
(2001) 08 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1159 of 2001

Osmania University and Another

APPELLANT

Vs

Azeezia Educational and Welfare Society and Others

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 08 AP CK 0056

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : K. Ramakanth Reddy, for the Appellant; M.S. Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—A short question as regards the jurisdiction of the University vis-?-vis All India Council for Technical Education arises for consideration in this appeal.

2. The first respondent filed a writ petition praying to declare the action of the respondents in refusing to grant provisional affiliation to the petitioner-first respondent society for the academic year 2000-2001 as illegal and unconstitutional. In the said writ petition, a prayer was made to issue a direction upon the State and the appellants herein to grant provisional affiliation to Azeezia College of Computers and Management established by the first respondent society at building No.50 & 51, Mahaboob Mansion, Malakpet, Hyderabad pending disposal of the main writ petition.

3. The petitioner society with a view to start a three year-full time course of Master of Computer Applications (MCA) applied to the All India Council for Technical Education, respondent No.3 herein. The Council on satisfaction as regards the facilities provided for the proposed course accorded approval to the petitioner society for establishment of a college of Computers and Management

subject to the conditions set out therein. However, the first appellant University declined to grant affiliation. Pursuant to the directions issued by this Court in W.P.No.6583 of 2000, the first appellant herein constituted an Inspection Committee to submit a report after inspection of the premises of the petitioner society. The first appellant by an order dated 17.4.2001 once again declined permission to start the institution at Mahaboob mansion, Malakpet in view of the unhygienic conditions at the site on the ground that the site itself being a marketing yard used exclusively for selling agricultural products and live stock.

4. In an Interlocutory application in the Writ Petition, the learned single Judge held that the 3rd respondent council is a regulatory body in the matter of approvals for the establishment of new educational institutions and that the decision of the first appellant University cannot override the decision formally arrived at by the All India Council for Technical Education and that the appellant has no independent role in such matters and thus it could not have adjudged the suitability of the location of the institution. Considerations according to the learned Judge which weighed with the appellants herein, are irrelevant and thus, the order impugned was without jurisdiction. Accordingly, the learned Judge directed the first appellant to reconsider the application of the petitioner society for provisional affiliation expeditiously keeping in view the permission already accorded by the 3rd respondent Council. Aggrieved by such directions issued by the learned single Judge, appellants preferred this writ appeal.

5. Mr. K. Ramakanth Reddy, learned Standing Counsel appearing for the appellants submits that such a direction could not have been issued at an interlocutory stage which would amount to allowing the writ petition itself. In any event contends, the learned counsel that the academic year 2000 -2001 has come to an end and thus, the directions cannot be implemented. Our attention has been drawn to the almanac which has been drawn up by the University on 29.11.2000 which is to the following effect:

I SEMESTER

1. Commencement of Classes 20.11.2000
2. Last date of instruction 10.3.2001
3. Preparation holidays & Practical Exams 11.3.2001 to 25.3.2001
4. Theory Exams 26.3.2001 to 7.4.2001

II. SEMESTER

1. Commencement of Classes 9.4.2001
2. Last date of instruction 11.8.2001
3. Preparation holidays 12.8.2001 to 26.8.2001
4. Theory Exams 27.8.2001 to 8.9.2001

5. Practical Exams 10.9.2001 to 15.9.2001

Having regard to the fact that even the first semester is almost over, the question of provisional affiliation at this stage would in our opinion be wholly irrelevant. Our attention, has been drawn to the new Regulation published on 26.8.2000. Rule 8(iv) reads thus:

8(iv) A furnished permanent building at least adequate for the first year on the land as specified at 8(i) shall be required within the stipulated period.

6. The said regulation has been replaced by the following:

8(iv) In case the applicant society/trust does not hold ownership right over the land, a Lease Agreement duly registered in its name for temporary accommodation for a minimum period of two years along with lay out plan graphs of the premises.

7. The learned counsel would contend that the University is not absolutely bound by the recommendations of the 3rd respondent herein. Reliance in this connection has been placed on STATE OF TAMIL NADU V. ADHIYAMAN EDUCATIONAL AND RESEARCH INSTITUTE¹ and M.SAMBASIVA RAO V. OSMANIA UNIVERSITY².

