

(1982) 12 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No"s. 2604 and etc. of 1981

P. Kasilingam and Others

APPELLANT

Vs

P.S.G. College of Technology and Others

RESPONDENT

Date of Decision : 23-12-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 261, 356, 357

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 101, 13, 14, 14A, 14B

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 10, 11, 11(4)(1), 14, 7

Tamil Nadu State Legislature (Delegation of Powers) Act, 1976 — Section 3, 4, 5, 6, 7

Citation : (1983) ILR (Mad) 347

Hon'ble Judges : V. Ramaswami, J; Singaravelu, J

Bench : Division Bench

Advocate : K.V. Sankaran, for A.M. Ilango, T.M. Vasudevan, R. Gandhi and V.K.T. Chari, for B. Sriramulu, for the Appellant; M.A. Sadanand, Government Advocate, P. Chidambaram and K. Swamidurai, Central Government Standing Councils, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—Writ Petitions Nos. 2889 and 3130 of 1981 have been filed praying for the issue of a writ of certiorari to quash the

resolution of the governing body of the P.S. College of Technology Peelamedu, Coimbatore made in No. N.4881/5533/80 dated. 18th March

1981 and for a mandamus directing the P.S.G. College of Technology (hereinafter called the College) to implement the provision, of the Tamil

Nadu Private Colleges (Regulation) Act, 1976 (hereinafter called the Act) and the Tamil Nadu Private Colleges (Regulation) Rules, 1976

(hereinafter called the Rules) Writ Petition of No. 3130 of 1981 has been filed by 41 members of the staff of the College and Writ Petition No.

2889 of 1981 has been filed by another member of the staff. The above college,

the State of Tamil Nadu and the University of Madras are the three Respondents in these writ petition. The relief has been asked for on the ground that, having regard to the purpose and objects of the Act and the Rules, all private colleges including professional colleges come within the purview of the Act and that, in fact, the P.S.G. College of Technology was held by this Court in Writ Petition No. 2756 of 1976 as coming within the meaning of private colleges under the Act. In spite of the fact that the College has been held to be coming within the purview of the Act and in spite of repeated appeals and reminders by the Petitioners and the P.S.G. College of Technology and Polytechnic Teachers Association, of which the Petitioners are members," the College had failed to implement the provisions of the Act and the Rules made there under. On the contrary, the governing body of the College at its 54th meeting held on 18th March 1981 passed the following resolution:

Resolved unanimously that the Governing Body is clearly of the view that the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Tamil Nadu Private Colleges (Regulation) Rule, 1976 do not definitely apply to the P.S.G. College of Technology.

In view of this definite attitude taken in the resolution, the Petitioners have sought for a mandamus as mentioned above.

2. In Writ Petition No. 2604 of 1981 the Petitioner is a Lecturer in Electrical, Electronics and Communication Engineering in the College. In

addition to the facts mentioned in the other two writ petitions, in this petition the Petitioner has further questioned the jurisdiction of the College to

advertise on an All India Basis and call for applications for filling up vacancies in faculty positions and in its various departments with the area of

specification required. According to the Petitioner, under Rule 11(4)(1) and (ii) of the said Rules, it is incumbent on the part of the College to

consider the claims of all qualified teachers in the college while making promotions and making of direct recruitment to promotional posts could

arise only when none of the qualified teachers in the College is found suitable for promotion. He also states that he is personally aggrieved on the

ground that he is qualified for promotion from the post of Lecturer to the post of Assistant Professor in the Department of Electrical and

Electronics Engineering of Electronics and Communication Engineering and that

without promoting him the causing of all India advertisement for filing up the vacancies is illegal.

3. When these writ petition were pending the college itself filed Writ Petition No. 3205 of 1981 praying for the issue of a writ of declaration or any appropriate writ or order, declaring that the provision of the Act and the Rule do not apply to the P.S.G. College of Technology and Polytechnic, Peelamedu, Coimbatore and pass such further or other consequential order as this Court may deem fit. In this writ petition, in addition to impleading the three writ Petitioners in the other writ petitions, the College has also impleaded the State of Tamil Nadu, the Union of India and the University of Madras as Respondents. The contention of the Petitioner College of Technology is that neither expressly nor impliedly the professional college like the Petitioner College of Technology are included within the purview of the Act and that, in fact, both the Central and the State Government were proceeding on the basis that the provision of the Act and the Rule do not cover such professional college. In fact, the contention of the Petitioner was that any other constitution of the Act would make it ultravires the legislative power of the State. The main contention in all these writ petitions, therefore, relate to the applicability of the provision of the Act and the Rules to the P.S.G. College of Technology, Coimbatore.

