
(2003) 09 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16267 of 2002 and 5698, 6365 and 6858 of 2003

Mohammed Vaziruddin Educational Society

APPELLANT

Vs

Convenor, EAMCET-2002 and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 20

Citation : (2003) 6 ALD 100

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, for Y. Venkatesh Reddy, in WP Nos. 16267/02 and 5698/03 and Ashok, for C. Sudesh Anand, in WP Nos. 6365 and 6858/2003, for the Appellant; C. Kodanda Ram, SC for JNTU for Respondent No. 1 in WP No. 16267/02 and for Respondent No. 4 in WP Nos. 5698, 6365 and 6858 of 2003, S. Satyanarayana Prasad, SC for AICTE for Respondent Nos. 2 and 4 in WP No. 16267/02 and for Respondent Nos. 2 in WP Nos. 5698, 6365 and 6858 of 2003 and Government Pleader for Higher Education for Respondent No. 3 in WP No. 16267 of 2002, for Respondent Nos. 1 and 3 in WP No. 5698 of 2003 and for Respondent No. 1 in WP Nos. 6365 and 6858 of 2003, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—W.P. Nos. 16267/2002 and 5698/2003 are filed by an Educational Society, whereas W.P. Nos. 6365/2002 and 6858/2003 are filed by the students. The subject matter in these four writ petitions is either common or is overlapping. Hence, they are disposed of together.

2. Mohd. Vaziruddin Educational Society, Prakash Nagar, Rajahmundry, hereinafter referred to as the Society, had established Al-Ameer College of Engineering and Information Technology at Visakhapatnam (for short "the College"). Initially it had introduced three courses, viz., Computer Science and Engineering, Electronics and Communication Engineering and Information Technology, with 60 seats each. The All India Council of Technical Education, hereinafter referred to as the AICTE, had accorded its approval for the said three

courses through its proceedings dated 19-7-2001. The society claims to have been conferred with the minority status and that it was allotted as well as permitted to admit the candidates, as provided under the relevant Rules. There is no controversy about the admission into these courses.

3. With a view to enable the Educational Societies to apply for establishment of colleges or for introduction of new courses, the AICTE had issued notification dated 1-8-2001. The notification related to the courses or the colleges, as the case may be, which were to commence from the academic year 2002-2003. A detailed schedule for submission of applications, stages of processing the same, etc., has been indicated therein. In response to the same, the society claims to have applied to the AICTE to accord approval for introducing the course of Biotechnology in its college. The application was processed and ultimately through its order dated 8-8-2002; the AICTE had accorded approval for an intake of 40 students for the academic year 2002-2003.

4. The society approached the Convenor of the concerned academic year for allotment of students. Since no action has been taken thereon, it had filed W.P. No. 16267/2003, seeking a direction to the respondents therein to allot the candidates for admission into 1st year of Biotechnology Course for the academic year 2002-2003 and to permit it to admit students against 50% managing quota.

5. An interim order was passed therein, directing the Convenor to allot candidates and to permit the society to admit the candidates in accordance with the relevant Rules. The petitioner claims to have admitted as many as 13 candidates, out of whom 11 are said to be continuing.

6. Aggrieved by the interim order granted by this Court, the State preferred an appeal. Interim order was set aside through orders of the Division Bench dated 24-10-2002. Taking this aspect into notice, the A.P. State Council for Higher Education, issued letter dated 27-3-2003, stating that the college cannot continue the students so admitted, on its Rolls. Challenging this letter, the society filed W.P. No. 5698/2003, 6 students filed W.P. No. 6365/2003 and 5 other students filed WP No. 6858/2003.

7. The petitioners contend that once the AICTE had accorded its approval for the Biotechnology Course for the academic year 2002-2003, there was no justification on the part of the Convenor or the other respondents in not allotting the candidates or not permitting the society to admit the candidates, in accordance with the relevant Rules. According to them, by the time the AICTE had accorded its approval, counselling was in progress and non-allotment of candidates was on hyper technical and non-existent grounds.

