

(1995) 03 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 17226 of 1994

Smt. Kannammal Educational Trust

APPELLANT

Vs

University of Madras

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Madras University Act, 1923 — Section 30

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 2(8), 29, 3, 4(1), 5(3)

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 2

Citation : AIR 1996 Mad 303

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Advocate : A.L. Somayaji, for M/s. Aiyar and Dolia, for the Appellant; P. Jothimani, for the Respondent

Judgement

S.M. Ali Mohamed, J.—The petitioner herein is one of the trustees of Tmt. Kannammal Educational Trust. In the affidavit filed in support of

the writ petition, the petitioner trustee has stated that the Trust decided to start a Law College at Madras under the name and style of the Tamil

Nadu Law College from the Academic Year 1994-95. It is stated that the trust possesses sufficient land, building, funds and all other infrastructural

facilities to start the said Law College on a self-financing basis. After having made all such arrangements, the petitioner made an application to the

Bar Council of India on 1-4-1994 requesting the Bar Council of India to grant permission to start the college in the City of Madras. In response to

the said application, the Bar Council of India sent a copy of the questionnaire which was directed to be filled and re-submitted to the council

through the University. It is further stated that the petitioner complied with the said requirements and also paid a sum of Rs, 15,000/- towards

inspection fees. The Bar Council of India appointed an inspection team and the said team inspected the premises of the petitioner-Trust on 9-8-

1994 and after the inspection by a proceeding dated 19-8-1994 the Bar Council of India granted permission to the petitioner-Trust to run 5 years

Law Course only from the Academic Year 1994-95. It is also stated that the Bar Council of India permitted the petitioners to admit students in the

first year class for the current session, i.e., 1994-95. The petitioner-Trust made an application to the University of Madras, the respondent herein

for affiliation of the college for the year 1994-95 on 2-8-1993. The University of Madras by its communication dated 22-9-1994 rejected the

application. The said letter reads as follows :--

From

The Registrar,

University of Madras.

To

The Chairman,

Tmt, Kannammal Educational Trust,

Madras-600017.

Sir,

Sub : Starting of Law College in the name of Tamil Nadu Law College --
Regarding.

Ref.: Your letter dated 10-8-1994.

I am to inform you that the Syndicate at its meeting held on 8-9-1994 considered the letter received from the Chairman, Tmt. Kannammal

Educational Trust, Madras-17 for establishing the New Law College in the name and style of Tamil Nadu Law College, Madras together with

permission letter dt. 19-8-1994 from the Bar Council of India, New Delhi and resolved as rejected since the Trust has not submitted G.O. from

Government of Tamil Nadu.

Yours faithfully,

Sd/-

Registrar.

Aggrieved by the same, the petitioner-Trust has approached this Court by way of

this writ petition.

2. A counter-affidavit has been filed on behalf of the University of Madras wherein it is stated that the letter dated 2-8-1993 of the petitioner-Trust

was not received and only the subsequent letter 17-6-1994 was received and thereafter the matter was considered by the Syndicate in the meeting

held on 8-9-1994. It is further stated in the counter-affidavit of the respondent as follows :--

I respectfully submit that when the proposals were received from various educational agencies for opening of new Law Colleges for the academic

year 1994-95, as per the recommendations of Syndicate Committee on recognition, affiliation and inspection of College dated 30-5-1994, the

Syndicate in the meeting held on 29-6-1994 has resolved that the educational agencies applied for starting of new Law Colleges be informed that

the approval of the Bar Council of India and Government Order for starting Law College be obtained and forwarded to the University. The

Syndicate being a statutory authority to grant affiliation to the colleges as per the Madras University Act, 1923 is entitled to impose such

stipulations which are permissible in law. It was in accordance with the said decision of the Syndicate the proposal of the petitioner to start Law

College for 1994-95 was rejected also on the ground that the Government Order was not obtained.

I respectfully submit that inasmuch as the petitioner has not made application in the proper form within time, the petitioner is not entitled for

consideration for affiliation for the year 1994-95. That apart the petitioner has not accompanied the Government Order for starting a Private Law

College. It is not correct for the petitioner to state that the State Government has no say in the starting of a Law College. Even a perusal of the

letter of the Bar Council of India dt. 19-8-1994 which was subsequently sent by the petitioner along with the letter dt. 24-8-1994 itself would

show clearly that the petitioner has to obtain no objection from the Government and the University to start the Private Law College. That apart it is

unsustainable to state that the starting of Law College is within the purview of Entry No. 66 of the List 1 of Schedule VII of the Constitution of

India. That relates to the co-ordination and determination of standard in institutions for High Education and Research and Scientific and Technical

Institutions.

I respectfully submit that in respect of starting of the Private Law College which is also a college within the meaning of the Tamil Nadu Private

Colleges Regulation Act 1976, it is no doubt true that the Bar Council of India's permission is necessary being the professional body but the State

Government's consent is also required as seen in the letter of the Bar Council of India dated 19-8-1994 itself.

