
(2004) 11 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No"s. 27030, 27757, 2800, 28335 and 28356 of 2004
and W.P.M.P. No"s. 32915, 33772, 34398, 34418 and 34028 of 2004

Madras Education and Research, Integrated Trust (MERIT)

APPELLANT

Vs

The Periyar University

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Constitution of India, 1950 — Article 254(1)

Dr. M.G.R. Medical University, Tamil Nadu (Amendment) Act, 1989 — Section 5(5)

Indian Medical Council Act, 1956 — Section 10A

National Council for Teacher Education Act, 1993 — Section 14

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 12, 14(1), 14(3), 14(6), 2(1)

Citation : (2004) 11 MAD CK 0008

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : N. Paul Vasanthakumar, in WP No. 27030/2004, A. Jenasenan, in WP No. 27757/2004 and 28356/2004 and V. Dlianapalan, for Rabu Manohar, in WP No. 28335 and 28009/2004, for the Appellant; R. Muthukumaraswamy, A.A.G., assisted by, V. Karthikeyan, A.G.P. in W.P. Nos. 27030, 28356 and 28009/2004, C.K. Chandrasekaran, for Row and Reddy in W.P. No. 27757/2004 for Bharathidasan University, V. Karthikeyan, Addl. Govt. Pleader for 1st Respondent in W.P. Nos. 28009 and 28335/2004, S. Udayakumar, Addl. Central Govt. Standing Counsel for 2nd Respondent in W.P. Nos. 28009 and 28335/2004 and P. Jothimani, for 3rd Respondent in WP No. 28335/2004, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—As the issues raised are identical, all the Writ Petitions are taken up for disposal by this Common Order.

2. The Petitioners in W.P. Nos. 27030, 28009 and 28335/2004 have approached this Court for a direction to the Universities to grant affiliation

for B. Ed., Course without insisting on the production of ""No Objection Certificate"" from the State Government. The Petitioners in W.P. Nos.

27757 and 28356/2004 have questioned the order of the Universities rejecting the grant of affiliation on the ground that the Petitioners did not obtain permission of the State Government.

3. As the facts are almost similar, the averments made in W.P. No. 27030/2004 is referred:

a) The Petitioner viz., Madras Education and Research Integrated Trust (MERIT) was created in the year 1994 with the object of establishing educational institutions in and around Dharmapuri District. The Petitioner Trust has also established Matriculation School and Higher Secondary School at Sekkampatti, Harur Taluk, Dharmapuri District in the year 1993. The said schools have been recognised by the Educational authorities and are unaided. In order to start B. Ed-Course, the Trust has established a College in the name of "P.D.R. Vellachiammal College of Education at Sekkampatti, Soriyampatti Post, Dharmapuri District from the academic year 2004-2005. The Petitioner-trust submitted an application dated 23.12.2002 before the Southern Regional Committee, National Council for Teacher Education (hereinafter called as "NCTE") for approval of the said course from the academic year 2003-2004. The said application was returned by "NCTE" for the compliance of furnishing NOC from the State Government on or before 31.12.2002. Hence, the application was not considered for the academic year 2003-2004. As the NCTE permitted the said application to be treated as an application for the academic year 2004-2005 and the Petitioner could produce NOC on or before 31.12.2003, the Petitioner applied to the State Government for the grant of NOC. Such request was however rejected by the State Government on 12.06.2003. Pending consideration of NOC, the Petitioner-Trust approached this Court for a direction to the "NCTE" to consider the application of the Petitioner-trust for approval without reference to NOC in W.P. No. 38352/2003.

(b) Following the judgment of the Apex Court reported in St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, this Court had directed the "NCTE" to consider the application of the Petitioner-trust for the grant of recognition in accordance with law and without reference to NOC. Pursuant to the above direction, an inspection was caused and ultimately, "NTCE" to

granted recognition on 09.09.2004 to enable the Petitioner- trust to start B. Ed., Course of one year duration from the academic year 2004-2005

with an annual intake of 100 students.

