendation of the Academic Council. Therefore, the power exercised by the Syndicate to grant exemption, to the

students of the respondents 3 to 10, even if taken to have been exercised u/s 38

of the Act, does not satisfy the pre-requisite prescribed u/s 38 of the Act.

29. As a last straw on the Camel's back, it was contended that the respondents 3 to 10 did not seek retrospective affiliation and that the

respondents 3 to 10 sought affiliation for the academic year 2005-2006, by making applications in the same academic year and getting recognition

from NCTE in the same academic year. My attention was drawn to the series of correspondence between the various institutions and the

University to drive home the point that the applications were made in the year 2005-2006 and understood by the University to be applications for

the year 2005-2006 only. However, I do not propose to get into those factual details in view of the fact that as a matter of fact, the University

granted affiliation only for the year 2006-2007 to respondents 3 to 10, despite their applications being for the year 2005-2006. The respondents 3

to 10 have been granted affiliation by the first respondent-University only for the academic year 2006-2007, under various orders dated

28.4.2006, 24.7.2006 and 8.9.2006. These resolutions were not challenged by the respondents 3 to 10 in the past seven months, on the ground

that their applications related to the year 2005-2006. Instead of challenging the decision of the University conveyed to the respondents 3 to 10 in

April, July and September 2006 to grant affiliation only for the year 2006-2007, the respondents 3 to 10 thought fit to go back to the University

and get affiliation from 2005-2006 and the said request has also now been turned down by the University by the resolution dated 27.10.2006.

Therefore, the issue as to whether the applications of the respondents 3 to 10 ought to have been considered only for the academic year 2005-

2006, cannot be gone into.

30. A contention was raised that if there was repugnancy between the provisions contained in NCTE Act and the University Act and the Statutes,

the Central Legislation shall prevail. This contention was raised, for the purpose of holding that once NCTE granted recognition for the year 2005-

2006, it is the duty of the University to grant affiliation for the same academic year. But I do not find any repugnancy between the provisions of

Section 14 of NCTE Act and Clauses 46 and 47 of the Chapter XXVI of the Statutes of the University. Regulation 8 of NCTE Regulations, 2002

prescribes the Norms and Standards for various Teacher Education Courses, as per Appendices 3 to 14. Appendix-7 therein relates to the

Norms and Standards for Secondary Teacher Education Programme. Clause 2(a) and 4(a) of the Norms and Standards for Secondary Teacher

Education Programme read as follows:

2. Duration and Intake.-- (a) The B.Ed. programme shall be of a duration of at least one academic year.

4. Curriculum Transaction and Requirement of Teaching Staff.--(a) There shall be at least 150 teaching days in a year exclusive of period of

admission, examination, etc. Besides, every teacher trainee shall be required to undergo internship-in-teaching (including practice teaching and skill

development) for at least 30 days in nearby secondary/senior secondary schools.

31. Therefore, even NCTE Act and the Regulations take into account the Norms and Standards to be maintained and it is the role of the

University to ensure maintenance of such Norms and Standards. As pointed out by Mr. R. Muthukumaraswamy, learned senior counsel appearing

for the respondents 7 and 10, the Supreme Court held in *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government*

Higher Education Department, Thiruvananthapuram, Kerala State and Another, , that the obligation of the University to act in tune with the

permission granted by the Central Agency viz., AICTE or NCTE is only to the extent that the University Act and the Statutes are not inconsistent

with the NCTE Act or Regulations. Since NCTE Regulation 8(v) read with Appendix-7 is not inconsistent but only in tune with Clauses 46 and 47

of Chapter XXVI of the Statutes of the University, there is also no repugnancy.

32. As pointed out by the Division Bench of this Court in *The University of Madras v. Loordhu Ammal Educational Trust* 2005 W.L.R. 395, there

is an inherent danger in accepting the proposition that the University shall act merely as a "stamping and despatch clerk", after the grant of

recognition by NCTE. This danger is well brought out by a factual position in respect of one of the contesting respondents in this very same case.

The sixth respondent herein obtained recognition from NCTE on 6.1.2006 for the academic year 2005-2006. Since they had already filed an

application on 27.11.2004 for affiliation to the University, the sixth respondent obtained a direction in W.P. No. 19784 of 2006 dated 29.6.2006,

to the University to process their application for affiliation. In pursuance of the said order, the Inspection Commission inspected the sixth

respondent-College on 27.7.2006 and submitted a report. The said report was placed before the Affiliation Committee on 1.9.2006. The

Affiliation Committee pointed out five deficiencies, three of which may not really have a bearing on the question of affiliation. But two deficiencies

pointed out by the Affiliation Committee on 1.9.2006, stare at one's face and they are as follows:

(1) No teacher has acquired SLET or NET qualifications.