3. It is submitted by Mr. Somayaji, learned senior counsel appearing for the petitioner that there is infirmity in the impugned order dated 22-9-

1994 of the respondent University of Madras in rejecting the application of the petitioner trust for affiliation on the ground that the trust has not

submitted G.O. from Government of Tamil Nadu. In this connection, the learned senior counsel referred to the Madras University Act of 1923.

Section 19(ii) of the said Act reads as follows : The Syndicate shall have the following powers namely . . . (ii)

To affiliate colleges to the University and to recognise colleges as approved colleges"".

He also refers to the statutes made under S. 30 of the Madras University Act (hereinafter referred to as the Act), and in particular Chapter XXVI-

1(a) which reads as follows dealing with Affiliated College :

Affiliated College"" means any college affiliated to the University and providing course of study for admission to the examinations for degrees of the

University and includes a college deemed to be affiliated to the University under the Madras University (Amendment) Act, 1966"".

Statute 37 of Chap. XXVI reads as follows :

A college applying for affiliation or approval shall send a formal letter of application to the Registrar between the 1st July and 31st October

proceeding the academic year in which the courses are proposed to be started and shall give full information in the letter of a application on the

following matters :

a) Constitution and personnel of the Managing Body.

b) Subjects and courses in which affiliation or approval is sought.

c) Previous, if any, for affiliation or approval in the same subjects and their disposal.

d) Accommodation, equipment, the strength of the College, the number of students for whom provision has been made or is proposed to be made.

The information relating to accommodation should be accompanied by drawings.

e) Qualifications, salaries and work of the teachers" together with a time-table or work.

f) Hostel and lodgings, and play-ground, and residence for the Principal and the other numbers of the staff.

g) Fees proposed to be levied and the financial provision made for capital expenditure on buildings and equipment for the continued maintenance of the college"".

Learned senior counsel appearing for the petitioner submitted that there is no provision under the Madras University Act, 1923 for any approval

from the Government of Tamil Nadu and in the absence of any provisions in the Act, the impugned letter rejecting the application of the petitioner

trust for affiliation of the Law College of the petitioner trust is unsustainable. On the other hand Mr. P. Jothimani, learned counsel appearing for the

respondent/University, submitted that even though the impugned order does not mention the provision of the law under which it has been rejected,

contended that the application of the petitioner trust is covered . under the Tamil Nadu Private Colleges" (Regulation) Act, 1976 and in particular,

the learned counsel referred to S. 5 sub-sec. (3) which reads as follows :--

5 Grant of permission-- (1) On receipt of an application under sub-sec. (1) of S. 4, the Government :--

(a) may, after considering the particulars contained in such application, grant or refuse to grant the permission; and

(b) shall communicate their decision to the applicant within such period as may be prescribed;

Provided that the permission shall not be refused under this section unless the applicant has been given an opportunity of making his representations;

Provided further that in case of refusal of the permission the applicant shall be entitled to the refund of one-half of the amount of the fee accompanying the application.

(2) The decision of the Government under clause (a) sub-sec. (1) shall be final.

(3) No University shall grant affiliation to any private college unless permission has been granted by the Government under sub-sec. (1)".

and submitted that no University shall grant affiliation to any private college unless permission has been granted by the Government under sub-sec.

(1). He also refers to sub-sec. (3) of S. 1 and submitted that the Tamil Nadu Private Colleges (Regulation) Act, 1976 applies to all private

colleges. In answer to the said contention, learned senior counsel appearing for the petitioner submitted that the professional colleges are outside

the purview of the Tamil Nadu Private Colleges (Regulation) Act, 1976. In support of this contention, the learned senior counsel relied on the

judgment of a Division Bench of this Court reported in P. Kasilingam v. P.S.G. College of Technology, 1984 LIC 1134, wherein this Court has

held as follows (at p. 1143) :--

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 Colleges" is defined in S. 2(8) as meaning "a college maintained by an

educational agency and approved by, or affiliated to, a University but does not include a college -

(a) established or administered or maintained by the Central Government or the Government or any local authority or any university; or

(b) giving, providing or imparting religious instruction alone, but not any other instructions".

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 orders 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 authorities 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 read as

follows :--

College"" means and includes Arts and Science College, Teachers Training College, Physical Education College, Oriental Col-legs, 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 technological 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.

4. The points for consideration are whether starting of a private law college requires permission of the State Government under S. 3 of the Tamil

Nadu Private Colleges (Regulation) Act 1976 and whether private law colleges which impart legal courses are professional institutions?

5. The preamble of Tamil Nadu Private Colleges (Regulation) Act 1976 herein referred to as ""the Act"" says that the Act is to provide for the

regulation of private colleges of the State of Tamil Nadu. Section 3 of the Act reads as follows :--

NEW PRIVATE COLLEGE TO OBTAIN PERMISSION :

Save as otherwise expressly provided in this Act, no person shall, without the permission of the Government and except in accordance with the

terms and conditions specified in such permission, establish, on or after the date of commencement of this Act, any private college:

Provided that it shall also be necessary to obtain affiliation of such college to a University.