(c) On the strength of the recognition, the Petitioner-trust has made a representation on 11.9.2004 to the Periyar University for grant of affiliation.

As the said application was not considered on the ground that the Petitioner-trust did not obtain permission of the State Government, it has

approached this Court.

4. The Petitioners in other Writ Petitions are also similarly placed as all the Petitioners have been granted recognition for starting B. Ed., course of

one year duration from the academic year 2004-2005 with an annual intake of 100 students. As already referred, the concerned Universities have

rejected the request of the Petitioners in W.P. No. 227757 and 28356/2004 for grant of affiliation on the same ground that they did not obtain

permission from the State Government, they have also approached this Court.

5. I have heard the respective learned Counsel for the Petitioners as well as the Respondents.

6. The bone of contention of the respective counsel is that after ""NCTE Act"" has come into force with effect from 28.10.1987, the provisions of

Sections 3, 4 and 5 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 hereinafter referred to ""The State Act"" and the Statutes of the

Periyar University as provided in Clause 111(1) under Chapter IX viz., ""Application for affiliation shall be made only after obtaining permission

from the Government of Tamil Nadu for starting a self-financing college; Chapter XIV (a)(i) of Bharathidasan University, viz., Application for

affiliation shall be made only after obtaining permission from the Government of Tamil Nadu for starting self-financing College"" hereinafter referred

to ""The Statute"", would be inoperative, as they are repugnant to the Central Act. In such event, the insistence of obtaining permission from the

State government is without any authority of law. It is the further challenge that under the provisions of ""NCTE Act"" except for the requirement of

production of NOC, no further requirement for the institute to obtain permission from the State Government is contemplated. Even in the case of

NOC as the Apex Court had already held that the grant or refusal of NOC cannot be the only basis for ""NCTE"" to consider the application as

NCTE"" is empowered to consider the application for recognition independent of such certificates and the grant of recognition shall only be subject

to the satisfaction of the NCTE as to the compliance of the conditions prescribed under the Act and the Regulations made thereunder.

7. Mr. R. Muthukumaraswamy, learned Additional Advocate General assisted by Mr. V. Karthikayan, learned Additional Government Pleader

leading the arguments on behalf of Periyar University, Respondent in W.P. No. 27030/2004 has submitted that the ""NCTE Act"" was enacted by

the Parliament, in exercise of power under Entry 66 of List I to the VII the Schedule and the State Act was enacted under Entry 11 of List II prior

to Forty Second Amendment. The University Acts were enacted under Entry 25 of List III. A combined reading of various provisions of ""NCTE

Act"" does not appear to occupy the entire field of Education and in the wake of Section 14, it appears that the NCTE Act does not occupy the

area, more particularly the insistence on the institutes to get permission from the State Government in terms of Section 5 of the State Act. In the

absence of any exclusion of the power to insist the permission from the State Government, the provision of the State Act can still be valid and can

be operative.

8. Mr. C.K. Chandrasekaran, learned Counsel for M/s Row and Reddy for Bharathidasan University and Mr. P. Jothimani the learned Counsel

appearing for Madurai Kamaraj University argued on the same line.

9. In the light of the above submissions, the following Point arises for consideration:

Whether the University could insist the Institutes to get permission from the State Government as a pre condition for grant of affiliation even after

the NCTE has granted recognition?

