

(2017) 04 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition (C)Nos. 36678 of 2016, 1758, 2748, 4314, 4540, 4735, 4840, 5169, 6491, 6710, 8394, 11000, 11069, 11313, 11684 of 2017

The Executive Director

APPELLANT

Vs

A.P.J. Abdul Kalam Technological University

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 KerLJ 727

Hon'ble Judges : Mr. Devan Ramachandran, J.

Bench : Single Bench

Advocate : Sri. Kurian George Kannanthanam Sr. Advocate, Sri. Tony George Kannanthanam and Sri. Thomas George, Advocates, for the Petitioners; Sri. S. Krishnamoorthy, SC, KTU, for the Respondent No. 1; Sri. K.K. Ravindranath, Addl. Advocate General and Sri. P.K. Vijayamohan, Special Government Pleader, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Devan Ramachandran, J.—Brevity will do no inequity when issues and points urged have been spoken to on by the several courts in judgments past. I, therefore, intend in his judgment to be as brief as would be possible.

2. The subject matter in issue in all these writ petitions is the pre-condition imposed by two Universities under which the applicants, who are Private Self Financing Colleges and Institutions, have been asked to obtain a prior permission of the Government of Kerala styled as a "No Objection Certificate" (NOC) before their applications for affiliation can be considered by the Universities. The two Universities, namely, APJ Abdul Kalam Technological University and the Kerala University of Health and Allied Sciences have issued notifications, which are impugned in these writ petitions, mandating that the applicants for new courses obtain the NOC from the Government of Kerala before their applications for affiliation can be considered. This condition has been assailed by the petitioners

as being in excess of the powers vested with the Universities and also on the ground that the Government does not have any such right, under the Statutes and Regulations applicable, to grant or deny NOCs but at the best the Government's view may be considered by the Universities appropriately in terms of the enabling Statutes.

3. Since all these writ petitions concern similar if not identical issues, contain essentially the same averments, allegations and assertions and have asked for reliefs that are similar and entwined to each other, I deem it appropriate to dispose them of jointly in this judgment. However, for the sake of convenience I treat W.P.(C)No. 1758/2007 as the lead case and any reference to the parties and documents in this judgment will be as per the status available in that writ petition.

4. I have heard the learned Senior Counsel Sri. Kurian George Kannanthanam, assisted by Sri. T.B.Hood, the learned Senior Counsel Sri. S.Sreekumar, assisted by Sri. Thomas, the learned counsel Sri. George Poonthottam and Sri. Sanjay, appearing for the petitioners, the learned Standing Counsel for the two Universities, the learned Standing Counsel for the Medical Council of India and the learned Special Government Pleader for the official respondents.

5. Among all the maze of pleadings and materials placed on record in these cases, the one issue which requires pointed consideration is whether the Universities have the competence, statutorily or otherwise, to impose a condition as they have now done, that an application for affiliation or for a consent of affiliation, for a new course will be considered and will be dependent on a prior NOC to be obtained by the applicants from the Government of Kerala.

6. It is now affirmatively settled by various judgments that the University can act only under the terms of the Statutes under which it has been enlivened. The two Universities are governed by two separate Statutes. The APJ Abdul Kalam Technological University (Technological University) lives under the A.P.J. Abdul Kalam Technological University Act, 2015 and the Kerala Health and Allied Sciences obtain sustenance from the Kerala University of Health Sciences Act, 2010. The survey of the powers of the University to act in a particular manner in performance of their functions, delimited under the Statutes, will determine on the powers that are vested on them by the said Statutes. In other words, the Universities are bound by the terms of the Statutes and cannot in any manner meander away from it or act in any manner that would be dilatory.

7. As far as the Technological University is concerned, it is only governed by the Act and not by Statutes since no such Statues have been brought into force. Unlike the other Universities, the Technological University does not have the First Statute or Ordinances nor has such been adopted by it like other Universities, at least as of now. Therefore, the power of the Technological University will have to be governed solely by the provisions of the Act and no other. The provisions relating to affiliation of colleges is contained in Sections 60 and 63 of Chapter

VIII of the Act. A reading of these sections would make it ineluctable that the procedure for consideration of the applications for affiliation has been strictly prescribed therein and the procedure that has been mandated by it will have to be followed without exception or deviation.