4. Before dealing with this main point in dispute, we may first dispose of two of the contentions raised in these petitions by the members of the staff of the College. The first contention is that the question of applicability of the provisions of the Act and the Rules to the P.S.G. College of Technology is concluded by a decision of a single Judge of this Court in Writ Petition No. 2756 of 1976 and that the College is bound by res judicata and estoppel by conduct. The facts leading to this contention may now be noticed in order to appreciate this contention. Some time in the beginning of 1976, certain charges were framed against the Petitioner in Writ Petition No. 2604 of 1981 by the Principal of the College on certain allegations of misconduct. When the enquiry was pending, the said Petitioner was alleged to have given a letter of resignation on 19th March 1976 with a request that he may be relieved of his duties from the College after six months from the date of that letter. The Principal of the

College accepted the letter of resignation and also agreed to believe him with effect from 19th September 1976. However an order was issued on

5th April 1976 relieving the Petitioner with immediate effect and enclosing a cheque for the salary payable to him for the re-marring portion of the

six months period. The Petitioner submitted a memorandum to the Governor of Tamil Nadu, complaining that the letter of resignation given by him

was not voluntary but was a result of coercion and threat. This memorandum to the Governor was endorsed to the University of Madras for

consideration. The Syndicate of the Madras University dismissed the same on 15th May 1976 on the ground among others that no appeal would

lie co the Syndicate. Thereafter the Petitioner filed Writ Petitions No. 2756 of 1976 praying for the issue of a writ of certiorari to quash the order

of the University. The University and the P.S.G. College of Technology alone were made party Respondents. In this Writ Petition the Petitioner

contended that having regard to the definition of College occurring in the Rules, it would not include a professional college and that, therefore, the

provisions of the Act and the Rules would not apply to the P.S.G. College of Technology and the University was the competent authority to deal

with his appeal. This contention was rejected by a brief order, the relevant portion of which reads as follows:

First of all, the expanded definition of the private College as laid down in the section (Section 2(8)) cannot be abridged or Curtailed by the rules.

Secondly, the definition of College occurring in the rule is an inclusive definition. Though for the purpose of the University Act, 1923 the college

might have been defined as including professional college, so long as the definition u/s 2(8) of the Act is wide enough to include a professional

College, an appeal will lie only to the Government u/s 20 read with Rule 14. In this view, his writ petition will stand dismissed.

5. Therefore, the Petitioner filed an appeal to the Government which was forwarded to the Additional Director of Technical Education for

conducting an enquiry and submitting a report and after receiving such report the Government allowed the appeal and directed reinstatement. The

P.S.G. College of Technology filed Writ Petition No. 16 of 1979 to quash the said Government Order. The High Court by an order, dated 1st

October, 1979 allowed the writ petition on merits and set aside the order of the Government. The Petitioner filed Civil Appeal No. 493 of 1980

against the decision of the High Court. By its judgment, dated 8th January, 1981 the Supreme Court allowed the appeal and restored the order of

the State Government to reinstate the Petitioner in service and further remitted the matter to the Government to decide as to whether the Petitioner

is entitled to all arrears of pay and allowances upon his reinstatement in service.

6. As may be seen from the judgment of the High Court and the Supreme Court, in those proceedings the parties proceeded on the assumption

that the provisions of the Act and the Rules are applicable to P.S.G. College of Technology. The judgment of the single Judge in Writ Petition No.

2756 of 1976 was one of dismissal of the writ petition and the P.S.G. College of Technology could not be said to be a person aggrieved by the

judgment. Neither the Union of India nor the State of Tamil Nadu were parties to the writ petition. The conduct of the College in not questioning

the jurisdiction of the Government in entertaining the appeal on the ground that the Act and the Rules are not applicable and fighting the case on

merits at the subsequent stages could not in any way be considered as a conduct which will preclude the College from agitating the question of the

validity or applicability of the Act and the Rules. For the first time in the presence of all the parties this question is raised in these writ petitions and

since we are sitting in a Bench, we are entitled to consider the correctness of the judgment of the single Judge in Writ Petition No. 2756 of 1976.

In the foregoing circumstances the judgment also could be considered as only per curiam. Further the doctrine of acquiescence is not a bar when

constitutional validity is questioned. We are therefore unable to accept the contention of the staff that the decision operates as res judicata or that

the College is precluded by their conduct from questioning the validity of applicability of the provision of the Act to them.

7. The other contention of the writ Petitioner in Writ Petition No. 2604 of 1981 is that Writ Petition No. 2205 of 1981 has been filed by P.S.G.

College of Technology and Polytechnic represented by its Principal, that there is no such person in that style of remand that, in fact, the P.S.G.

College of Technology and P.S.G. Polytechnic are two different institutions which cannot and do not have a single corporate existence and the writ

petition by such a person is not maintainable. In the affidavit filed by the College in support of Writ Petition No. 3205 of 1981 it is stated:

The P.S.G. Polytechnic (formerly known as P.S.G. Industrial Institute School Department) offering Diploma Courses Was started in 1939. The

P.S.G. College of Technology offering undergraduate Courses in B (sic) was started in the year 1951 with the grant of affiliation by the University

of Madras. Postgraduate courses in Engineering Were started in the year 1958.

8. The Principal of the College of Technology and the Polytechnic is one are the same person. In fact in Writ Petition No. 3130 of 1981 which has

been filed by the President of the P.S.G. College of Technology and Polytechnic Teachers Association and 41 others, it is stated that:

the first Respondent is running a polytechnic also as a11 integral part of the College which is quite contrary to the provisions of the Act and the

Rules.

