

(1988) 03 MAD CK 0037

In the Madras High Court

Case No : W.Ps. No's. 995 etc. of 1988

St. Joseph's Teacher Training Institute for Women at
Devapandalam and Others

APPELLANT

Vs

Director of School Education, Madras and Others

RESPONDENT

Date of Decision : 10-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1989 Mad 346

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : R. Muthukrishnan, Nalini Chidambaram, G. Venkataraman, K. Ilias Ali, E. Padmanabhan, V. Ramajagadeesan, K. Kandaswami, V. Kunchithapatham, A. Muthukrishnan and S. Udhayakumar, for the Appellant; J. Kanakaraj, Addl. Govt. Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—Some of the petitioners the institutions in this batch of writ petitions are either coveting recognition for their initial

functioning or for the functioning of certain classes which they have taken in, subsequent to their obtaining recognition for their initial functioning,

obviously to get at the attendant benefits thereto. Some of the institutions pray for directions to the authorities to permit their students to take the

examination or examinations, pending decision on the question of recognition. There is a complaint in some cases that permission to take the

examinations was accorded earlier, but that has not been adhered to now. In one case W.P. 2176 of 1988 it is claimed that the students of the

institution have taken their examinations and there is a request for publication of their results. In W.P. 1983 of 1988, the question of recognition is

pending and the prayer is to direct the authorities to permit the 1986-87 and

1987-88 batch of students of the institution to have teaching training in the recognised institutes.

2. There is no dispute that for the students, who undergo any course in these institutions, to take particular examination or examinations, recognition

is a condition precedent. These institutions ought not to have commenced functioning either initially or commenced functioning the classes taken,

subsequently without first obtaining the required recognition, the very such functioning, in my view, is infirm. If, with temerity, these institutions have

started functioning without obtaining recognition, what they have done is grossly wrong. The delay that may be occurring on the question of

recognition on account of laches, if any, on the part of the authorities concerned, may be reprehensible, and, of course, may not merit any

tolerance. But that is not a ground to be taken note of to encourage a situation which the institutions themselves have brought about. They have no

business to start functioning inducting students in the courses which have no sanctity in the eye of law, without recognition. It could be complained

legitimately that these institutions are only commercial minded and they have exploited the students, may be by making declarations or giving

assurances that, recognition is automatic and could be secured is a matter of course. This Court cannot give its seal of approval to this conduct on

the part of the institutions. As already, noted, undue delay on the part of the authorities in considering the question of recognition is not to be

commended. But on, that account, this court cannot straightway direct the authorities to permit the students, who have undergone the courses,

without the sanction of recognition, to go through the examinations which would be a futile process. Equally, so, it would not be proper for this

Court to direct the authorities to publish the results of the examinations, which those students have been permitted to take, whatever be the

circumstances under which the permission was obtained. So also, the institutions cannot be permitted to adopt functioning on the same lines as

those having recognition. So far as these institutions covet recognition, this Court can issue the appropriate directions to the authorities concerned

to consider and dispose of the question of recognition at whatever stage it may be in respect of each of the institutions as asked for by them, with

expedition.

3. Learned counsel appearing for the institutions cited the following authorities in support of their submissions that this Court could issue

appropriate directions, pending decision on the question of recognition by the authorities-- (1) Malankara Syrian Catholic Arch Diocese of

Trivandrum v. Joint Director of School Education (Secondary) (1987) 100 MLW 976 The Society of the Brothers of the Sacred Heart of Jesus

Jalayamkottai rep by its President and Superior General Rev Bro A. Arul Prakaam v. Director of School Education, Madras, W.P. 2022 of 1982

order dt. 23-1-1985 and (3) the order of the Supreme Court of India in St. Pauls Teachers Training Institute v. Director of School Education etc.

C. A. 1914 to 1926 of 1987 dt. 15-9-1987. But, I find that each of these cases has been dealt with on its own facts, and I cannot draw any

inspiration for a general rule or a proposition from these pronouncements relied on by the learned counsel appearing for the institutions, for a

decision on the present questions.