8. In its counter-affidavit, the Government of Andhra Pradesh, had stated that grant of approval by the AICTE for the Biotechnology Course was subject to the State Government being in position to allot the candidates and since the counselling for the academic year was in an advanced stage, by the time the approval came to be accorded, no students could be allotted. The 2nd contention

is that mere approval by the AICTE does not enable the petitioners to demand allotment of candidates, unless the Government had accorded permission u/s 20 of the A.P. Education Act (for short "the Act").

9. The Jawaharlal Nehru Technological University (for short "the University"), figures as respondent in some of the writ petitions. In its counter-affidavit, it has stated that for the year 2002-2003, the application of the society was only for renewal of affiliation for the three courses, and that provisional affiliation was accorded for one year for such courses. They state that there was application for affiliation for the Biotechnology Course. According to them, the application was to have been made in the prescribed form with prescribed fee, within the time schedule, duly enclosing the approval by the AICTE and permission of the Government and in the absence of the same, it was not under any obligation to accord affiliation.

10. Heard Sri C.V. Mohan Reddy, learned Counsel for the Society, Sri S.R. Ashok, learned Senior Counsel for the petitioners in WP Nos. 6365 and 6858/2003., learned Government Pleader for Higher Education for the Government of Andhra Pradesh, Sri K. Ramesh Babu, Standing Counsel for the A.P.State Council for Higher Education and Sri Kodanda Ram, learned Standing Counsel for JNTU.

11. The controversy in this batch of writ petitions is only as regards the right of the society to admit the candidates into the 1st year of Biotechnology Course for the academic year 2002-2003. As regards rest of the courses, there is no controversy. Even for this course, the Government itself had allotted students for the current academic year. Therefore, it needs to be seen as to whether there existed any factual and legal foundation for the society to admit the candidates. Through a catena of decisions, the Hon"ble Supreme Court, from time to time, held that in the matter of establishment of institutions of technical education, the approval by the AICTE is an important step. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , it was held that the AICTE Act, 1987, which is a Central Act, would prevail over the other State Enactments and in the event of inconsistency with the provisions of the State Acts, the former would prevail. It was further held that if the AICTE accords approval, other formalities are not necessary and in the absence of approval by it, existence of permission, etc., granted by other agencies are of no avail. In subsequent judgments, the matter was explained further duly assigning the respective roles to the concerned agencies, such as State Governments, Universities. Here in this case, there is no overlapping of jurisdiction of the various authorities in the matter of according permission for the concerned course.

12. From the counter-affidavit filed by the State Government, it is discernible that objections are two fold, viz., that the counselling has already commenced for the concerned academic year by the time the approval was received and that the permission was not granted by the Government for this course u/s 20 of the Act.

13. In its order according approval, the AICTE had made it very clear that the approval granted by it is subject to the condition that the concerned State Government is in a position to allot candidates for the concerned academic year. The 2nd condition incorporated by it reads as under:

"That the State Government is in a position to provide students through central counselling as per its schedule for the current academic session, if not so the approval may be revalidated as per rules by the Council for the academic year 2003-04."

Therefore, it needs to be seen as to whether the State Government was in a position to allot the candidates.

14. The schedule for the counselling for admission of candidates in 200 and odd Engineering Colleges in the State was notified on 21-6-2002. The 1st phase commenced from 29-6-2002. This was for allotment of candidates against unreserved seats. The counselling for the 2nd phase viz:, for reserved categories commenced from 2-8-2002. It was to continue till 28-8-2002. The permission accorded by the AICTE was on 8-8-2002. The contention of the State would have been acceptable had it been a case where it was not possible to select any candidate for unreserved seats, once the 2nd phase of counselling had commenced. Even during the 2nd phase of counselling, the selection for reserved candidates was to end by 17-8-2002. Thereafter, the counselling was scheduled to take place for all the categories of seats once again, with special emphasis on sliding. If any seats in the general category became vacant, subsequently either on account of candidates admitted in it having switched over to seats in reserved categories or on account of similar reasons, the necessary sliding with reference to the merit of the candidates was to have taken place from 18th to 28th August.

