

(2012) 04 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 2245 of 2008

S. Rajendran

APPELLANT

Vs

Jawahar Science College and The Thiruvalluvar University

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 226

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 18, 18(1), 18(2), 2(8)

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 12(1)

Citation : (2012) 04 MAD CK 0072

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Krishnasamy, for the Appellant; Shakkespeare for R1, Mr. Sanjai Gandhi, GA for R2 and R3 and Mr. A. Selvendran for R4, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru

1. The two petitioners were teachers working in the first respondent college. The first petitioner is a Lecturer in Mathematics (Selection Grade) and

the second petitioner is a Lecturer in Tamil (Selection Grade). Admittedly, the first respondent College is run by a society funded by Neyveli

Lignite Corporation and it is an unaided college. Even then this Court has held that the provisions of the Tamil Nadu Private Colleges (Regulation)

Act, 1976 (for short Act) and the Rules framed thereunder will apply to the petitioner college, which was approved by a Division Bench in respect

of the very same college vide judgment reported in 1994 WLR 84 [Jawahar College Staff Association, Neyveli, by its Secretary v. University of

Madras and others]. The definition of the term ""private college"" u/s 2(8) of the Act does not make any distinction between aided or unaided in the

matter of closure under the Act. When once it is conceded that the provisions of the Act applies, then so far as the disciplinary proceedings to be

initiated against any teacher or other person working in such college is governed by Chapter IV of the Act. Under the said Chapter, in terms of

Section 18, it is incumbent upon the teacher to abide by the Code of Conduct. u/s 18(1), any violation of Code of Conduct will result in

disciplinary action. u/s 18(2) of the Act, the College Committee can also define standards of conduct to be observed by teachers and other

persons employed in the private college, such standards not being inconsistent with the provisions of the Act and the rules made thereunder.

2. In the present case, on coming to know that the Management had applied for closure of certain courses, teachers were having protest against

their action and there is litigation between the parties. In any event, in both the writ petitions, the challenge is to the show cause memo given to the

teachers as to why disciplinary action should not be initiated against them and they were asked to submit their explanation. It was stated that two

teachers were attributing unnecessary motive and alleging malice/vindictiveness on the part of the management in the matter of closure of 5 courses

during the year 2007-2008. The teachers were also demanding withdrawal of the cases filed by the Management and were spreading false news

against the motive of the Management.

3. It is the stand of the Management that those courses became unviable and there were hardly takers for those courses which necessitated the

closure of those courses. However, the justification of the management for initiating with the process of closure is unnecessary in the present case.

It has to be seen whether at the stage of show cause notice, the two memos are liable to be interdicted by this Court.

4. In the writ petitions, notice was given to the respondents on 28.01.2008. Subsequently, the writ petitions were admitted on 15.11.2010. In the

miscellaneous petitions, no relief was granted. On the other hand, all the miscellaneous petitions including application for grant of ex gratia were

closed by this Court on 15.11.2010.

5. The first respondent has filed a counter affidavit dated 17.02.2009. In the counter affidavit it was stated that the petitioners have submitted their

written explanation and had participated in the enquiry conducted by the retired

District and Sessions Judge who was appointed as Enquiry

Officer. The petitioners had requested adjournment of the enquiry to 29.01.2008. Thereafter, they have rushed to this Court with the present writ

petitions. It was also stated that the closure proposal by the Management was fully justified. The association of which the petitioners were member

were not recognised. Even the commission appointed by the University justified the action of the Management. Hence, the petitioners having given

false information, they are liable to be proceeded with.

6. However, as noted already Section 18(1) of the Act circumscribes the Management from initiating action against the teachers only for violation

of code of conduct prescribed under the Act. Under Rule 12(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, Code of Conduct

have been prescribed in Annexure I. Annexure I contains 11 conducts as "Code of Conduct". When as to which Code of Conduct, teachers have

violated justifying the action of the management in initiating show cause notice, Mr.Shakkespeare appearing for the first respondent pointed out

Conduct No. 10 as giving them the source of power. Since reliance was placed upon the said conduct, it is necessary to refer to Conduct No. 10

which is as follows:-

10. No teacher or other person employed in a college shall engage himself or participate in any activity which is anti-secular or which tends to

create disharmony in society or in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of

States, friendly relation with foreign States, Public order, decency or morality or which involves contempt of Court, defamation or incitement to an

offence.

7. A perusal of the above code of conduct will clearly show it related to the affairs of the State and nothing to do with any management. In fact the

said clause as verbatim extracted from Article 19(2) of the Constitution. It imposes reasonable restrictions on the freedom of speech guaranteed

under Article 19(1)(a) of the Constitution. The State Government while framing Annexure I had taken care to introduce an exception to the Code

of Conduct wherein, the explanation reads thus:

Adoption of legitimate methods of ventilating grievance shall not be considered as criticism of the Government.

8. Therefore, the State has taken care to protect the rights of the teachers to ventilate their grievance. In the present case, may be the teachers have overshot by expressing certain issues without verifying the facts. But on that ground it is not open to the Management to initiate any disciplinary proceedings contrary to statutory injunction contained u/s 18(1) r/w Rule 12(1) and Annexure I of the Act and Rules. this Court is not satisfied with the explanation offered by the first respondent in this regard in the counter affidavit. Even assuming that the Management had defined standards of conduct in terms of Section 18(2) of the Act (which had not been done so far), no major penalty can be imposed by the Management. Hence, both the writ petitions will stand allowed. The impugned show cause memo stands set aside. May be in a given case, if any complicated questions of facts were involved, it may be necessary to go through a trial. But in the present case, the issue involved is a legal issue based upon facts, which are not in dispute. Hence, this Court has exercised its power in extraordinary circumstances under Article 226 and allowed these writ petitions. No costs.