
(1991) 03 MAD CK 0018
In the Madras High Court

M. Jayasudha and Others

APPELLANT

Vs

The University of Madras and Another

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Citation : (1991) 2 MLJ 29

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The petitioners in this writ petition are the students who have been admitted by the second respondent/College to a

course for the academic year 1990-91 and they have come to this Court by way of this writ petition challenging the order of the first

respondent/University refusing to grant provisional affiliation to the second respondent/college for the academic year 1990-91.

2. The second respondent/College was informed by the University as early as in May, 1990, that it should not admit any students for the academic

year 1990-91 without getting provisional affiliation from the University. In spite of that, the second respondent/College admitted the students for the

academic year 1990-91 and the petitioners herein are some of those who were so admitted. When the College issued a notification for admission,

a notice was issued by the University to the second respondent/College on 28.6.1990 requesting the second respondent to state how it has issued

the admission notification without getting continuance of provisional affiliation from the University for the courses, namely, (i) B.Sc., Computer

Science; (ii) B.Sc., Nutrition and Dietetics; (iii) B.Sc., Bio-Chemistry; and (iv) B.Com., for the academic year 1990-91 in spite of clear instructions

given not to admit students to any of the said courses for 1990-91. The University further requested the second respondent/College that the advertisement should be withdrawn immediately by issuing another notification in the press and a copy of the same should be sent to the University within a week's time from the date of receipt of the notice. Otherwise, the University will be constrained to issue a counter-notification in the Press for the information and benefit of the public to the effect that the second respondent/College has not yet been granted continuance of provisional affiliation by the University for 1990-91 and the students seeking admission would be doing so at their own risk. At this state, the second respondent approached this Court by filing W.P. No. 9602 of 1990 and sought for two interim orders, one seeking stay of the letter of the University insofar as it directed the second respondent/College not to admit any students for the academic year 1990-91 and the other for an interim injunction restraining the University from issuing any notification in the press with regard to the admission of the students in the second respondent/College for the year 1990-91.

3. At the time when W.P. No. 9602 of 1990 came up for admission, the learned Counsel for the University took notice on behalf of the University and gave an undertaking that no notification in the press with regard to the admission of students in the second respondent/College for the year 1990-91 would be published pending disposal of the writ miscellaneous petition (W.M.P. No. 14290 of 1990). That undertaking was recorded by this Court on 6.7.1990 and notice was directed to be issued to the second respondent therein and the petition was directed to be posted on 11.7.1990. In the other petition for stay, the learned Counsel for the University took notice.

4. It seems that the main writ petition itself came to be disposed of by S. Ramalingam, J., on 11.7.1990 and the learned Judge directed the University to appoint an Inspection Commission and receive a report and after considering the said report, the University was asked to consider the question grant of permanent affiliation or continuation of the provisional affiliation, as the case may be, and communicate its decision to the petitioner-trust on or before 15.9.1990. After this, the order impugned in present writ petition filed by a few of the students of the second

respondent/College rejecting the continuance of the provisional affiliation to the second respondent-College earned to be passed on 19.2.1991.

5. When this writ petition came up for admission, Mr. K.R. Tamizhmani, learned Counsel, took notice on behalf of the University and has informed

this Court about the previous litigation between the second respondent/College and the University.

6. I find that even in the affidavit filed in support of W.P. No. 9602 of 1990 there is an averment in paragraph 16 of the affidavit that the second

respondent/College has admitted around 80 students. This affidavit was sworn to on 7.7.1990.

7. After hearing Mr. A.L. Somayajee, learned Counsel for the petitioner and Mr. K.R. Tamizhmani, learned Counsel for the University of Madras

who stoutly opposes the writ petition itself, I am of the view that the petitioners have no right to challenge the order passed against the second

respondent/College refusing to continue the provisional affiliation to the second respondent/College for the academic year 1990-91. From the facts

narrated about it could be seen that the grant of affiliation was in doubt and the University was not permitting the second respondent/College to

admit students for the year 1990-91 and this has been made clear by the University in its communication sent to the second respondent/College as

early as in May, 1990. In spite of such specific direction given by the University not to admit students, the second respondent/College has admitted

the students and had come upto this Court challenging even the issuance of a notification in the press that the second respondent/College has not

been granted affiliation and hence the students should not seek admission therein. Though an allegation is made in the affidavit filed in the earlier

writ petition that around 80 students had been admitted, it is not very clear as to which course or courses the students had been admitted. Further,

here is a case where the students studying in the second respondent/College have come upto this Court challenging the order passed by the

University refusing the continuance of provisional affiliation to the second respondent/College for the academic year 1990-91. This, in my view,

should not be encouraged. A College without infrastructural facilities cannot and should not be allowed to run. It has been made so clear by me

and this view of mine has been affirmed by a Division Bench of this Court in *Adhiyaman Educational and Research Institutions v. The State of*

Tamil Nadu 1989 W.L.R. 62.