15. Instances are not lacking when both, during the counselling and even thereafter, permissions were accorded to Medical and Engineering Colleges and admissions were undertaken duly giving opportunity to all the candidates according to their merit. The refusal on the part of the Government to allot candidates to the petitioners" even after it had secured approval from the AICTE while the counselling was in progress does not appear to be justifiable.

16. The 2nd objection was as to the non-existence of permission by the Government u/s 20 of the Act. This provision mandates that no educational institution shall be started in the State without specific permission from the Government. The society obtained such permission before it started the institution. The question is as to whether such permission is necessary for opening an individual course. By placing reliance upon the provisions of the Rules framed under the Act, it is sought to be emphasised that permission is necessary even for introducing a course in an existing institution. This Court is relieved of the trouble of interpreting the impact of the said provisions for the simple reason that the respondents themselves have allotted candidates to the said course in favour of the society, during the current academic year, even without there being

any such permission. If the Government was of the view that it can allot candidates in the absence of the specific permission u/s 20, for the current academic year for the said course, on the strength of the same letter of approval by the AICTE, neither in logic nor in law, it can support its action in refusing to do so, during the previous academic year.

17. Once these findings are recorded, it has to be examined as to whether the students admitted by the society derive any right on account of such admissions. Learned Government Pleader for Higher Education has stressed on the circumstance that though the petitioners were admitted on the strength of an interim order, it was vacated shortly thereafter and thereby neither the college nor the students derived any right out of it.

18. The society was conferred minority status through specific orders of the Government. This enables the Society to admit candidates hailing from minority community to the extent of 50% of the seats viz., 20 seats. Rule 8(a) of the A.P. Professional Educational Institutions (Regulation of Admissions into Undergraduate Professional Courses through Common Entrance Test) Rules, 1989, contained in G.O. Ms. No. 184 dated 20-8-1993, provides for the same. The Rule is silent as to the right of the Management to admit non-minority candidates in the event of non-availability of minority candidates. That, however, is a different aspect. The students are said to have been admitted on 20-8-2002. The interim order was vacated on 24-10-2002. While vacating the interim order, the Division Bench of this Court did not make any observation as to the status of the candidates, who have already been admitted. While the learned Counsel for the petitioner submits that in the absence of a specific observation by the Division Bench, the rights of the candidates who have already been admitted cannot be said to have been affected, learned Government Pleader submits that once the interim order is vacated, all rights flowing therefrom come to an end. It is in this context that the maxim *actus curiae neminem gravabit* becomes relevant. In *Mohammed Gazi v. State of A.P.* 2000 (4) SCC 342, the Supreme Court observed as under:

"In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law."

In *Prakash Narain Sharma Vs. Burmah Shell Cooperative Housing Society Ltd.*, , the Supreme Court observed as under:

"It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order of the Civil Court by assuming authority upon itself to decide that the order of Civil Court is one by *coram non-judice*. The appropriate course in such case is for the person aggrieved first to approach the Civil Court inviting its attention to the relevant provisions of law and call it upon to adjudicate upon the question of its own jurisdiction and to

vacate or recall its order if it be one which it did not have jurisdiction in law to make. So long as this is not done, the order of competent Court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings.

19. Reverting to the facts of the case, the Division Bench, while setting aside the impugned order, held as under:

"We have heard the Counsel appearing on either side and also perused the main prayer in the writ petition and also the interim prayer asked for.