10. The power of the State Government either to grant or to withdraw the permission granted to technical institutes as well as the power of the

Universities to disaffiliate those colleges came up for consideration before the Apex Court in the judgment reported in State of T.N. and Another

Vs. Adhiyaman Educational and Research Institute and Others, . Though some of the colleges therein were granted permission to start self-

financing Private Engineering Colleges and were subsequently affiliated by the Madras University, affiliations were sought to be withdrawn on the

ground of non compliance of infra-structural facilities. The decision of the University was questioned by the institutions on the ground that after All

India Council for Technical Education Act, 1987, viz., the Central Act has come into force, the State Government would have no jurisdiction either

to grant recognition or to withdraw the recognition of any Engineering College and equally the University also cannot withdraw the affiliation. After

considering both the Central Act viz., AICTE Act and the State Act viz., Madras University Act, the Apex Court ultimately held that the provisions

of the State Act enabling the State either to grant or withdraw recognition are repugnant to the Central Act as the Central Act was enacted to

occupy the entire field in order to provide proper planning and coordinated development of technical education system throughout the Country and

promotion of qualitative improvement. The Apex Court also held that after the Central Act came into force, the provisions of the University Act in

regard to withdrawal of recognition for non-compliance of the conditions which fell within the power of the AICTE was void and inoperative as the

pre-constitution law are also impliedly repealed to the extent of repugnancy.

11. Similar issue as to the grant of affiliation to the Medical Colleges came up for consideration before the Apex Court in Thirumuruga

Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, . Sub-section 5 of Section 5 of Dr. M.G.R. Medical

University, Tamil Nadu Act which was introduced by Dr. M.G.R. Medical University, Tamil Nadu (Amendment and Validation) Act, 1989

(T.N.32 of 1990) also provides that ""No college shall be affiliated to the University unless the permission of the Government to establish such

college has been obtained"". After tracing the source of both. Central and the State Act with reference to the two Legislations, the Apex Court held

that in terms of Section 10-A of the Indian Medical Council Act, 1956 as introduced by Indian Medical Council (Amendment) Act, 1993 Central

Act 31 of 1993, the provision of Sub-section 5 of Section 5 of the State Act is repugnant, void and cannot be enforced. The above law laid down

by the Apex Court is quoted with approval by the Apex Court in Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to

Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, .

12. The State Act was enacted by the State Legislature in exercise of power under Entry II of List II of State List. After the Forty Second

Amendment which came into force with effect from 3.1.1977, the State Legislature could enact law on education including technical education,

medical education and Universities subject to the provisions of Entries 63,64,65 and 66 of List I only under Entry 25 of List III(Concurrent List).

The Periyar University Act, Bhrathidasan University Act and Madurai Kamaraj University Act were also enacted after 42nd Amendment in

exercise of power under Entry 25 of List IN of 7th Schedule (Concurrent List).

13.. The test to find out the repugnancy is as to whether the provisions of the ""NCTE"" Act occupies the entire field of education throughout the

country. In fact, the Apex Court in Jaya Gokul's case(cited supra) has specifically held that in the event, the Central Act occupies the entire field

making it applicable to the institutions throughout the Country, the provisions of the State Act, which are inconsistent with the provisions of Central

Act would be void and inoperative. The same test was adopted by the Apex Court while the provisions of Central and State Acts were

considered with reference to the Engineering and Medical Colleges in the judgment referred to above.

14. On the basis of the above judgments, it must now be considered as to whether ""NCTE Act"" has been enacted making it applicable to all the

Teacher Training Institutes of the Country therefore over rides the provisions of the State Acts, more particularly, the provisions of the respective

University Acts, enabling the Universities to insist prior permission of the State Government.

15. Entry 66 of List I of Union List of Seventh Schedule of the Constitution of India reads as follows:

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

16. The ""NCTE"" Act was enacted in exercise of the power under Entry 66 of List I Entry 25 of List III(Concurrent List) in order to provide

proper planning and coordinated development of the technical education system throughout the Country; promotion of qualitative improvement of

such education in relation to planned quantitative growth; regulation and proper maintenance of norms and standards in technical education system

and for matters connected therewith. The provision of Article 254(1) of the Constitution of India, relating to inconsistency between laws made by

the Parliament and laws made by the legislatures of States reads as under:

Inconsistency between laws made by Parliament and laws made by the Legislatures of States:

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is

competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the

provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case

may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision

repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the

Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law

adding to, amending, varying or repealing the law so made by the Legislature of the State

The plea of the Petitioners as to the repugnancy shall be considered keeping the above in mind.