Probably, on this ground the Petitioner is styled as P.S.G. College of Technology and Polytechnic and represented by its Principal. On that ground

the writ petition cannot be said as not maintainable. Further, the question whether the Act is applicable to the College of Technology is directly

arising in all the other writ petitions as well and that therefore this writ petition could not be dismissed on such technical ground. This objection is

therefore overruled. That leaves us to the main question as to the applicability of the Act and the Rules to the P.S.G. College of Technology.

9. Following the proclamation issued on 31st day of January, 1976 under Article 356 of the Constitution, the Parliament enacted the Tamil Nadu

State Legislature (Delegation of Powers) Act, 1976. u/s 3 the power of the Legislature of the State of Tamil Nadu to make laws, which has been

declared by the proclamation to be exercisable by or under the authority of the Parliament, was conferred on the President. In exercise of the

powers conferred by Section 3 of this Act, the President was pleased to enact the Tamil Nadu Private Colleges (Regulation) Act, 1976. Chapter

II of the Act deals with the establishment permission for establishment and the payment of grant by the State Government at such rate and for such

purposes as may be presented. Section 3 prohibits the establishment of any private college on or after the date of commencement of the Act

without the permission of the State Government and except in accordance with the terms and conditions specified in the permission. Section 4

deals with the application for permission and the particulars to be furnished

in such application. Section 5 deals with the considerations of the application for permission, and the procedure to be adapted. Section 6 is a provision relating to existing an age and Section 7 provides for transfer or change in the concession (sic) of the management. Sections 8 and 9 deal with in merit institution and Section 101 for payment of grant. Rule 7 framed under the Act provides that the grants may be paid by the Government for the purposes of teaching construction of buildings purchase of building site play ground, furniture, books and appliances and prescribes condition for payment of such grants. Chapter III deals with the constitution of a college committee and its functions. It is to the effect that every private college, not being a minority college, shall have a college committee which shall include the principal of the private college and two senior professors employed in the private college. Rule 8 of the Rules framed under the Act provides that the terms of office of the members of the committee shall be three years and that the committee shall consist of (i) representatives of the educational agency of whom one shall be nominated by the educational agency as its President, (ii) the principal of the college; (iii) Two senior most professors and (iv) One member nominated by the University The Educational Agency shall also nominate one of its representatives as Secretary of the committee, who shall function for and on behalf of the Committee and the educational, agency and according to the resolutions passed at the meeting of the committee The functions of the Secretary in relation to the conduct of the meeting are provided for under the Rules. Section 13 and Rule 10 deal with the meaning of the committee and Section 14 relates to the functions of the college committee. This section provides that the committee shall have the following functions, namely, (a) to carry on the general administration of the private college excluding the properties and funds of the private college; (b) to appoint teachers and other persons of the private college, fix their pay and allowance and define their notices and the conditions of their service and (c) to take disciplinary action against teachers and other persons of the private college. Section 14A empowers the Government to appoint a special officer in the case of maladministration, lapses inequalities of the private college and suspend the college committee. Section 14B provides for an appeal to the Special Tribunal consisting of two Judges of the

High Court against the order of the Government u/s 14A. Chapter IV deals with qualification, appointments, conditions of service and disciplinary

actions in respect of teachers and other persons employed in private colleges. Section 15 enables the University to make regulations, statutes or

ordinances specifying the qualifications for the appointments of teachers and other persons employed in a private college and section 16 prohibits

the appointment of any person who does not possess that qualification. Section 17 enables the Government to make rules relating to promotion,

pay allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters, excluding qualifications

of teachers and other persons in any private college; and in exercise of this power, Rule 11 had been framed of which Clause 4(i) and (ii) which

are relevant may be extracted here;

(4). (i) Promotion shall be made on grounds of merit and ability, seniority being considered, only where merit and ability are approximately equal.

(ii) The committee shall, while making promotion, consider the claims of all the qualified teachers in that college. If, however, none of the qualified

teachers in the college is found suitable for promotion, the vacancy may be filled up by direct recruitment by calling applications from qualified

persons through the press.

Explanation.- For purpose of this rule, if an educational agency has established and administered more than one college, and then the colleges

under the control of that educational agency shall be treated as one unit.

Section 19 provides for disciplinary action and the dismissal, removal or reduction in rank on suspension and the procedure to be followed in such

cases. An appeal is provided to the State.

Government u/s 20 against the order of dismissal, removal or reduction in rank or other termination of services, and a further appeal to a Tribunal

u/s 21. The procedure of filing an appeal, constitution of the Tribunal and other procedural matters are dealt with in Chapter VII. Chapter V and

VI generally deal with the properties of the educational agency, restrictions on alienations, audit of accounts, etc. Chapter VIII deals with levy of

penalties and the procedure for such levy for willful contravention of any of the provisions of the Act and the Rules and Chapter IX deals with

miscellaneous provisions including the power to make rules to give effect to the

provisions of the Act.

10. As may be seen from the brief statement of the Provisions, of the Act and the rules frames the following are the following are the essential

objectives of the Act:

(1) Prevention of the haphazard and mushroom growth of private college by requiring the permission of the State Government for establishing any

private College.