The term, ""Private College"" is defined under S. 2(8) of the Act as follows :--

Private College"" means a college maintained by an educational agency and

approved, by or affiliated to, a university but does not include a college

:--

(a) established or administered or maintained by the Central Government or the Government or any local authority or any university; or

(b) giving, providing or imparting religious instruction alone, but not any other instructions.

From a perusal of the provisions of the Act, Section 3 of the Act will get attracted to a new private educational institution provided it squarely

comes under the definition of the term, ""Private College"" given u/s 2(8) of the Act. A Division Bench of this Court in P. Kasilingam v. P.S.G.

College of Technology, 1984 LIC 1134, has held that engineering colleges which are professional institutions do not come under the purview of

the Tamil Nadu Private Colleges (Regulation) Act, 1978 as they are not ""Private Colleges"" within the definition of Section 2(8) of the Act. The

above Division Bench of this Court in this connection referred to Rule 2(b) of the Tamil Nadu Private Colleges (Regulation) Rules 1976 and

observed as follows :--

In fact, the Rules defined ""Colleges"" also and that reads as follows :--

Colleges"" means and include 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 technological institutions. It is true that the Rules could not

restrict the application of the Act. But we are not reading the Rules and 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

Legislatures. Ail 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.

The point then for consideration is whether . private law colleges which impart legal course, are professional institutions?

The terms, "Profession" and "Institution" are defined in the Concise Oxford Dictionary as follows :

Profession"" :-- A vocation or calling especially one that involves some branch of advanced learning or science"".

Institution"" :-- A society or organisation founded especially for charitable, religious or educational or social purposes"".

The meaning of ""Profession"" given in New Lexicon Webster Dictionary -- page 798 is as follows :--

One of a limited number of occupation or vocations involving special learning and carrying a social prestige -- the learned professionals; Law, medicine, and the church"".

The meaning of ""Profession"" given in the Law Lexicon by P. R. Iyer is as follows :--

The word implies professional attainment in special knowledge as distinguished from mere skill; a practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation as distinguished from its pursuits for its own purposes"".

In Black's Law Dictionary (5th Edition) the term, ""Profession"" is defined as follows :--

Profession"" :-- A vocation or occupation requiring special usually advanced education, knowledge and skill; e.g., law or medical professions. Also refers to whole body of such profession.

The term, originally contemplated only technology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill"".

In Halsbury's Laws of England, Fourth Edition, Volume 3 at page 587 under heading ""Barrister"", and ""Profession"", it is stated as; follows :--

One of the chief objects of the Inns of Court was to make provision for the practical study of the common law and for the instruction of all their members in that. science. The system of education consisted of reading on statutes, moots or arguments on points of law, chiefly real property law, and the putting of cases. The members of the Inns of Court, before they could become practitioners, were obliged to attend at and take part in some of these exercises"".

It is clear from the above meaning of the. terms, ""Profession"" and

""Institution"" that organisations which impart advanced learning in a particular field

of profession such as law, medicine or engineering for attainment of special knowledge as distinguished from mere skill are professional institutions.

6. There is therefore force in the contentions of Mr. Somayaji, learned senior counsel appearing for the petitioner that the provisions of the Tamil

Nadu Private Colleges (Regulations) Act will not apply to the petitioner as the petitioner applied for affiliation to the Madras University to start a

professional institution a private law college for the purpose of imparting law course. Following the aforementioned Division Bench ruling of this

Court, I am of the considered view that private law colleges are professional institutions and for imparting and attainment of special knowledge in

law will not come under the purview of the Tamil Nadu Private Colleges (Regulation) Act 1976 and S. 3 of the Act will have no application upon

the facts and circumstances of the instant case.

7. Further from a perusal of the Madras University Act, 1923, it is clear that there is no specific provision similar to that contained in sub-sec. (3)

of the Tamil Nadu Private Colleges (Regulation) Act 1976, to the effect that no university shall grant affiliation to any private college unless

permission has been granted by the Government. In the absence of any such specific provision in the Madras University Act 1923, the Madras

University is bound to follow the existing provisions given in the Madras University Act 1923, and the Statutes made thereunder for the purposes

of grant of affiliation. The respondent has to examine whether the conditions laid down under the Madras University Act, 1923 and the Statute

made thereunder for the purpose of the affiliation have been complied by the petitioner.

8. No other provisions of the Madras University Act 1923 was brought to the notice of this Court by the learned counsel for the respondent

University which provides for obtaining prior permission of the State Government for grant of affiliation by the University of Madras. In the

absence of such provisions in the Madras University Act, 1923 , there is no necessity for the petitioner Trust to get prior permission of the

Government of Tamil Nadu for grant of affiliation by the Madras University. In view of the above, the impugned order is unsustainable in law and

accordingly, the same is quashed. The respondent University is directed to dispose of the application of the petitioner for affiliation fresh on merits

and in accordance with law, which eight weeks from the date ;of receipt of copy of this order. This writ petition is ordered accordingly. No costs.

9. Order accordingly.