4. On the other hand, the principles have been discussed and set out succinctly in the following pronouncements relied on by Mr. J. Kanakaraj,

learned Additional Government Pleader, appearing for the authorities. In N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and

Another, , the question has been dealt with in the following manner (at pp. 1190-91) -

One of the writ petitions before us (W.P. 12697/85) was filed by a student claiming to have undergone training in one of privately managed

institutes. It was argued that the students of the institute in which she had undergone training were permitted in previous years to appear at the

Government examinations and as in previous years she may be allowed to appear at the examination this year. A similar request was made by Sri

Garg that the students who have undergone training for the one year course in these private institutions may be allowed to appear at the

examination notwithstanding the fact that permission might not be accorded to them. We are unable to accede to these requests. These institutions

were established and the students were admitted into these institutes despite a series of press notes issued by the Government. If by a fiat of the

Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of

unauthorised institutions. It is not appropriate that the jurisdiction of the Court under Article 32 of the Constitution or Article 226 should be

frittered away for such a purpose.

5. In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the specific observations run as follows

(Para 10) :-

Shri K.K. Venugopal, learned counsel for the students, who have been admitted into the MBBS course of this institution, pleaded that the

interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at

the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our

attention to the circumstances that students of the Medical College established by the Darusalam Educational Trust were permitted to appear at the

examination notwithstanding the fact that affiliation had not by then been granted by the University. Sri Venugopal suggested that we might issue

appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made

by Sri Venugopal on behalf of the students. Any direction of the nature sought by Sri Venugopal would be in clear transgression of the provisions

of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its

existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the

Court to disobey the laws. The case of the medical college started by the Darusalam Trust appears to stand on a different footing as we find from

the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that

account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the

grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University

did in the case of the Darusalam Medical college as a precedent in the present case to direct the University to do something which it is forbidden

from doing by the University Act and the regulations of the University.

6. In *Amarendra Pratap Singh and Others Vs. Lalit Narain Mithila University and Others*, there was a request for a Mandamus for declaration of

results of the students of the institutions, which are yet to get recognition and affiliation. This is what was observed by the majority (Para 20) -

Plainly enough, no mandamus can be issued to perpetuate a mistake. If the law places a total ban on the students of unrecognised and unaffiliated

institutions to take the examination of Bachelor of Education then it is not for the Court to override the same and of all things through the medium of

a mandamus contrary to law,

7. In the *State of Tamil Nadu v. S.P. Sree Ratha*, W.P. Nos. 1373 and 1374 of 1986 order dt. 3-2-1987 : (reported in 1987 (13) IJ 727) a

Bench of this Court consisting of M. N. Chandurkar C. J. and M. Srinivasan J. observed as follows : --

An impression seems to be gaining ground that Court ultimately will come to the rescue of the students who have got themselves admitted into

unrecognised educational institutions. The ultimate beneficiary in such cases is the unscrupulous persons who unauthorisedly start educational

institutions more by way of an adventure in business only with the object of making money. The beneficiaries of such Court's order though

immediately are the students, unfortunately it is the correspondents of such institutions, who will be emboldened to continue with their activities of

starting unauthorised educational institutions, weighing the interest of the individual students and the interest of the community as a whole and also

to prevent students from falling into the trap laid by these adventurers in the field of education, it is time we take rather a strong view of the matter

and do not interfere by ordering any alternative arrangement in the exercise of jurisdiction under Article 226 of the Constitution. If there is neither

any right in the petitioners to get an order directing the recognition of an educational institution nor to get themselves admitted to an institution of his

choice, it is difficult to see how by way of interim relief any order could be made directing the students to be admitted in any particular institution. In

our view, having regard to the increased tendency of starting unauthorised educational institutions, there was hardly any scope for making the kind

of order which has been made by the learned single Judge.

8. After adverting to the pronouncements relied on both by the learned counsel

appearing for the institutions and the learned Additional

Government Pleader, I feel obliged to issue the following directions : (1) the authorities concerned are directed to consider and dispose of the

question of recognition at whatever stage it may be in respect of each of the institutions with due expedition, and in any event, before the lapse of

eight weeks from today. (2) If it is a question of the concerned institution or institutions taking up appeals as against the initial order or orders of

rejection of recognition, if not already done, they will do so before the lapse of a week from today, so that the question of recognition can be

disposed of, as per Clause(1) supra. (3) The other requests by these institutions that the students, who have undergone the concerned courses in

them, should be permitted to take the examination or examinations, pending the question of recognition or that the results of the examinations

already taken by those students should be published or that any ancillary direction pending recognition should be given, cannot be countenanced,

and they all stand rejected. (4) If recognition is to be accorded ultimately to all or any of these institutions, the authorities should hold supplemental

examination or examinations within a reasonable time and in any event before the lapse of twelve weeks from the ultimate grant of recognition for

the students who have undergone the concerned courses subject to their eligibility. (5) Equally so, the publication of the results of those students,

who have already taken the examinations, shall be done within the above period. These writ petitions are ordered in the above terms. No costs.