(2) Presenting the terms and conditions on which the Government would pay recurring and non-recurring grants.

(3) The constitution of a college committee and defining its functions.

(4) Enabling the University to prescribe qualifications for appointment of teachers and other persons and authorising the Government to make rules

relating to promotion pay allowances, etc.

(5) Prescribing the procedure for disciplinary proceedings in respect of teaching and non teaching staff and providing appeals and second appeals

against arbitrary and illegal orders.

(6) Provisions intended to prevent maladministration and misappropriation of the properties and funds of the College.

11. The contention of the learned Counsel for the College of Technology was that in respect of these identical matters, the Government of India

have given certain directions to the State Government and these instructions have been incorporated in the relevant places in the Tamil Nadu grant-

in-aid Code of the Madras Technical Education Department approved and issued in G.O. Ms. No. 1282, Education, dated 26th July 1967. The

instructions are in regard to matters that could be the subject of legislation under Entry 66 of List I of the Seventh Schedule of the Constitution and

therefore the State would have no legislative power to make a law contrary to such instructions.

12. On the constitution and establishment of an All India Council for Technical Education, we find the following consolidated note on the resolution

of the Government of India:

In their plan for Post War Development in India the Central Advisory Board of Education have given reasons for their belief that technical

education at the higher stages cannot in modern conditions be effectively

organised, on a provincial basis. They have emphasised the need for planning this particular branch of education on an All India basis if there is to be substantial industrial development in the post war period and have remarked that "to stimulate, co-ordinate and control the provision of the educational facilities, which such a development as well as existing industry will need, there must be an All India body in supreme charge". They have accordingly recommended the establishment of a National Council for Technical Education which, they suggest, should can rolpolicy in technical education generally and deal with all technical institutions above the high school stage except the Technological Departments of Universities. A necessary preliminary to any planned and balanced development of technical education is a survey by a single competent body of existing facilities, probable post war requirements and present and prospective proposals for development in this important sphere of education. It has accordingly been decided that the All India Council for Technical Education should be set up immediately com posed in the way suggested by the Central Advisory Board, but entrusted in the first instance with adviser functions only.

The Council is composed of the following members:

- (i) Chairman; The Hon''ble Minister for Education, Central Government.
- (ii) Educational Adviser to the Government of India.
- (iii) Representatives of the Ministries and Departments of the Government of India.
- (iv) Two members of the House of the people elected by it.
- (v) One member of the Council of States elected by it.
- (vi) One representative of each of the states.
- (vii) Eight representatives of Industry and Commerce to be nominated by Organisations approved by the Government of India.
- (viii) Two representatives of Labour to be nominated by organisations approved by the Government of India.
- (ix) One member of the central Advisory Board of Education.
- (x) One member of the Inter University Board of India.
- (xi) One representative of the Association of Principals of Technical Institutions in India.

(xii) Two representatives of Professional Bodies.

(xiii) Not more than the members nominated by the Government of India to represent other interests:

13. The all India Council for Technical Education is attached to the Ministry of Education and a member of the Staff in the Ministry is the

Secretary of the Council. The council for Technical Education have four Regional Committees, one each for the eastern, western, northern and

southern regions of the country, the functions of the council and its Regional Committees is to advise the Central Government, the State

Governments and other authorities on various problems concerning the region, connected with the provision of educational and training facilities in

technical institutions and industry and commerce.

14. The first five year plan emphasised the need for an increasing amount of attention in regard to Engineering and Technological Education on

some important questions such as the pattern of technical education, the apportionment of responsibility as between the various agencies

concerned, the control of technical education, co operation between industry and commerce on the one hand and technical institutions on the

other.... The general conclusions in the First Five Year Plan were that with the industrialization we would be requiring an increasing number of

highly qualified engineers in different specialties and that the Central Government must take charge of the control and co ordination of technical

education. Primarily, the All India Council for Technical Education should be an advisory body to do the coordination work and advise the Central

Government on Engineering and technical Education. On this policy both Government Engineering and Technological Institutions and Private

Engineering and Technological Institutions were to be regulated by directions issued by the Central Government. On this policy the Government of

India accordingly have at various times issued directions on all topics like the governing body, recruitment of teaching staff and disciplinary

proceedings in private technical educational institutions.

15. The Grant in and Code of the Madras Technical Education Department has incorporated at the relevant places all such instructions issued by

the Central Government and made some other instructions their own in regard to other matters making it a complete code relating to private

technical educational institutions.

16. Article 9 deals with the constitution of the Governing Councils and states that every private education technical institution shall be under the

management of a Governing Council composed of not exceeding 20 members including the Principal who will be the ex officio Member Secretary.

One of the members shall be the Treasurer to be appointed with the concurrence of the Director. Not more than 50 per cent of the total members

shall be nominated by the Trust, Society; individual or group founding the institution the remaining 50 per cent shall consist of:

- (i) a representative of the All India Council for Technical Education;
- (ii) The Director of Technical Education of the State Government;
- (iii) A nominee of the Central Government;
- (iv) A nominee of the University to which the institution is affiliated; and
- (v) The remaining members nominated by the Director from among officers of the following departments of the State Government, viz., Industries, Public Works, Highways etc. or of autonomous bodies like the Madras Electricity Board.

