

(1990) 04 MAD CK 0012
In the Madras High Court

Selvam Educational and Charitable Trust	APPELLANT
Vs	
Madurai Kamaraj University and Others	RESPONDENT

Date of Decision : 19-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 2 MLJ 288

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the order of the learned single Judge in W.P. No.4 of 1990. That was a writ

petition, preferred by the appellant herein and the respondents herein were the respondents in that writ petition. It is better that we refer to the

parties as per their rank and nomenclature in the writ petition. The petitioner is a Trust. It has established several educational institutions and is

running them. The petitioner is registered under the Societies Registration Act On 12.11.1984, the petitioner as per G.O. Ms. No. 1777,

Education Department, obtained permission from the second-respondent for starting an engineering college under the name and style of "Indian

Engineering College" at Vadakangulam, Tirunelveli District, hereinafter called the college, under self-financing scheme with effect from 1984-85 for

three Branches, namely, 1. Civil Engineering. 2. Mechanical Engineering and 3. Electronics and Communication Engineering. By that Government

Order, there are certain conditions imposed subject to which the permission was granted. The petitioner applied for affiliation to the first-

respondent and by order dated 17.12.1984, the first respondent accorded provisional affiliation for the year 1984-85 for B.E. "Degree for the

aforesaid three Branches. The provisional affiliation was continued for the academic years 1985-86 and 1986-87. By G.O. Ms. No. 1853,

Education Department, dated 23.11.1987, the second respondent permitted the introduction of B.E. Degree course in Computer Science and

Engineering in the College with effect from the academic year 1987-88 and there was a direction to reallocate the student strength of 180,. already

sanctioned, in all the four Branches as follows: .

On 28.12.1987, the petitioner applied to the first respondent for extending the affiliation for the academic years 1987-88 and 1988-89 for all the

four Branches. After the formalities getting satisfied, on 9.12.1988 the first respondent granted the petitioner provisional affiliation for the academic

year 1988-89 for the Branch "Computer Science and Engineering". It must be noted that on 28th March, 1988, the all India Council for Technical

Education Act 52 of 1987, hereinafter referred to as the Act, came into force. The implications of the Act were obviously not adverted to, at the

time of the order dated 9.12.1988 of the first respondent with reference to granting provisional affiliation for the B.E. Degree Course in Computer

Science and Engineering, which affiliation was accorded for the first time, only then, for the academic year 1988-89. On 16.7.1989, the third-

respondent issued a show cause as to why the permission accorded by G.O. Ms. No. 1776, Education Department, dated 12.11.1984, should

not be withdrawn on the ground that the infrastructural facilities provided by the petitioner did not conform to the conditions laid down by the

Government. On 24.7.1989, the petitioner sent a reply maintaining a stand the other way about and asking for the action to be withdrawn. On

30.7.1989, the first respondent issued a similar show cause notice to the petitioner and the petitioner replied on 10.8.1989. The first respondent

directed an inspection by a commission of the college and the commission did the inspection on 20.10.1989. On 12.11.1989, the petitioner sent a

letter to the third respondent asking for urgent action. On 29.11.1989, the Syndicate of the first respondent passed a resolution that the affiliation

for B.E. Degree Course in Electronics and Communication Engineering and Computer Science and Engineering should not be granted to the

college in view of the fact that the infrastructural facilities provided by the college are not adequate as per the report of the commission, which did

the inspection. This resolution was communicated by the Registrar of the first respondent on 19.12.1989 to the college. This obliged the petitioner

to come to this Court by way of the writ petition, projecting the following prayer:

For the reasons stated in the accompanying affidavit it is prayed that this Honourable Court may be pleased to issue a writ of certiorarified

mandamus or any other appropriate writ, order or direction in the nature of a writ of certiorarified mandamus calling for the records of the first

respondent made in Ref. No. Cd. 3/SFEC/89-90, dated 19.12.1989, quash the same and consequently issue a mandamus directing the

respondents to continue to order the benefits of the provisional affiliation for all the four courses and the release of the Government quota to the

First B.E. course for the petitioners" Engineering College namely "The Indian Engineering College", Vadakkangulam, Tirunelveli-Kattabomman

District, for the academic year 1989-90 and pass such further or other orders as may be deemed fit and proper and render justice.

