

(1999) 08 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 13229 of 1999

Park College of Engineering and Technology

APPELLANT

Vs

Bharathiar University

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

All India Council for Technical Education Regulations — Regulation 4, 7(4), 8(1), 8(2), 8(3)

Constitution of India, 1950 — Article 226

Citation : (1999) 08 MAD CK 0024

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Nalini Chidambaram for S. Silambam and C. Chinnaswamy, for the Appellant; C. Chinnaswamy, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Petitioner is an engineering college sponsored by a Trust. They have prayed for a declaration to declare Clause 20 of

the Barathiar University Statute and the consequential letter of the Registrar dated 5.10.98 as illegal and ultravires to the extent it affects the

Petitioner.

2. This writ petition, in my view, is not maintainable in the light of the order passed in W.P. No. 12885/99 dated 2.8.99. Petitioner had prayed in

that writ petition for a direction to quash the order of the University dated 21.7.99 refusing to grant provisional affiliation and for a direction to

inspect the Petitioner's college for the grant of affiliation which was dismissed on 22.8.99.

3. The brief facts necessary for the disposal of the writ petition are as follows:

Petitioner obtained an approval for the additional course of Information Technology, which we are concerned with, on 29.6.99. They have applied to the University in their letter dated 12.7.99 for an affiliation. The University rejected their request of affiliation on the ground that for seeking an affiliation for the year 1999-2000 they should have made an application before 31st October of the preceding year. The case of the Petitioner is that once the A.I.C.T.E. approves and permits starting of the course, then consequentially, the University is bound to grant the affiliation immediately thereafter. Similar contention raised by the-Petitioner in W.P. No. 12885/99 was rejected. One of the grounds was that the Statute 20 prescribes that an application for affiliation should be made before 31st October of the preceding academic year. Petitioner who is running a college with so many other faculties should be aware that an application for affiliation should be made within a particular time for consideration and the grant of affiliation. Since the Petitioner's application is followed by constitution of an inspection team and the report and thereafter approval by the University, for affiliation, the college has to follow a schedule of time limit that should correspond with the beginning and closing of the academic year, and there must be sufficient time for the college to undertake the course and the students to complete it. Therefore, the time schedule is very relevant as far as the academic matters are concerned. Simply because the Petitioner has obtained a permission from the A.I.C.T.E. on 29.6.99 it will not mean that the affiliation will be given immediately for the same academic year, but it can only be for the next academic year. The University, keeping in view the time schedule, has prescribed a date namely 31st October as the last date for receiving of an application for affiliation.

Therefore, the Petitioner has to make an application before 31.10.99 for an affiliation for the course commencing from June/July, 2000.

4. As a matter of fact, one of the specific condition imposed by the A.I.C.T.E. for the grant of approval is as follows:

The admission shall be made only after adequate infrastructure and all other facilities are created as per the norms and guidelines of A.I.C.T.E.

Government of India State Government and obtaining the affiliation from the concerned University in case of degree programme. There are 24

conditions attached to the affiliation. Petitioner has conveniently omitted to include in its annexure of conditions to the approval of the A.I.C.T.E.

dated 18.10.96. Learned senior counsel appearing for the University also refers to the circular issued by the Southern Regional Office of

A.I.C.T.E. dated 10.11.98. As per this circular, applications called for every year for the establishment of new institutions and introduction of new

course have to be made in the prescribed form to the A.I.C.T.E. and concurrently to the Universities and the State Government for the issue of No

Objection Certificate. The N.O.C. are to be based on the request made in the application submitted by the institution. The have also made it clear

that while issuing the N.O.C, the State Government and the University must indicate the subject and the N.O.C. should be restricted only to the

programmes applied for based on the copy of the formal applications made to the A.I.C.T.E. This circular makes it evidently clear that application

for introduction of new course should be made concurrently with the University for obtaining N.O.C. In this case, admittedly, no such application

was made before the University. However, the A.I.C.T.E. has issued a consent without N.O.C. Further, without an application for affiliation as

prescribed by the University Statutes for the purpose of affiliation, Petitioner cannot have the right to start the course.

5. Now it transpires that based on the A.I.C.T.E. approval alone the additional course permitted by the AICTE in their letter dated 29.6.99 is

included in the Single Window System as per the letter of the Director of Technical Education dated 29.7.99. However, since the additional course

is not affiliated to the University, the Petitioner institute cannot make admissions, since one of the first conditions imposed for affiliation to the

A.I.C.T.E. is that, before making admissions, the college should have been affiliated. Therefore, even if any allotment is made by the Director of

Technical Education, the Petitioner college cannot admit the students, since the additional course is not affiliated till date. Regulation 7(4) of the All

India Council for Technical Education, 1994 as amended by Regulation 1997, states that every application for approval has to be made

simultaneously to the State Government and the University. The applications are scrutinised under Regulation 8(1), (2) and (3) which provides for

consideration by the University including an inspection. In reference to new courses, Regulation 8(9) states that subject to Sub-Regulation (8), the

decision shall be communicated to the University by 15th June. Without participation of the University, no new courses can be permitted. Further,

Regulation 4 states that application can be made only by a registered societies or trusts. In this case, the applicant's name is not made clear. The

cause title shows the Petitioner as Park College of Engineering & Technology, Kaniyur, sponsored by Park Trust. Whereas, the approval is to

Park College at Karumutham-patty. The first page of the application is not enclosed in the typed set.

6. Above all, the point raised by the Petitioner on the validity of the Statute cannot be sustained since the contention is squarely barred by the

principle of the Petitioner cannot be grounds to restrict the plea of res judicata. The Supreme Court, in The Direct Recruit Class-II Engineering

Officers" Association and others Vs. State of Maharashtra and others, , held that a judgment of the High Court under Article 226 passed after a

hearing on merits must therefore bind the parties till it is set aside in appeal as provided by the Constitution. An attempted change in the form of the

Petitioner cannot be ground to restrict the plea res judicata. The binding character of judgments of courts of competent jurisdiction is in essence of

the approved rule of law on which the administration of justice rests. An adjudication is conclusive and final not only as to the actual matters

determined, but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially

connected with the subject matter of the litigation and every matter coming into the legitimate purview of the original action by them in respect of

matters of claim and defence. The said ruling squarely applies to the facts of the present case. Therefore, the Petitioner cannot keep alive the

question of raising an additional plea. The matter is squarely covered by the earlier decision dated 2.8.99. On the same day, the present writ

petition is filed raising the same plea in different form. For all these reasons, I do not find any merit or bonafides in this writ petition.

7. I do not find any infirmity in the Statutes of the University or the letter of the University. Hence, the writ petition fails and it is accordingly

dismissed. Consequently, W.M.P. No. 18981/99 is also dismissed.