

(2009) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22922 of 2006

Pillarisetty Kanthi and Others

APPELLANT

Vs

Institute of Advanced Studies in Education, Deemed
University, Gandhi Vidya Mandir and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

University Grants Commission Act, 1956 — Section 2, 22, 3

Citation : (2010) 3 ALD 805 : (2010) 2 ALT 588

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ch. Samson Babu, S. Satyam Reddy, Kiran Palakurthi, A.K. Jayaprakash Rao, P. Pandu Ranga Reddy, M. Prasada Rao, S. Niranjan Reddy, Ch. Ramesh Babu, Andapalli Sanjeev Kumar, Srinivas Dammalapati, K. Satyanarayana Murthy, Rama Mohan Palanki, Chandraiah Suakara, Namavarapu Rajeswara Rao, S.A.K. Mynuddin, J. Sreenivasa Rao, M. Venkat Ram Reddy, T. Koteswara Prasad, P. Rajeswara Rao, M. Surender Rao, Ch. Jagannadha Rao, P.V. Venkateswara Rao, Naram Nageswara Rao, Karri Suryanarayana, Venkat Reddu Thipparthi, S.D. Gowd and G.V.L. Murthy, for the Appellant; M. Gaddam Srinivas and C. Sudesh Anand for Respondent No. 1 in W.P. Nos. 22922 and 24424 of 2006, S. Sriram, for Respondent Nos. 2 and 3 in W.P. Nos. 22922 and 24424 of 2006, C. Sudesh Anand, in W.P. No. 22922 of 06, for R-1 in W.Ps. 24424, 27008, 27100, 27126 and 27148 of 06 and for R-2 in W.P. 26848 of 06, G.P. for Higher Education for Respondent No. 5, Deepak Bhattacharjee, in W.P. No. 22922 of 06, in W.P. No. 24424 of 06, for R-5 and 6 in W.P. 26665 of 06, for R-1 and 5 in W.P. 26848 of 06, for R-3 and 7 in W.P. 27008 of 06 and for R-2 and 4 in W.P. 27100 of 06, A. Chaya Devi, in W.P. No. 22922 of 06, in W.P. 26665 of 06 and for Respondent No. 6 in W.P. 26848 of 06 and S. Srinivasa Reddy, in W.P. No. 26848 of 06 and for R-3 in W.P. 27100 of 06, for the Respondent

Judgement

L. Narasimha Reddy, J.—In this batch of writ petitions, the status of correspondence courses offered by certain deemed universities is at issue. While in some cases, the petitioners complain that the concerned deemed university is not awarding degrees, even after completion of the courses, in others, the

grievance is about the non-recognition of such degrees, in the context of admission to other courses, such as B.Ed.

2. Till recently, the degrees used to be conferred on regular completion of study in class rooms for the prescribed duration and on the basis of performance in the examination conducted by the respective Universities. The concept of "study off the campus" which is also known as "distance mode" has been invented in the recent past and it has become popular. The Indira Gandhi National Open University created under the Act 15 of 1985 (for short "the Open University") is a pioneer in this regard. The study through this method would obviate the necessity for a student, to attend regular classes. In many cases, the qualifications to seek admission into the equivalent of courses through regular mode of study, are relaxed. For instance, if in the regular mode, the qualification for a student to seek admission into under graduate course B.A. is a pass in intermediate or equivalent, for admission into the same course through distance mode is inferior, if not reduced to a considerable minimum. Here itself, it is relevant to mention that while the universities that are in existence for the past several decades have introduced distance mode as an ancillary activity, substantial number of "deemed universities" have taken up it, almost as their principal or exclusive activity.

3. The recognition of degrees awarded for courses through distance mode, by other universities presented several issues. The University Grants Commission (for short "the U.G.C.") constituted under the University Grants Commission Act, 1956 regulates the Universities in the Country, as regards the courses that are not governed by the other specialized agencies such as Bar Council of India, Medical Council of India, All India Council of Technical Education (A.I.C.T.E.). The Open University had an important role to play, in relation to the courses imparted through distance mode. Its activities are channelised through what is known as "Distance Education Council" (for short "the D.E.C."). Where the course, though imparted through distance mode, is technical in nature, the A.I.C.T.E. constituted under the A.I.C.T.E. Act 1987 had its own role to play. In certain cases, the approval of all the three agencies referred to above became necessary. To avoid multiplicity of inspections and duplication of work, all the three agencies i.e., U.G.C., A.I.C.T.E. and D.E.C. have collectively brought into existence a memorandum of understanding in May 2007. It provided for constitution of a Joint Inspection Committee and issuance of the letters of approval jointly, signed by the three agencies.