17. The Council is established in terms of Section 3 of the Act with the constitution of members enumerated u/s 3(4). The constitution includes the

Chairperson, Vice-Chairperson, a Member-Secretary appointed by the Central Government and the Secretary to Government of India in the

Department of Education ex-officio Member and various experts in the educational fields.

18. Section 12(f) lays down the guidelines for compliance by recognised institutions for starting new courses or training and for providing physical

and instructional facilities, staffing pattern and staff qualifications. Council is empowered to constitute Regional Committees. One such Committee

viz., Southern Regional Committee is at Bangalore.

19. Section 14 enables the institution which intends to offer a course or training in teacher education, to make an application for grant of

recognition. On receipt of such application from any institution u/s 14(1) of the Act, the Regional Committee shall satisfy as to the financial

resources, accommodation, library, qualified staff, laboratory etc. In the event, the Regional Committee satisfies itself as to the compliance of the

above provisions, can order granting recognition. In such event, the order granting recognition to an institution for a course or training in teacher

Education, shall be published in the Official Gazette and shall also be communicated in writing for appropriate action to such institution and to the

concerned examining body, the local authority or the State Government and the Central Government.

20. In terms of Sub-section 6 of Section 14, every examining body on receipt of the order under Sub-Section 4, shall grant affiliation to the

institution. In the event, the Regional Committee is not satisfied with the infra-structural and other facilities, it may refuse the recognition and in such

event also, the order of refusal shall be communicated to the examining body, local authority, State Government and the Central Government for

follow up action. On receipt of such order, in the event, institutions had already been granted affiliation, the concerned University shall cancel the

affiliation and for want of fresh recognition institute cannot be granted affiliation.

21. A combined reading of the above provisions together with the definition of ""Teacher Education"" as defined u/s 2(1) of the Act which includes

the B. Ed., course also, reveals that these provisions are identical and para-materia to the provisions of ""AICTE Act"" more particularly, in respect

of the powers and functions of the concerned Government to grant recognition. In fact, the preamble of the Act is also similar both in ""AICTE Act

and ""NCTE Act"". Both the Acts have been enacted with a view to provide proper planning and coordinated development of technical/teacher

education system throughout the Country.

22. Mr. R. Muthukumaraswamy, learned Additional Advocate General would submit that in terms of Section 14 of the ""NCTE Act"" it cannot be

contended that the power of the Universities to insist the institutes to obtain permission from the State Government in terms of Section 5 of the

Tamil Nadu Private College (Regulation) Act and the statutes of respective Universities cannot be construed as excluded or occupied by the

NCTE Act"". The power of the University should be considered with reference to the provisions of the respective University Acts and the Statutes

made thereunder. The Statutes of the respective Universities insist for prior permission. This argument falls to the ground in view of the categorical

pronouncement of the Apex Court in Athiyaman's case, Variar's Case and Jaya Gokul's case referred supra. In Athiyaman's case the Apex

Court has held that after the AICTE Act has come into force, had occupied the field including grant of permission, the State Government would

not have jurisdiction either to grant or withdraw the permission as the provision of the State Act including the grant of permission is void and

inoperative. Similar provision contained in Section 5(5) of Tamil Nadu Dr. M.G.R. University Act was held to be void and inoperative in the

judgment of the Apex Court in VARIYAR'S case. The law laid down by the Apex Court was equally applicable to the Statutes of the respective

Universities also. It must be kept in mind that Section 5(5) of Dr. M.G.R. Medical University Act which stipulated a condition to obtain prior

permission from the Government for grant of affiliation, was considered by the Apex Court and was held to be repugnant to the Central Act. I do

find that the law laid down by the Apex Court is squarely applicable to the cases on hand.