2. The learned single Judge, who dealt with the writ petition, found that the ratio of the pronouncement of a Bench of this Court in Adhiyaman

Educational and Research Institution, Madras v. The State of Tamil Nadu by its Special Commissioner and Secretary, Education Department,

Madras and Ors., W.A.Nos.793, 797 and 821 of 1989, Judgment, dated 23.11.1989 would squarely apply to the case on hand. The learned

single Judge, however, declined to accord the reliefs to the petitioner, taking note of the following features;

(1) With regard to the B.E. Degree Course in Computer Science and Engineering, though the permission by the second respondent was granted

before the coming into force of the Act, the affiliation was accorded by the first respondent only on 9.12.1988 after the Act came into force and as

per the ratio of the Bench in the above pronouncement, neither the State Government nor the University has any power to grant recognition or

affiliation on conditions imposed by them, and it could be only the All India Council for Technical Education, hereinafter referred to as the Council,

which could grant such permission on the norms prescribed by the Council itself; and hence the affiliation in the instant case granted by the first

respondent on 9.12.1988 was invalid and the petitioner cannot ask for continuation of affiliation for the year 1989-90. The learned single Judge

directed the petitioner to approach the Council to get its permission and thereafter approach the first respondent for grant of affiliation.

(2) With regard to the other Branches, namely, Civil Engineering, Mechanical Engineering and Electronics and Communication Engineering; though

in the order of the learned single Judge, there is reference only to the Branch of Electronics and Communication Engineering, the reasoning must

hold good for the other two Branches also because the prayer covered all the four Branches, and there is no concession by the respondents

regarding any Branch, the learned single Judge put the allegation of the college receiving capitation fee as disentitling the petitioner to have affiliation

in respect of the Branches. The learned single Judge specifically opined that otherwise, the affiliation having had been accorded anterior to the

coming into force of the Act, it should be continued in the normal course. Thus, the learned single Judge dismissed the Writ Petitions: and this has

obliged the petitioner to prefer this writ appeal.

3. M/s. R Krishnamoorthy and R. Muthukumaraswamy, learned Counsel for the petitioner, would make two submissions coveting interference at

our hands in this writ appeal. The first submission is that once it is found that the ratio expressed by the Bench in *Adhiyaman Educational and*

Research Institutions, Madras v. The State of Tamil Nadu by its Special Commissioner and Secretary, Education Department, Madras and Anr.,

W.A. Nos. 793 797 and 821 of 1989, Judgment dated 23.11.1989 applies to the present case, as done by the learned single Judge himself, the

learned single Judge ought not to have denied the continuation of the affiliation for the year 1989-90 as asked for in the writ petition for at least the

three Branches; namely, Civil Engineering; Mechanical Engineering; and Electronics and Communication Engineering, putting the allegation of

receipt of capitation fees by the college against the petitioner. Learned Counsel for the petitioner would submit that nowhere in the pleadings and in

the proceedings which preceded the filing of the writ petition, the respondents have taken the stand that affiliation was denied and is being denied

on the ground of the college receiving the capitation fees and it was only in the course of arguments before the learned single Judge, this point was

advanced. This point was advanced before the learned single Judge as follows: Two students of the college filed W.P. Nos. 3783 and 5789 of

1988 to forbear the respondents in those writ petitions, including the college herein, from interfering with the students continuing with their studies in

the college and from taking the examinations conducted on the ground that the students are not eligible for admission. The college was served with

Rule Nisi in one of the writ petitions, namely, W.P. No. 3783 of 1988 and yet the college did not enter appearance and file any counter-affidavit.

In the affidavits filed in support of these writ petitions, preferred by the students, there was an allegation that the students paid capitation fees to the

college authorities, though the receipts were issued under the caption "Donation to Building Fund".