8. The Supreme Court has also come down very heavily on the Courts issuing directions under Article 226 of the Constitution in favour of

unrecognised Institutions in the decision in N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, . If an Institution is not

affiliated to the University and when that Institution was informed by the University that it should not admit students and, if inspite of that the

students got themselves admitted, it is very unfortunate and they have taken the risk upon themselves. The Supreme Court in the aforementioned

decision has held categorically that the students who have undergone training in private teacher training institutes established without permission

cannot be permitted to appear at the examinations under Article 32 or 226 of the Constitution. The Supreme Court observed that if by a fiat of the

court the Government is directed to permit them to appear at the examination court will practically be encouraging and condoning the establishment

of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 avoid be

frittered away for such a purpose. Though these observations were made by the Supreme Court in the case of Teacher Training Institutes under

private managements, I am of the view that the observations of the Supreme Court will squarely apply to the facts of this case also. Here is a case

where the second respondent/College was asked by the University not to admit students. Inspite of such direction from the University, the second

respondent/College proceeded to admit the students. Now the result is that the! students have now come to this Court by way of this writ petition

against the order passed by the; University refusing affiliation to the second respondent College. One of the writ petitions in the above said

Supreme Court decision was filed by a I student who had undergone training in a private Teacher Training Institute. The request made by the

learned Counsel for the petitioners therein that the students who have undergone training for the one year course in those private institutions may be

allowed to appear at the examination notwithstanding the fact that permission might not be accorded to them was rejected by the Supreme Court.

9. The case before me is almost a similar one and the request made by Mr. A.L. Somayajee, the learned Counsel for the petitioners is almost

similar to the request made by the learned Counsel for the petitioners before the Supreme Court. It is also seen that the authorities of the second

respondent college were trying to overreach everybody at every stage. As such, I do not find any reason to entertain this writ petition filed by the

students challenging an order passed by the University refusing to grant affiliation to the second respondent/College. I do not see how the writ

petition is maintainable before this Court. A Division Bench of this Court in *Raghavan v. Tamil Institute of Agriculture and Rural Development* etc.

1987 W.L.R. 684, has observed as follows:

...We are conscious of the facts that our decision is likely to affect adversely the students, but in the interest of curbing the unabated activities of

some persons who start unauthorised educational institutions, such a hard and drastic decision has to be taken....

In *Andhra Kesari Education Society v. Director of School Education and Ors.* AIR 1989 S.C. 183, though the Supreme Court by interim orders

permitted a set of students to be admitted, yet, on the question of giving permission to permit them to appear for the examinations the Supreme

Court observed as follows:

... But it would be for the Director of School and the Registrar, Nagarjuna University to consider and satisfy themselves and not for this Court at

once to permit them to appear in the examination....

10. Before parting with the case, I think I should make certain observations against the first respondent/University also. In *Adhiyaman Educational*

and *Research Institutions v. The State of Tamil Nadu* 1989 W.L.R. 62, M. Srinivasan, J. speaking for the Bench has categorically given certain

directions with regard to the grant or refusal of affiliation to the Colleges. In the instant case, though S. Ramalingam, J. in W.P. No. 9602 of 1990

by order dated 11.7.1990 directed the University to pass orders on the question of affiliation on or before 15.9.1990, the University has taken

time upto February, 1991 i.e., till the end of the academic year. This, in my view, is against the principles laid down by the Division Bench of this

Court in the decision referred to above. In spite of the directions given by this Court with regard to the grant or refusal of affiliation, it is very

unfortunate that the University has taken its own time in taking such decisions. Though this is an unfortunate case, yet, this Court cannot grant

affiliation to a course which has been declined by the University. This is a hard case.

11. The writ petition will stand dismissed. However, I direct the first respondent to consider forthwith whether the students in the second

respondent college has undergone the necessary course and if necessary to permit them to appear for the examinations in future, in view of the fact

they were led to believe by the second respondent college that it had affiliation and admitted the students to the course. This is in consonance with

the view taken by the Supreme Court in *Andhra Kesari Education Society v. Director of School Education and Ors.* AIR 1989 S.C.183.