4. The petitioners contend that the respective universities or institutions were visited by the Joint Inspection Committee and positive recommendations for approval of the courses were made. They submit that the non-issuance of degree certificates or the non-recognition of the courses as the case may be is illegal, arbitrary and unconstitutional.

5. The stands taken by the different agencies that figured a% respondents are not consistent.

6. In its counter affidavit, the U.G.C. stated that the various courses imparted by the deemed universities through distance mode are not recognized. The circumstances, under which the Joint Inspection Committee was constituted under the memorandum of understanding, are mentioned. It is however stated that no approval as provided for under the memorandum of understanding, was accorded to any deemed university or courses imparted by them.

7. The Open University on the other hand states that it is conferred with the power to regulate the courses of this nature and approval was accorded by it for many deemed universities for the courses imparted by them. It is stated that though formal orders as such were not issued, the approval was accorded in principle.

8. The A.P. State Council of Higher Education, which figured as respondent, in some of the cases, has taken the stand that the courses cannot be recognized unless they are approved by the U.G.C. or by the collective body constituted under the memorandum of understanding in terms thereof.

9. The courses that are at issue, in these writ petitions are imparted by three deemed universities viz., Institute of Advanced Studies in Education (IASE), Rajasthan, Vinayaka Missions University, Salem and JRN Rajasthan Vidyapeeth University, Udaipur, Rajasthan. Out of them, the IASE, Rajasthan has taken the stand that the petitioners in various writ petitions, though have registered for the distance mode courses with some of the recognized branches in the State of A.P., all of them have appeared in all the examinations of the course at once, without maintaining the prescribed interval between one examination and another. On this basis, it pleads that the petitioners cannot claim the right to be conferred degrees. An attempt is made by it to plead that the courses imparted by it through distance education mode are legal, valid and properly recognized.

10. The other two deemed universities have taken the stand that the courses conducted by them through distance mode are recognized by the concerned agencies. According to them, the U.G.C. has no substantial role in recognition of such courses and that the D.E.C has accorded the necessary approval. They also pleaded that *ex post facto* approval/recognition was accorded by the D.E.C. for such courses.

11. Heard the learned Counsel for the petitioners and learned Standing Counsel for U.G.C, D.E.C, A.I.C.T.E, respective universities as well as the deemed universities.

12. The controversy in these writ petitions is in a very narrow compass. It is in relation to the recognition or approval of the courses that are offered through distance mode by the deemed universities. Under the U.G.C. Act, the word "university" is defined u/s 2(f) as under:

2(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as

may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

13. In addition to this, Section 3 of the U.G.C. Act empowers the Central Government to confer status of University on any institution of higher learning. This however shall be on the advise of the Commission. Section 3 reads as under:

3. Application of Act to institutions for higher studies other than Universities: The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this. Act shall apply to such institution as if it were a University within the meaning of Clause (f) of Section 2.

14. The courses that are the subject matter of these writ petitions are not imparted by any universities as defined u/s 2(f) of the U.G.C. Act, but are conducted by the deemed universities. Section 22 of the U.G.C. Act confers power upon the university or a deemed university to confer or grant degrees.

15. The Open University Act defines the objects underlying it and the various activities to be taken up by the said university. The emphasis under that enactment is mostly about the framing of the courses to be imparted through distance mode, prescription of syllabus etc. The Open University does not appear to have been conferred with the power to recognize any other universities or institutions. However, it can grant affiliation to institutions. The difference between U.G.C. and the Open University is that the former is an agency to recognize and confer status of "University" on an educational institution, whereas the latter is a university by itself, may be created under different statute.

16. Even where the university is covered by the provisions of the U.G.C. Act, in case any course imparted by that university or an institution affiliated to it, is regulated under any other enactment, approval by agencies created under those enactments is essential. For instance, if an Engineering College is established by the University or an institution affiliated to, the approval of A.I.C.T.E. is necessary for the institution or the course, as the case may be. In respect of law colleges, the approval of Bar Council of India and for medical colleges, the clearance of Medical Council of India is needed. Some courses imparted through distance mode have the characteristics of technical courses. Most of such courses are technical as defined under the A.I.C.T.E Act. With a view to avoid duplication of work and multiplicity of proceedings, the three agencies viz., U.G.C., D.E.C and A.I.C.T.E. have brought into existence a Joint Inspection Committee under the memorandum of understanding, dated 10.05.2007. The terms of reference of the memorandum of understanding are mentioned as under:

(1) There shall be a joint UGC, AICTE and DEC Committee to oversee the implementation of MOU and to design action plan for approval and monitoring of Institutions offering technical programmes through distance and mixed mode.