17. The tenure of the office of the members of the Council shall be three years. The Governing Council shall be answerable for the maintenance of

the institution and fulfillment of all the conditions of recognition and aid including the due enforcement of such rules of discipline as are prescribed

from time to time. The main functions of the Governing Council are:

- (1) To manage the affairs of the institution.
- (2) To appoint such staff as may be required for the efficient management of the affairs of the institution in accordance with the orders of the Government in force from time to time.
- (3) To enter into service contracts.
- (4) To impose penalties on the members of the Staff and
- (5) To consider the Annual Report and Audited Accounts for the previous financial year and frame the Budget Estimated for the ensuing year.

18. Article 9 also incorporates the instructions of the Government of India relating to the functions of the Governing Council. In their letter dated

8/9th January 1957 the Government of India has said that the following shall be the functions of the Governing Council are:

- (1) To manage the affairs of the institute and to regulate its expenditure.
- (2) To determine the cadre and grade of the departments and to create, suspend or abolish posts and to fix the emoluments and the terms of service of the employees of the institute.
- (3) To appoint all staff in accordance with the regulation drawn up for the purpose.
- (4) To grant leave and allowances, to determine conditions of service, to enter into service contracts and to grant extensions of service to staff.
- (5) To impose penalties on the staff in accordance with the procedure laid down for the purpose.
- (6) To consider the annual report and audited accounts for the previous financial year and the Budget Estimates of the ensuing year to take decision thereon.
- (7) To appoint qualified auditors every year and to fix their remuneration.

19. The following conditions have also been prescribed by the Government of India in the matter of recruitment of teachers in Engineering Colleges

and they have been incorporated in the Grant in aid Code:

Recruitment of all categories of teachers shall be made strictly on merit and on the basis of All India Advertisement and selection. The qualification

prescribed for the posts should be essentially related to academic attainments, etc. Selection Committees should have not less than two outside

experts. Appointment should not be made on communal or caste considerations.

20. Article 14 deals with the disciplinary control over the staff and states that no employees of the institution shall be punished or dismissed from

the institution, except in accordance with the instructions given in Appendix 3 and that Appendix clearly indicates the procedure to be followed in

disciplinary matters. It may be seen from the above that in the manner of the constitution and functions of the Government Body, the method,

manner and terms of recruitment of the staff and in the matter of taking disciplinary proceedings, there are clear instructions of the Government of

India which have been incorporated in the Grant in aid Code.

21. During all the Five Year Plan periods, private technical colleges and institutions were given financial assistance from the Central Government. In

the affidavit filed in support of Writ Petition No. 3205 of 1981, the pattern of

assistance given by the Central Government and State Government

to the P.S.G. College of Technology is clearly set out and the facts and figures given therein have not been disputed in any of the counter affidavits

in these cases. The details of which are extracted hereunder:

Unit. Centre. State. Management.

(1) (2) (3) (4)

A. Postgraduate Courses ;

(i) Engineering-Technology Non Recurring-Recurring. .. 100%

(ii) M. B. A. Do. 50% .. 50%

B. Undergraduate courses and Diploma Courses.

I. 5 Year Plan Do. 66.66% 16.67% 16.67%

II. 5 Year Plan Do. 666.66% 16.67% 16.67%

III. 5 year Plan Do. 50% 25% 25%

IV. 5 Year Plan Do. 75% 25% (From

* (Revised) 1967-68

onwards)

V. 5 Year PUn Do. * 80% 20%

Present Do. * 90% 10%

*Central share Government.

paid to State

Government

POSTGRADUATE COURSES

Year. Net Deficit. (2) Central Share of State Management.

Government. (3) Government. (5)

(4)

1977-78 RS. 8,83,805.60 RS. 8,83,905.60 RS.

1978-79 8,72,353.37 8,87,353.37

1979-80 9,03,237.01 9,05,237.01

1980-81 10,28,884.48 10,28,515.20

NON-RECURRING EXPENDITURE"

Equipment, Library and ; furniture. Share of Share of Government of Management.

India.

RS. 14,01,231.30RS. RS.

13,64,526.00 36,705.30.

14,01,231.30 14,01,23138

Accounts ate subject to audit by, the Madras.

Accountanti½General,

UNDERGRADUATE COURSES B.B/B

TECH. COURSES

Tear (1) Gross Expenditure Central Net Deficit. Share of State Management.

Government. (2) (3) Government. (4) (5)

RS. PS. RS. PS. RS. PS-

1*77i½78 19.76,210-92 16,23,632-74 3,52,578-18

(80%)

1978i½79 22,62,763-82 21,17,535-14 1,45,228-68

(90%)

1979i½ 28,23,054-98 26,18,835-30 2,14,119-68

(90%)

1980i½81 30,47,199-03* 28,11,690-93 (90%) 2,35,508-10

*Final assessment yet to be made.