4. The learned single Judge, on the first respondent producing copies of the affidavits in W.P. Nos. 3783 and 5789 of 1988, gave an opportunity

to the petitioner to file an affidavit to clarify the position. The petitioner did clarify the position by filing the requisite affidavit and the relevant

averments therein, as extracted in the order of the learned single Judge run as follows:

At the outset, the petitioners submit that the aforesaid writ petitions have been filed by two students who are students in the petitioner's private

Engineering College having been admitted during the academic year 1987-88. The complaint made by the writ petitioners in the said writ petitions

was that they, who were admitted during the academic year 1987-88 had been told that their admissions have not been approved by the Director

of Technical Education on the ground that they were not eligible to be admitted to the B.E. Degree course as per the regulations and that the said

action of the respondents was illegal. It is in these circumstances that the petitioners in the said Writ Petitions had prayed for a mandamus directing

the respondents in the said writ petition including the petitioner from the interfering with their continuing their studies for the B.E. Degree course in

the petitioner's Engineering college and taking up the examinations conducted by the third respondent. In paragraph 4 of the affidavit in the

aforesaid writ petitions, it is alleged that a sum of Rs.50,000 in the case of W.P. No. 5789 of 1988 and Rs.35,000 in the case of W.P. No. 3783

of 1988 had been collected by the petitioner towards capitation fee. The petitioners submit that they have not collected any capitation fee from any

candidate who sought admission to their Engineering College including the petitioners in W.P. Nos. 5789 of 1988 and 3783 of 1988. The

allegation made by the petitioners in the said writ petitions that a sum of Rs.50,000 and Rs.35,000 respectively were collected by the petitioner

from the said students towards capitation fee, though the receipts were issued as donations is incorrect and denied. The petitioners submit that the

private Engineering colleges established by them are self-financing Colleges which can receive donations. As and when donations are offered by

philanthropists, they are received by the petitioner institution and utilised wholly for the said institution. In the circumstances, the allegations made

by the petitioner in the aforesaid writ petitions that the petitioners herein have collected or received capitation fee is false and denied. The petitioner

have never demanded or collected any capitation fee for admission to the petitioner's Engineering College. As a matter of fact immediately after

the petitioners in the said writ petitions were informed by letter dated 4.5.1988 that their admissions have not been approved and therefore they

have got to be sent out of the institution, no complaint was made against the petitioner institution or any claim made for refund of the alleged

capitation fee. The only complaint made by the petitioners in the said writ petitions was that the action of the Director of Technical Education in

disapproving their admissions was irregular which had been accepted by this Honourable Court.

5. In spite of the above averments, the learned single Judge opined there is no explanation by the petitioner for not filing the counter-affidavit in the

writ petitions preferred by the students refuting the allegations made by the students. It was urged on behalf of the petitioner before the learned

single Judge that the proceedings, impugned in the present writ petition, cannot be supported by additional or new grounds. The learned single

Judge did not doubt this proposition. Yet, on the ground that when facts and circumstances are made available to the Court, the Court must

consider the propriety of issuing the discretionary relief under Article 226 of the Constitution of India, declined to accord reliefs to the petitioner.

The learned single Judge has specifically opined that the question as to whether the petitioner received the capitation fees from the students cannot

be decided in the present writ petition.

6. Learned Counsel for the petitioner submits that on a factor which has not been cleared from doubt on a proper adjudication over the same, and

which could not be taken as unambiguous and unimpeachable there should not be a denial to the petitioner, of the reliefs to ""which the petitioner is otherwise entitled. Our assessment of the facts of the case obliges us to concur with this submission of the learned Counsel for the petitioner. The allegation that the college received capitation fees is not one, put forth by the respondents either in the proceedings which preceded the filing of the writ petition or in the pleadings which they put forth in the present writ petition. It has come to be advanced only in the course of arguments before the learned single Judge. Chance having been given to the petitioner to explain, the petitioner did explain. It has explained as to why it did not choose to refute the allegations made by the students in their writ petitions. The learned single Judge was in order when he said that the question as to whether the college received capitation fees from the students cannot be decided in the present writ petition. The learned single Judge was also conscious of the proposition that the impugned proceedings cannot be supported by any new or additional ground for the first time before Court. Yet, to say that when facts and circumstances are made available to Court, there need not be a grant of the discretionary relief under Article 226 of the Constitution of India appears to us, on the facts of the present case to be unacceptable. The very facts and circumstances, to be put against the petitioner, cannot be taken to be accepted and unexplained ones. They are being disputed. There is no adjudication over the same, even done by the learned single Judge rightly, in our view, in the present writ petition. Factors over which doubts still hover, and which doubts have not been cleared, need not be taken note of by this Court, to discredit a party and to deny him the reliefs, to which he is otherwise entitled. Hence, we cannot subscribe our support to the view of the learned single Judge that this factor should be thought about the put against the petitioner in "getting the reliefs to which it is otherwise entitled. Thus, so far as the three Branches, namely, Civil Engineering; Mechanical Engineering; and Electronics and Communication Engineering, the affiliation having been accorded even prior to the coming into force of the Act, it could be continued, as asked for by the petitioner, for the academic year 1989-90. As already noted, that this should be the normal course is the view of the learned Judge himself, but for the allegation of receipt of capitation fees by the college.