8. As far as the Health University is concerned, as I have already indicated above, it is created by the Health Sciences Act and is governed by the Kerala University of Health Sciences First Statutes, 2013 in its operational ambit. The relevant provisions relating to affiliation of colleges is contained in Chapter XXI of the First Statutes and in particular Statute 10 thereof.

9. The questions for determination in this case would pivot on the question as to whether the Universities have the power to prescribe a condition, their powers being hypostized on these provisions, as they have now done.

10. A survey of the provisions, aforementioned, would make it absolutely indubitable that the Acts or Statutes concerned do not prescribe a condition that the applicants have to first obtain a permission in the nature of an NOC from the Government of Kerala.

11. As far as the Technological Act is concerned, Sections 60 and 63 provide for the procedure. In fact, those sections say that the University shall follow the procedure prescribed in the Statutes for grant or continuation of affiliation since there are no Statutes under the Act. Obviously, the jurisdictional purview will have to be guided only by the Act. I deem it necessary for ease of convenience to extract Section 60(2) of the Technological Act as below:

"The Educational Agency applying for affiliation or recognition and whose college or institution has been granted affiliation or recognition, shall give and comply with the following undertaking:-

(i) that the provisions of this Act, or any other Acts passed by the State Legislature related to Engineering field in the State, rules made thereunder and Statutes, Ordinances, Regulations, standing orders and directions of the University shall be observed;

(ii) that there shall be a separate Governing Body or Managing Council for an affiliated college or group of colleges receiving financial assistance from the Government or the University;

(iii) that the number of students admitted for courses of study shall not exceed the limits prescribed from time to time, by the University, the Government, Central or State Councils or authorities in the concerned discipline as the case may be;

(iv) that there shall be suitable and adequate physical facilities such as building, laboratories, libraries, equipments required for teaching and research, hostel and other infrastructure facilities as the case may be, prescribed by Statutes, Ordinances and Regulations;

- (v) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working;
- (vi) that the strength and qualifications of teaching and non-teaching staff of the affiliated colleges and the emoluments and the terms and conditions of service of the staff of affiliated colleges shall be such as may be prescribed by the University and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;
- (vii) that the services of all teaching and non-teaching employees and the facilities of the college to be affiliated shall be made available for conducting examinations and for promoting other activities of the University;
- (viii) that the directions and orders issued by the Chancellor, Vice-Chancellor and other officers of the University in exercise of the powers conferred on them under the provisions of this Act, Statutes, Ordinances and Regulations or any other Act passed by the State Legislature in this regard, shall be complied with;
- (ix) that there shall be no transfer of the management or ownership of the college without previous sanction of the University;
- (x) that the college or institution shall not be closed without previous sanction of the University;
- (xi) that in the event of disaffiliation or de-recognition or closure of the college or institution, all the assets of the college or institution including building and equipment which have been constructed or created out of the amount paid as a grant-in-aid by the Government or the University Grants Commission shall vest in the Government."

As far as continuation of affiliation is concerned, it is governed by Section 63 of the Technological Act, which reads as under:

"63. Continuation of affiliation.-

- (1) The affiliated college or recognised institution may apply for continuation of affiliation or recognition for the courses of study for which affiliation or recognition was granted ordinarily six months prior to the date of expiry of such affiliation or recognition. The University shall follow the procedure prescribed in Statutes, for grant of continuation of affiliation.
- (2) The affiliated college or recognised institution may apply for affiliation or recognition for additional courses of study and the same shall be considered by the University following the procedures or rules prescribed in this regard in the Statutes.
- (3) An affiliated college with at least six years standing as an affiliated college may apply for permanent affiliation in the manner as may be prescribed in the Statutes and the University shall consider such applications in such manner as may be prescribed."