This Committee shall be named as "UGC-AICTE-DEC Joint Committee for Technical and General Education in Distance Mode"

(2) The UGC, AICTE and DEC shall ensure close and coordinated working towards quality excellence in technical and general education through distance and mixed mode.

17. The procedure to be followed for processing the proposals and grant of approval is appended to the Memorandum of Understanding. The manner, in which the report of the Joint Inspection Committee shall be placed and further steps shall be taken, is indicated in Clauses 6, 7 and 8. They read as under:

(6) The reports of the Inspection Committee shall be placed before the Joint Committee within 7 days from the date of inspection.

(7) The recommendations of the Joint committee shall be communicated to AICTE and UGC within 7 working days from the date of meeting of Joint Inspection Committee in which reports of the Visiting Committee have been considered.

(8) Based on the recommendations of Joint Committee, the letter of approval may be issued by the Joint Committee. The letter should be explicitly state "this has the approval of UGC, AICTE and DEC". The letter should be signed by the Secretary UGC, Member Secretary AICTE and Director DEC.

18. From this, it is clear that the ultimate approval would emerge only in the form of a letter that is jointly signed by the Secretary, U.G.C., Member Secretary, A.I.C.T.E and Director, D.E.C. In none of the cases, the letters of approval contemplated under Rule 8 exist.

19. Heavy reliance is placed by the deemed universities as well as the D.E.C. on the minutes of the Joint Inspection Committee. Assuming that the joint committee made a positive recommendation in respect of various institutions, the exercise would acquire enforceability, only when a letter jointly signed by the Secretary U.G.C., Member Secretary A.I.C.T.E and Director, D.E.C. is issued. Till such an eventuality takes place, the minutes cannot give raise to any legal consequences.

20. Reliance is also placed upon certain proceedings issued by the D.E.C. granting ex post facto recognition/approval. In this regard, it needs to be observed that the D.E.C., by itself is not conferred with the power to accord such approval on its own accord, particularly without reference to, and consent of U.G.C. The U.G.C. has been making its stand clear from time to time, on this aspect. In the year 2001, it addressed letters stipulating the manner, in which the "off the campus" distance education programme by the deemed universities must be undertaken. In its letter, dated 06.03.2004 addressed to the Vice-Chancellors of all the deemed universities, the U.G.C. took exception to the introduction of new courses without taking any approval from the UGC. The relevant portion reads as under:

The Government on the recommendations of the UGC has conferred the status of deemed to be university on your institution. As it is, all such institutions are expected to bring about qualitative improvement in higher education by way of realizing excellence of the highest order in their chosen fields.

It may please be noted that the degrees awarded by the deemed universities in violation of the instructions contained in the enclosed guidelines shall be regarded as unspecified and render the deemed universities to be punishable under relevant provisions of the UGC Act, 1956.

21. An opportunity was given to the universities to seek approval for such courses within a period of six months. No such steps were taken by the deemed universities herein. At a subsequent stage also, the UGC made it clear that the Report of the Joint Inspection Committee constituted under the Memorandum of Understanding dated 10.05.2007 did not give raise to any orders of approval.

22. In Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, , the Hon''ble Supreme Court had an occasion to deal with the legality of expost facto approval of the courses. Incidentally, the approval in that case was also accorded by the D.E.C. In paragraph 58 of the judgment, the Hon''ble Supreme Court observed as under:

The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 05.05.2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provision of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect.

23. Therefore, the approval said to have been accorded by the D.E.C. with effect from retrospective date cannot be sustained in law.

24. The result of the discussion undertaken above is that unless there existed an approval as contemplated in the Memorandum of Understanding, dated 10.05.2007, or independently by an authority under specific enactment, the courses imparted through distance mode cannot be recognized in law in the context of admission into other courses in different institutions, affiliated to other universities.

25. Therefore, the writ petitions are disposed of, directing that-

(a) only such courses imparted by the deemed universities through distance mode, as are approved under the letter jointly signed by the Secretary U.G.C., Member Secretary, A.I.C.T.E. and Director D.E.C. or by any independent authority under the relevant enactment conferred with the power to grant

approval prospectively, shall be treated as legal and valid; and

(b) such of the petitioners who have studied the courses through distance mode from AISE, Rajasthan are not entitled for conferment of degrees, since the examinations were not conducted as per the procedure prescribed by that university.