(Accounts are subject to audit by the Examiner of

Local Funds Accounts, Government of Tamil Madras

and the Accountant General Madras;)

22. The Central Government had also given assistance to put up Hostels with 50 per cent of the cost as grants and the remaining 50 per cent as

interest free loan to be repaid in 20 installments,

23. The Central Government has also given in 1978 a special direct Central assistance grant of about Rs. 10.51akshs for modernization and

replacement of absolute equipments and library.

24. In the plan budget for 1982-83 also we find specific provision of grants to Engineering Colleges. The Grant in aid Code prescribes also the conditions of aid and the purposes for which aid may be given.

25. We may also mention that the Grant-in-aid Code also contains provisions relating to the conditions on which permission for starting a new private technical education institution could be granted and recognition accorded and detailed condition on which the teaching and non-teaching

grants will be given by the State Government as also provision relating to auditing and other matters. Thus all matters that are found generally in

Tamil Nadu Private Colleges (Regulation) Act, 1976 are to be found in the Grant-in-aid Code of the Madras Technical Education Department of

which as already stated, on the important questions like governing body, recruitment of staff and taking of disciplinary proceedings, there were

clear instructions of the Government of India which have been incorporated in the Grant-in-aid Code. There are also certain other instructions

relating to obtaining of grant from the Central Government though the Central grant is dispersed through the State Governments.

26. The contention of Sri V.K.T. Chari learned Counsel for the College is that these directions or regulations of the Central Government re

referable to matters covered by the subject under Entry 66 of List I and based on important development policy. These instructions are binding on

the State Governments and the institutions.

27. Let us first consider the submission of the learned Counsel that the Act in terms is not applicable to professional Colleges, it is therefore

necessary to consider some of the provisions relating to this contention. Private College is defined in Section 2(8) as meaning;

a College maintained by an educational agency and approved by, or affiliated to, a university, but does not include college(a) established or

administered or maintained by the Central Government or the Government or any local authority or any university; (sic)(b) giving, providing or

imparting religious instructions alone, but not any other instruction.

Under the provisions of the Act read with the Rules, these Private Colleges and educational agencies have to comply with and carry out the

instructions, directions and aides issued by the Director or his subordinate Officers from time to time on pain of withdrawal of the recognition and

the grant, Director is defined as meaning Director of Collegiate Education. But so far as engineering and technological institutions are concerned,

there is a different competent officer, who is designated as Director of Technical Education and he is the authority competent to issue instructions,

directions and orders and he is not one of those authorize who functions under the Private Colleges (Regulation Act, 1976, The technical

institutions do not function in this State under the Director of Collegiate Education. The teaching and non teaching grants of the State Government

for engineering colleges had all along been given under the Grant-in-aid Code, subject to the directions and conditions mentioned therein and that

had been the practice even after the College Act came into force in 1976. In fact, the Rules defined. College also and that reads as follows:

"College" means and includes Arts and Science College, Teachers Training College, Physical Education College Oriental College, School or

Institute of Social Work and Music College maintained by an educational agency and approved by, or affiliated to, the University.

This definition is consistent with the Act not being applicable to engineering colleges and technical institutions. It is true that the Rules could not

restrict the application of the Act. But we are not reading the Rules as restricting the operation of the Act, but as an instance of how the authorities,

who are to enforce the provisions of the Act have understood and applied the provisions, keeping in view the intentions of the Legislature. All

along the Central Government and the State Government were proceeding on the basis that the Act is not applicable to engineering colleges which

are professional institutions.

28. In the counter affidavit filed on behalf of the State of Tamil Nadu the first Respondent in Writ Petition No. 3205 of 1981, it is stated that the

Grant in aid Code applies:

All to Private technical educational Institutions recognized already or to be recognized hereafter by the Government or any authority authorised by

the Government in this behalf from time to time. Grants will be sanctioned under this Code to all recognised technical educational institutions under

private management subject to the conditions specified in the code. In order to get State Government grants, every private technical institution has

to scrupulously follow the code and instructions given by the Government of

Tamil Nadu and Director of Technical Education in that behalf from

time to time. Detailed procedure have been laid down in this Code with regard to (1) condition of Aid, (ii) Non recurring grant for buildings, (iii)

Non recurring grant for books etc., (iv) Recurring grants, (v) General conditions of service members of teaching staff, (vi) Procedure for taking

disciplinary action against members of staff, etc. The Code also prescribed many other forms to be complied by the management of technical

institutions.

The counter-affidavit further states:

...the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to is "the Act") was enacted and rule made thereunder were made

by the Government of Tamil Nadu, with the object of regulating all private colleges in the state. The Act applies to all private colleges under the

control of "Director of Collegiate Education apart from Teachers Training College, School of Institute of Social Work and Music College

maintained by an educational agency and approved by, or affiliated to the University have also been brought specifically within the purview of the

said Act. However professional colleges like private Technical Institutions and Private Engineering Colleges have not been specifically included in

the definition of the Act. Further the term "Director under" the rules has been defined as Director of Collegiate Education and the Director of

Technical Education under whose control the private technical institutions function will find it impossible to enforce the Act.