8. Mr. M.S. Prasad, learned counsel appearing on behalf of the writ petitioner - respondent would submit that in view of the well settled principles of law, the order impugned in the writ petition dated 11.8.2000 could not have been passed by the appellants herein. According to the learned counsel, the jurisdiction of the University vis-?-vis respondent No3 herein is well settled in view of the several decisions of this Court and in that view of the matter, the writ petitioner-respondent has made out a prima facie case. Strong reliance in this connection has been placed on ADHIYAMAN EDUCATIONAL AND RESEARCH INSTITUTE (supra) JAYA GOKUL EDUCATIONAL TRUST V. COMMR. & SECY. TO GOVT. HIGHER EDUCATION DEPT.,³ and on MADANAPALLE INSTITUTE OF TECHNOLOGY AND SCIENCE V. STATE OF A.P.⁴.

9. It is well known that for the purpose of granting an interim order, the Court is not only concerned with the existence of prima facie case, but it must also ask itself the question as regards existence of balance of convenience and inconvenience. It shall also consider the question as to whether the petitioner shall suffer irreparable loss in the event an order of injunction is not issued.

10. It is also beyond any cavil of doubt that in a matter of this nature public interest has also a role to play. By reason of the impugned order as noticed hereinbefore the learned single Judge for all intent and purport has granted same relief to the petitioner.

11. One of the questions which is required to be considered and adjudicated is as to whether the new Regulation would apply as regards the matter of grant of affiliation. Such question arises having regard to the fact that according to the

writ petitioner it has filed an application for grant of affiliation before the rule was amended. The learned single Judge has not addressed himself the aforementioned aspect of the matter.

12. Prima facie, we are therefore of the view that as by 26.8.2000 on which the amendment has come into force, no affiliation could have been directed to be granted. Prima facie, the appellants herein can legitimately refuse to pass an order according affiliation in the event one of the vital conditions for grant of such affiliation is not fulfilled.

13. The balance of convenience also in our opinion is not in favour of the first respondent. If an order of affiliation is directed to be passed at this stage, the first respondent would admit students and in the event the writ petition is ultimately dismissed, they would suffer irreparable injury. The public interest and the third party interest are the matters which are required to be taken into consideration. In this connection, we may refer to the decisions of the Apex Court in DENTAL COUNCIL OF INDIA V. SUBHARTI K.K.B.CHARITABLE TRUST⁵, RAMNIKLAL V. STATE OF MAHARASHTRA⁶ and also a decision of Jammu and Kashmir High Court in KRANTI GHOSH V. JAMMU DEVELOPMENT AUTHORITY⁷.

14. The question as to whether and / or how far and to what extent the decision of the third respondent shall be binding in the changed situation also requires consideration by the Court at the time of disposal of the writ petition.

15. In ADHIYAMAN EDUCATIONAL AND RESEARCH INSTITUTE (supra) on which both sides have placed reliance, the Apex Court inter alia observed:

16. The Senate and the Syndicate can make respectively statutes and ordinances to enforce the provisions of the Act. The Act and the statutes and the ordinances made there under show that the University is given powers to prescribe terms and conditions for affiliation also of the technical colleges such as the engineering colleges and also the power to disaffiliate such colleges for non fulfillment of the said conditions. It further gives power to the University to prescribe the qualifications of the teachers and also their service conditions. The University is also given the power to inspect and to conduct local inquiries of the affiliated colleges and to issue directions to the colleges on the basis of the reports of such inspection and inquiries. It can prescribe the curricula for the different courses conducted by the colleges and conduct examinations to confer degrees and diplomas. It can recommend to the appropriate authorities empowered to sanction, withhold or refuse the teaching and other grants, to decline to forward to the UGC any application made by the management for sanction of any grant, to suspend the provisional affiliation or approval granted to the college in course or courses of study, to decline to entertain any new application for affiliation or approval of applications for increase in strength in any course of studies conducted by the college, to recommend to the Government to take over the management of the college temporarily or permanently. Statute 44-A enables the University to grant affiliation provisionally, for fixed period and to grant

extensions for such provisional affiliation.

...

17. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act.