(2) Mr. D. Kesavan, Lecturer in education is over aged.

33. If despite the fact that the sixth respondent-College did not have any teacher who has acquired SLET or NET qualifications, the University has

to merely follow NCTE recognition and grant affiliation for the year 2005-2006, it would only amount to reducing the University to a mere

dumping yard, with no power of reasoning, discrimination and discretion. Such a situation is neither contemplated by NCTE Act nor good for the

cause of education.

34. In an ideal situation, an institution should be established first, followed next by recognition from the Central Agency and later by affiliation from

the concerned University, before students are admitted. But ideal situations prevail only in ideal societies, of which ours is not one. Therefore, some

allowance may have to be given and some flexibility maintained, on account of the lethargic attitude on the part of the agencies, but the same should

not result in perverting the process. In today's context, students are admitted first, institutions are established later, recognition is obtained

subsequently and affiliation is reserved as a last requisite, only to be used as a gate pass. The interpretation of the Acts, Statutes and Regulations,

cannot aid and abet such a process of reversal of a logical flow of events.

35. Under the above circumstances, I am of the considered view that the resolution of the first respondent-University dated 27.10.2006, rejecting

the request of the respondents 3 to 10 for affiliation with effect from 2005-2006, is perfectly valid and in tune with the Act and Statutes. But the

second part of the resolution permitting the students to take the examination, is in violation of Clauses 46 and 47 of Chapter XXVI of the Statutes

as well as Section 38 of the Thiruvalluvar University Act. But I am unable to set

aside the second portion of the resolution in view of the fact that about 800 students are due to take examinations from 6th December 2006 and that such a large number of students, who are not before me, shall not be taken by surprise and put to hardship and they shall not be made to bear the cross for the sins committed by the elders. In my anxiety to uphold the rule of law, I do not wish to inflict injury upon hundreds of students, especially when the University has permitted them to write the exams subject to the verification by an expert team, of their enrollment and satisfactory completion of the course.

36. Consequently, without setting aside the resolution dated 27.10.2006, the writ petition is disposed of with the following directions:

- (a) The University has no power to grant retrospective affiliation.
- (b) Any affiliation granted by the University shall be consistent with the requisites of Clauses 46 and 47 of Chapter XXVI of the Statutes of the University.
- (c) In order to ensure that an anomaly does not arise between the recognition granted by NCTE and the affiliation by the University, the University shall evolve a system by which it can work in close co-ordination with NCTE.
- (d) The system evolved by the University shall take care of the following broad principles:
 - (i) The University may impose a condition that all applications for affiliation shall be made within a week of submission of the applications for recognition to NCTE and such applications for affiliation shall quote the Registration Number given by NCTE.
 - (ii) The University shall also make it mandatory for the institutions to forward the copies of the letters of NCTE pointing out deficiencies and the replies of the institutions claiming rectification of deficiencies.
 - (iii) The University shall make it mandatory for the institutions to inform the date of inspection by the Team of NCTE and the University shall also depute its own Inspection Commission to coordinate with the Inspection Team of NCTE. This is to ensure that the inspections of NCTE and the University take place simultaneously or at least within short span of time.
 - (iv) Wherever the Inspecting Team of the University finds inadequacies, the University shall communicate the report of the Team to NCTE, to

enable NCTE to take such report also into account before granting recognition for any particular academic year.

(v) Since every recognition granted by NCTE is also subject to the approval of faculty members by the affiliating University, the University shall

communicate its decision regarding the approval of the faculty members to NCTE, within two weeks of taking a decision, to enable NCTE to

know whether the condition incorporated under paras-3(a) and 4 of the orders of recognition are duly complied with or not. This will enable

NCTE to take any action for withdrawal of recognition u/s 17(1) of NCTE Act.

(vi) If by the time the inspection is conducted both by NCTE and the University, a major portion of the academic year has also expired and the

University comes to a conclusion that from that stage it may not be possible for the institution to satisfy the requirement of 150 working days and

30 days of training, as per the Norms and Standards prescribed by NCTE, the University shall also communicate the same to NCTE to ensure

that they do not grant recognition in respect of that academic year, putting the University to a predicament.

(e) The steps narrated in the preceding Clause(d) are only by way of guidelines for the purpose of enabling the University to evolve a scientific

system to streamline the system of education. The University shall be free to fine tune and evolve any scientific system, for the purpose of achieving

a coordination.

37. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.