29. Again in paragraphs 5 and 6 of the counter-affidavit it is further stated as follows:

As far as aided technical institutions are concerned, the Grant-in-aid Code governs the service matters of the members of staff of private technical

institutions. Procedure of making appeal while a teaching staff stand dismissed has also been laid down in the grant-in-aid code. It is submitted that

in the Writ Petition No. 2756 of 1976 the existence of Grant-in-aid Code might not have been brought to the notice of this Hon'ble Court by the

Petitioner. Had it been brought to the notice of this Hon'ble Court then the observation made by the Court with regard to the definition of

College" as contained in the rules would have been different. Hence the observation of His Lordship in Writ Petition No. 2756 of 1976 has to be

reviewed. While the service conditions of the staff members are governed by the grant-in-aid code and while the Act does not specifically extend

its provisions to the private technical institutions also, including private Engineering Colleges. The Director of Technical Education, Madras

informed the Petitioner in his letter K. Dis 64505/CI/81, dated 28th January, 1981 that the provisions of grant-in-aid code approved by the

Government of Tamil Nadu, in G.O. Ms. No. 1282, Education, dated 26th July, 1967 are applicable for all matters including service matters,

disciplinary action, etc. Under such circumstances the decision taken at the 54th Meeting of the Governing Body of the Petitioner's College held

on 18th March, 1981 that Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules made thereunder do not apply to the P.S.G. College

of Technology may be accepted to be in order. In the circumstances the contention of the Petitioner in para 5 and the relief sought for, for a

declaration that the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules made thereunder do not apply to the

Petitioner is well founded and acceptable.

With regard to the contentions contained in para 6 of the affidavit it is submitted that the definition of "College" under the Tamil Nadu Private

Colleges (Regulation) Act, 1976 read with the rules made thereunder does not include all the colleges which are all affiliated to the University. The

definition in the Rules is more specific. It relates only to Teachers Training College, Physical Education College, Oriental College, School of

Institute of Social Work and Music College, it has no reference to professional college like the Petitioner college. When there is a specific code

called "Grant-in-aid" to govern the service conditions of the staff and the activities of the management the question of applicability of the Act in

respect of private Engineering Colleges does not arise.

30. The second Respondent Union of India have adopted the contentions of the State Government and stated that the impugned Act and the Rules

do not apply to the professional colleges and technical colleges like the Petitioner College and that it was not the intention of the State Legislature

to apply that Act to such institutions and further stated that the Legislature has specifically omitted to include professional colleges and technical

colleges like the Petitioner college. It is added that it cannot be said that the

Legislature has lost sight of the Technical and professional colleges

when they enacted this Act and framed the Rules thereunder, especially when the contrary is on the anvil of developments basing mostly on

scientific technology for industry.

31. The University also has not taken any different stand and further invited the attention of this Court that in the opinion of the Director of

Technical Education, the Engineering Colleges and the technical colleges cannot come under the purview of the Act and the Rules.

32. We are also of the view that, in these circumstances, we would be justified in applying the principal *communis error facit just*. The

understanding of the State Government and its officers, who are the competent persons to enforce the Act and the Rules, on the applicability of the

Act and the Rules to professional and Technical institutions, though the Act had been in force for a few years, only, could, in our opinion, justifiably

invoka interpreting the provisions of the Act and the rules on the principle of *communis error facit Just*.

33. It Would also be proper and legitimate to assume that the Government of India which had issued the regulations and instructions binding on the

institutions would have remembered and had in mind their instructions and regulations also while enacting the Private Colleges Act and that

therefore when they employed the word college in the Act, they would have used it only subject to its limits of legislative competence when

enacting a State Act in exercise of the power under Articles 356 and 357 of the Constitution. If the provisions of the Act are held to be applicable

to the engineering colleges and technical institutions, it would be contravening or affecting the instructions issued in respect of matters covered by

subject on Entry 66 of List I. It would be improper to assume that the Central Government have deliberately violated the constitutional restriction.

Positively we may also state that we are entitled to assume that the right hand of government knew what its left was doing as was held in *Mouat v.*

Betts Motors Ltd. [1958] 3 All. E.R. 402, 406 and that it could not have been the intention of the Government of India to legislate in exercise of

their powers of State Legislature something contrary to their own instructions, which are in the exclusive jurisdiction of the Union under Entry 66 of

List 1.

34. We are also of the view that the directions and instructions of the Central Government in relation to matters specified above are referable to

matters covered by the subject under Entry 66 of List and these instructions are binding on the State Government and the institutions.