23. In this context, Mr. R. Muthukumaraswamy, learned Additional Advocate General by drawing the attention of this Court to para 4 of the order

granting recognition submitted that the very order of granting recognition itself directs the institute to comply with the requirements of the University.

The power of the University to insist the prior permission of the State Government can be traced to para 4 of the order. The said para in my

considered view is with reference to either obtaining NOC from the State Government or the compliance of the conditions for grant of affiliation by

the University which are not inconsistent with either the ""NCTE"" Act or the Regulations made thereunder.

24. Insofar as the power of NCTE to grant NOC is concerned, the law is well settled in the judgment in St. Johns Teachers Training Institute Vs.

Regional Director, National Council for Teacher Education and Another, . Irrespective of the order of the Government on the grant of NOC, the

NCTE"" could independently consider the application for recognition. Insofar as the power of the University for grant of recognition, again the law

is well settled in the same case cited supra. NCTE is empowered to consider such of those applications without insisting NOC from the State

Government. It must be noted that even in the conditions for granting recognition, there is no specific condition for obtaining prior permission from the State Government.

25. For the above said reasons, I am unable to accept the contention of Mr. R. Muthukumaraswamy. learned Additional Advocate General that

Section 14 does not seem to be comprehensive with reference to teacher education. The satisfaction as contemplated in Section 14(3)(a) relates to

adequate financial resources, accommodation, library, qualified staff, laboratory etc., It would mean that it covers all the requirements for the

institutes to comply with reference to the guidelines laid down by the Council u/s 12(f). In this context, the regulations framed by the Council in

exercise of the power Section 32 of the Act also needs reference. Council is empowered to make regulations in connection with norms, guidelines

and standards in respect of starting of new courses or training recognised institutes under Clause(f) of Section 12. Such power is vested with the

Council u/s 32(2)(d)(iii) of the Act. Council has also framed regulations.

26. Appendix 6 relates to Norms and Standards for various teacher education Institutions. It relates to Duration of the course; Admission Criteria;

Intake and Migration; Courses and Periods of Study; Conduct of B. El. Ed Programme; Examination, Standards and Qualification of Examiners;

Staff Equipment and Training; other facilities; Norms for Space, specific infra-structural facilities for students of B. Ed., Course; Fee structure and

scholarship essential and nature of employment of staff etc.. The regulations are comprehensive and occupies the entire field. In that view of the

matter, the concerned University is not justified either in rejecting the request for grant of affiliation on the ground that the Institute has not produced

the order of prior permission from the State Government or fails to consider the request on the same ground.

27. Neither the Periyar University Act nor the Bharathidasan University Act or the Madurai Kamaraj University Act contemplate any provision for

obtaining permission from the State Government as a pre condition for grant of

recognition. However, by virtue of the provisions of the Act, the Statutes have been made by the Periyar University and Bharathidasan University and only by virtue of the Statutes, the insistence of prior permission from the State Government was made. Even when the very provision of the Act viz., Section 5(5) of Tamil Nadu Dr. M.G.R. Medical University Act was held to be void and inoperative by the Apex Court, the Statutes and that too without any specific provision under the Act, would be equally held to be void and inoperative. Hence, the insistence of the pre-condition by Periyar University and Bharathidasan University is totally unsustainable. In case of Madurai Kamaraj University, as already pointed out, no such provision is made either under the Act or under the Statutes. In the absence of the same, the Madurai Kamaraj University cannot insist for obtaining prior permission from the State Government as a precondition for grant of affiliation.

28. For the above reasons, all the Writ Petitions are allowed and the impugned order in W.P. No. 27757 and 28356/2004 are set aside. The respective Respondent Universities are directed to consider each of the applications submitted by the institutions for grant of affiliation without reference to the prior permission from the State Government, of course, subject to compliance of the conditions for grant of affiliation which are not inconsistent with the provisions of either "NCTE Act" or the regulations made thereunder. Such exercise shall be completed on or before 31.12.2004. No costs. Consequently, connected W.P.M. Ps. are closed.