18. In SAMBASIVA RAO's case (supra), a Full Bench of this Court followed the aforementioned decision and it was held therein:

19. Not only such conditions are imposed for grant of approval but also for withdrawal of approval under Regulation No.12 if any one or more are contravened. It is well known that an authority empowered to do an act is also impliedly empowered to undo it. If that is the object of Regulation No.12, it cannot be inconsistent with either the object and purpose of the Act or Sections 10(g) (k), (m) and (o) of the Act. In fact, Regulation No.12 providing for withdrawal of the approval has incorporated a safeguard to the technical institution etc., as it will have opportunity of being heard when the Council may take a decision after making such enquiry as it may consider appropriate, thereby conforming to the principles of natural justice. As pointed out by the Supreme Court in Abhiyaman's case supra, the Government the UGC and the University are properly represented in the committees u/s 9 of the Act and also Regulation no.9 and also in the Council itself by virtue of Section 3 sub clause (iv) of the Act and the Council takes the decision regarding the approval or withdrawal of the approval in consultation with such agencies in addition to invite any person associated with any of the said committees, thereby to have all the views and materials before taking any such decision. Above all, the Council has power to relax under Regulation No.11 any of the provisions of the Regulations in respect of any class or category of institutions. In that view of the matter, no regulation imposing any condition or empowering the Council to take a decision in regard to any of the matters therein, cannot operate oppressive or causes any hardship in a particular case or class of cases. Thus, there cannot be any repugnancy between the Regulations and the AICTE Act in any matter covered thereunder nor there is an excess exercise of power by the Council in framing Regulations which are intended to ensure to carry out the purposes of the Act which are not only enshrined in the Act but also confirmed by the Supreme Court in Adhiyaman's case supra.

20. In JAYA GOKUL EDUCATIONAL TRUST V. COMMR. (supra), the Apex Court was considering a different fact situation. On merit, the fault was found with the action of the University as it was held that "obtaining of the views from the State Government" is not synonymous with "without obtaining the approval of the State Government". It was observed:

Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

This aspect of the matter has been considered by one of us (V.V.S.RAO.J.) in MADANAPALLE INSTITUTE OF TECHNOLOGY AND SCIENCE (supra). In the said decision, although it was inter alia held that Central Act will prevail, it was not concerned with the situation where the rules of affiliation changed during the pendency of the application filed there for by the Institute concerned.

21. We may usefully refer to the observations of the Full Bench in M.SAMBASIVA RAO (supra) which read as under:

That clearly defines the autonomy of the University not to be autocracy, in relation to the matters concerned by the AICTE Act and it is operative in such other areas not covered by the AICTE Act. Therefore, we hold that the powers and functions of the AICTE or the Council under the Act cannot be taken to offend the autonomy of the University. Same thing can be said in relation to the Government or any other agency is concerned, that their area of operation by virtue of any other law including the State Acts cannot be in regard to the matters covered by the AICTE Act.

In a similar situation, in DENTAL COUNCIL OF INDIA (5 supra) the Apex Court while interpreting Section 10A of the Dentists Act, held that the decision of the Central Council shall prevail over the State Council. The Apex Court further held that the Court in exercise of powers under Article 226 of the Constitution of India cannot interfere with the discretion exercised by the experts body like Dental Council. It was further held as under:

" ... Still however, private institutions cannot be permitted to have educational "shops" in the country. Therefore, there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the concerned authority. On occasions, the concerned authorities, for various reasons, fail to discharge their function in accordance with the statutory provisions, rules and regulations. In some cases, because of the zeal to establish such educational institution by persons having means to do so, approach the authorities, but because of red-tapism or for extraneous reasons, such permissions are not granted or are delayed. As against this, it has been pointed out that instead of charitable institutions, persons having means, considering the demands of the market rush for establishing technical educational institutions including medical college or dental college as a commercial venture with sole object of earning profits and/or for some other purpose. Such institutions fail to observe the norms prescribed under the Act or the Regulations and exploit the situation because of ever increasing demand for such institutions. In such cases, permission is refused by the authorities without there being any bias or

extraneous considerations. It is, therefore, submitted that Courts normally should not interfere with a decision taken by the expert body such as Medical Council or Dental Council by straightaway issuing mandamus directing the authority to grant approval or permission to establish such institution. Where the authority has refused approval, the institution may not be well equipped to impart education and may not have qualified teachers, staff or other infrastructure necessary for running the institution. If permission is straightaway granted by the Court, society, education and ultimately the students suffer."

For the reasons aforementioned we are of the opinion that the impugned order cannot be sustained and it is set aside. The writ appeal is allowed. No costs.

22. Having regard to the facts and circumstances of this case, we are of the opinion that the matter requires consideration by an appropriate Bench hearing writ petitions as expeditiously as possible, preferably within a period of four weeks from the date of receipt of communication of a copy of this order.