7. Coming to B.E. Degree Course in Computer Science and Engineering, we do not feel obliged to differ from the view of the learned single Judge,

though there was an anxiety and endeavour on the part of the learned Counsel for the petitioner to persuade us to do so. Our reasons are as

follows: Though the second respondent granted permission on 23.11.1987, prior to the coming into force of the Act, so far as affiliation aspect is

concerned, that was done by the first respondent only on 9.12.1988 after the coming into force of the Act. as rightly pointed out by the learned

single Judge, the permission by the second respondent was of no consequence at all. We are in agreement with the view of the learned single Judge

that the affiliation granted by the first respondent on 9.12.1988 was itself invalid and the petitioner has to approach the Council and get its

permission and thereafter approach the first respondent for grant of affiliation.

8. We must also record here that the learned Counsel for the respondent brought to our notice that as against the pronouncement of the Bench of

this Court in *Adhiyaman Educational and Research Institutions, Madras v. The State of Tamil Nadu* by its Special Commissioner and Secretary,

Education Department, Madras and Ors., W.A. Nos. 793, 797 and 821 of 1989, Judgment dated 23.11.1989, an appeal has been preferred to

the Supreme Court of India and there is a stay of the operation of the said judgment. We find that on account of the order of stay of the operation

of the judgment, the working of the rights of the parties as per the said judgment could not be done. It cannot be stated that the ratio of the

pronouncement of the Bench has been set at naught. That could happen only in case the Supreme Court allows the appeal setting aside the

judgment of the Bench.

9. The result of our above discussion would enable the petitioner to succeed in so far as the three Branches of Civil Engineering, Mechanical

Engineering and Electronics and Communication Engineering are concerned, and yet learned Counsel for the petitioner would express a grievance

as a second point that before the proceeding impugned in the writ petition came to be passed the report of the Commission, who did the inspection

and which is the basis for the proceedings impugned in the writ petition was not at all furnished to the petitioner and there was no affording of an

opportunity to the petitioner to make its say over the same. Of course, the first-

respondent would take up a stand that the concerned in the college was present during inspection and in the communication dated 12.11.1989, there was no whisper about the non-furnishing of the report of the commission on inspection, and at no point of time there was a demand for the copy of the report of the commission on inspection, and hence the present grievance of not affording an adequate opportunity need not be countenanced at all. There is no need to go into this aspect at all, because we have countenanced the first line of thinking put forth by the learned Counsel for the petitioner with regard to the three Branches referred to above and the petitioner is entitled to the reliefs in respect of them.

10. Accordingly, we are obliged to interfere in writ appeal; we allow this writ appeal; we set aside the order of, the learned single Judge in W.P.

No. 4 of 1990, subject matter of challenge in this writ appeal and we allow W.P.No.4 of 1990 as follows:

(1) The resolution dated 29.11.1989 of the Syndicate of the first-respondent and the letter of the Registrar of the first respondent dated

19.12.1989 communicating the same are quashed so far as they relate to the denial of provisional affiliation to the college for the academic year

1989-90 for B.E. Degree Course in Electronics and Communication Engineering.

(2) The respondents are directed to issue provisional affiliation to the college for the academic year 1989-90 for B.E. Degree Course for the three

Branches, namely, Civil Engineering; Mechanical Engineering; and Electronics and Communication Engineering.

We make no order as to costs.