35. Under Article 73 of the Constitution the executive power of the Union shall extend to matters with respect which Parliament has power to

make laws. Under the proviso to that Article this executive power shall not, save as expressly provided in the Constitution or in any law made by

Parliament extend in any State to matters with respect to which the Legislature of the State has also power to make law. The executive power of

the Union under this Article 73 being co-extension with its legislative power, it relates to all the matters covered by the subject under entry 66 of

List I. If there is no enactment covering a particular aspect certainly the Central Government can on the administration by issuing administrative

instructions or, directions until the Parliament makes law in that behalf, (vide *Mis. Bishamber Dayal Chandra Mohan v. State of U.P.* AIR 1982

S.C. 337 Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. being

covered by Entry 66 of List I, 't if a matter within the exclusive jurisdiction of the Parliament and therefore the instruction issued in respect of any

matter which could be covered by the subject in Entry 66 has a constitutional priority and even the State Legislature would have no power to

legislate contrary to or violative of such instructions. The President while enacting the Tamil Nadu Private Colleges (Regulation) Act, 1976 was

exercising the powers of the State Legislature and therefore constitutionally the Act had the same effect as an enactment of the State Legislature

subject to all limitation attributable to the State legislative power. That the instructions relating to the constitution of the governing body and their

functions, prescribing the qualifications and conditions of recruitment of teaching staff and the provisions relating to disciplinary proceedings of

such staff of engineering and technological institutions would be covered by the subject Co-ordination and determination of standards in institutions

for higher education or research and scientific and technical institutions under Entry 66 would admit of no doubt. Any argument of overriding effect

of the College Act would be inadmissible. But what is contended by the learned Counsel for the staff is that Entry 66 of List I and Entry 25 of List

III have to be read harmoniously and that under Entry 25 the power would be available for the State Legislature even in regard to matters covered

by Entry 66 and that if only there is a legislation by Parliament to the extent of the matter covered by such legislation, the power of the State

Legislature would be curtailed, and that law made by the State Legislature could be displaced or overridden only by a law made by Parliament.

36. Entry 25 of List III reads as follows:

Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I ;

vocational and technical training of labour.

37. The Supreme Court considered the import of the expression subject to in the decision in *The Gujarat University, Ahmedabad Vs. Krishna*

Ranganath Mudholkar and Others, and observed (at page 715):

It is manifest that the extensive power vested in the Provincial Legislatures to legislate with respect to higher, scientific and technical education and

vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I and

List III mentioned in item 11 of List II. Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power

to legislate is vested exclusively in the Parliament. Use of the expression ""subject to"" in item 11 of List II of the Seventh Schedule clearly indicates

that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In *The Hingir-rampur Coal Co. Ltd. and Others Vs.*

The State of Orissa and Others, this Court in considering the import of the expression ""subject to"" used in an entry in List II, in relation to an entry

in List I observed that to the extent of the restriction imposed by the use of the expression ""subject to"" in an entry in List II, the power is taken

away from the State Legislature, Power of the State to legislate in respect of education including Universities must to the extent to which it is

entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by

entries 63 to 68 even if it otherwise falls within the larger field or ""education including Universities"" power to legislate on that subject must lie with the

Parliament.

38. By the Constitution (Forty second Amendment) Act, 1976, Which came into

force on 3rd January 1977, entry 11 of List II as omitted and same subject was brought in and included in Entry 25 of List 111.

39. The decision in *R. Chitralekha and Another Vs. State of Mysore and Others*, and the decision in *State of Andhra Pradesh and Another Vs.*

Lavu Narendranath and Others etc., referred to by the learned Counsel for the staff related to the power of the State Government to prescribe

tests for selection of a number of students from out of a larger number of applicants for admission to medical colleges and that was held not

covered by Entry 66 of List I. But even in regard to this the Supreme Court observed in the decision in *Chitralekha v. State of Mysore* 1 (at page 1830):

...if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the Constitution makes impossible to difficult the exercise

of the Legislative power of the Parliament under the entry "'Co-ordination and determination of standards in institutions for higher education or

research and scientific and technical institutions"' reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative

and hypothetical reasoning. If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe

out or appreciably at ridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case.

There could be no doubt therefore that the subject matter of entry 66 of List I is taken out of entry 25 of List 111 and the State Legislature has no power even though Parliament has as yet enacted law under entry 66 List I.

40. It was then contended by the learned Counsel for the Staff that the primacy of the executive instructions or directions issued by the Central

Government over the legislation made by the State is not covered by any of the provisions in the Constitution. In this connection he referred to the

provisions in Part IX relating to the distribution of legislative powers. We have already referred to the executive power of the Union and the scope

of the provision in Entry 25 of List III and the lack of Legislative powers for the State Legislature to legislate on topic under Entry 66. Under

Article 261 full faith and credit shall be given throughout the territory of India to public acts records and judicial proceedings of the Union and of

every State. In regard to scientific and technical education, the subject not

being covered by Entry 25 of List III, the instructions and directions of the Central Government in exercise of their executive power are bound to be complied with and carried out and the argument of the Counsel has therefore no substance.

41. For the foregoing reasons, we hold that the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Tamil Nadu Private Colleges

(Regulation) Rules, 1976 do not apply to the P.S.G. College of Technology and that Writ Petition No. 2756 of 1976 (P. Kasilingam 1. The

University of Madras represented by the Registrar 2. P.S.G. College of Technology, Peelamedu, Coimbatore, represented by its Principal

(Respondent) was wrongly decided. Accordingly, we allow Writ Petition No. 3205 of 1981 and made the rule nisi absolute. The other writ

petitions Writ Petition Nos. 2604, 2889 and 3130 of 1981 are dismissed. But there will be no orders as to costs in all these four writ petitions.