A perusal of the order passed by the learned Single Judge would show that the main relief has been granted at the interlocutory stage, which is impermissible in law. We, therefore, allow the writ appeal and set aside the order passed by the learned Single Judge and restore W.P. M.P. No. 20419 of 2002 in W.P. No. 16267 of 2002 to file for final hearing of the main writ petition. It is also stated that counter-affidavits have been filed by the respective parties and the matter is ready for enquiry. We, therefore, request the learned Single Judge to take this matter for hearing on priority basis and dispose of the writ petition as expeditiously as possible."

From a reading of the same, it is not evident that the admissions made pursuant to the impugned orders were set aside. The petitioners have categorically stated that the candidates so admitted were continued to be imparted the instructions.

20. Mere imparting of instructions by institutions unless the concerned University to which it is affiliated or is supposed to get affiliated certifies the existence of necessary infrastructure for according the affiliation does not cloth the institution or the students with a right to continue such courses. The petitioner-society contends that it had submitted an application for grant of affiliation to this course also for the academic year 2002-2003 along with the application for renewal of affiliations for other courses. The University had flatly denied of having received any such application. The fact that the University did not receive any application for affiliation of the course for the said academic year is not in dispute.

21. The learned Counsel for the petitioner has placed before this Court the proceedings of the University granting affiliation for certain courses even at the fag end of the academic year. They want to drive home the point that even if the University is satisfied with the infrastructure, the ultimate affiliation came to be granted only at the fag end of the academic year. They contend that taking exception to the admission into a course on the ground that no affiliation was granted by the time the admission took place, cannot be sustained in view of the uniform practice being adopted by the University.

22. None of the petitioners claim any relief for grant of affiliation for the course for the concerned academic year from the University. The effort of the Court is only to ensure whether there was any occasion for the University to assess the

existence of availability of the necessary infrastructure for the concerned academic year for the Biotechnology Course with the said college. The learned Standing Counsel has made available to this Court the inspection report submitted to it by a team of officers, in respect of the petitioner-society for the academic year 2002-2003. After conducting the inspection, the Convenor of the Committee addressed letter dated 3-2-2003 to the Registrar. The ultimate recommendations read as under:

"Based on information provided by the college and observations made, the Expert Committee recommends grant of affiliation for

11 B.Tech CSE (60), IT (60) and ECE (60) for the academic year 2002-2003;

1 B.Tech Bio-Tech (40) for the year 2002-2003; and

Renewal of affiliation for 1 B.Tech CSE (60), IT (60) and ECE (60)"

23. Learned Standing Counsel submits that there was no occasion for the Committee to make such recommendations as regards the Biotechnology Course. However, the learned Counsel for the petitioner-society referred to letter dated 23-12-2002 issued by the University to the Committee. The relevant portion of the said letter reads as under:

"The Expert Committee is also request to consider all the additional courses sanctioned including MCA and MBA for the academic year 2002-2003."

24. The objections raised in this regard by the respective Counsel become insignificant for the simple reason that this Court is not at all dealing with the question as to whether the society was entitled to be granted affiliation. For the limited purpose of ascertaining as to whether there existed necessary infrastructure for the college to continue the students admitted by it, the report referred to above would give an indication that such infrastructure did exist. As to the objection that in the absence of affiliation at the commencement of the academic year, the institution is not entitled to admit candidates, it would be sufficient to observe that the course of Biotechnology in the college of the society stood on the same footing as the other courses at the commencement of the concerned academic year.

25. Under these circumstances, the writ petitions are allowed, holding that the college established by the society was entitled to admit candidates against the management quota for the Biotechnology Course for the academic year 2002-2003. The question of granting permission for such candidates to appear in the examination year after year would depend on the satisfaction of the University as to the students having been imparted the course up to the required number of days, the completion of syllabus prescribed for the course, existence of necessary attendance for the concerned candidates, etc. For this purpose, necessary applications/representations are permitted to be made by the college as well as the students to the University. On such representations being made, the University shall pass appropriate orders within two weeks from the date of

receipt of such representations. No costs.