As far as the Kerala Health Sciences Act is concerned, as I have already noticed above, the climacteric provisions relating to the affiliation is obtained in Statute 10 of Chapter XXI of its First Statute, which reads as under:

"10. Grant of Affiliation.-

(1) The University may appoint a commission to inspect the proposed site of a new college/or to make a physical verification of the facilities that may exist for starting the new college/course, if the application is considered favourably by the University. The commission will inspect the suitability of the proposed site, verify the title deeds as regards the proprietary right of the Management over the land (and buildings if any) offered, building accommodation provided if any, assets of the Management, constitution of the registered body,.capability of maintaining academic standards and all other relevant matters. Further action on the application shall be taken on receipt of the report of the commission.

(2) The grant of affiliation shall depend upon the fulfilment by the Management of all the conditions that are specified here or that may be specified later for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports of inspection by the commission or commissions which the university may appoint for the purpose.

(3) Unless all the conditions are fulfilled, before the commencement of the academic year, no new college/or additional courses/or enhancement of seats shall be permitted to be started during that year.

(4) Educational agency, Management, the Principal or any other person or persons on their behalf shall neither demand nor accept donations from candidates for appointment to the staff and from students for admission to the college.

(5) The management shall be prepared to abide by such conditions and instructions as regards staff, infra structure facility, hospital, Internet and audiovisual facilities, equipment, library, reading room, play grounds, hostels, etc., as the University may, from time to time impose or issue in relation to the college.

(6) The Educational Agency or the Management shall give an undertaking to the University to carry out faithfully, the provisions of the Act, Statutes, Ordinances, and Regulations and the directions issued by the University from time to time, in so far as they are related to the college. The undertaking shall be endorsed by the Principal of the college.

(7) After considering the inspection commission report, if the University is satisfied, it may issue consent of affiliation for starting a new college or starting additional courses or enhancement of seats in existing courses subjected to obtain the essentiality certificate from Government.

(8) After considering the commission report and other enquiries, if any, and after

obtaining the essentiality certificate from the Central and/or State Councils or authorities in the concerned discipline and after obtaining the essentiality certificate from the Government, the Governing Council shall decide whether the affiliation be granted or refused, either in whole or in part."

In addition to Statute 10, as is extracted above, the form of application for affiliation is obtained under Statute 3 of Chapter XXI of the First Statutes.

12. The Senior Counsel and the learned counsel for the petitioners have lucidly explained to me the manner in which a new course, either in technology or in medical sciences, will have to be applied for and obtained. As far as the Technological institutions are concerned, they have to first make an application to the AICTE by an online method and such application will then have to be taken a print out and forwarded to the University concerned and the State of Kerala. These provisions are as mandated by Section 10(k) of the AICTE Act, which provides that if the University or the State of Kerala have any views in the matter, they can forward such to the AICTE which will be taken into account by them while considering and finalising the orders of approval.

13. As far as the medical courses are concerned, I am told that the applicants are expected to make an application to the Central Government first along with the consent of the University concerned and in the case of new colleges, the Essentiality Certificate issued by the Government of Kerala will also have to be enclosed. In the case at hand, I am only dealing with affiliation of new courses and not with the affiliation of new institutions and therefore, the Essentiality Certificate may not be relevant for these cases. The Central Government, thereafter, forwards these applications to the Medical Council of India (MCI) which then, as per the provisions of the MCI Act, issue a Letter of Permission (LOP), in a format as is prescribed, which then authorises the applicant to apply to the University for affiliation.

14. It is in this manner that both Technological and Medical Institutions are led to the University for affiliation. Therefore, the University is to decide whether the institutions are to be given affiliation or otherwise. When the regulatory bodies, namely, AICTE and MCI, do not require the permission of the Government of Kerala before approvals are granted, the question is whether the University would be bound by any condition to obtain the prior permission of the Government of Kerala in considering an application for affiliation. I am aware that the Hon"ble Supreme Court has considered this issue in great detail in various cases, primary among them being *Jayagokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department* ((2000) 5 SCC 231), wherein the Hon"ble Court has declared the law succinctly in paragraph 22 of the said judgment, which is as under:

"As held in T.N. case the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with.

So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the Universities concerned. The State-Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government."

Even though this a judgment that was delivered in the case of technical institutions, the ratio would apply even to medical institutions. I say this because the question essentially is as to the ambit of the operation and the jurisdiction of the Universities under the Statute. It is also now settled without requirement for a restatement that the Statutes will cover the field and the Universities are bound by them. In other words, they cannot operate beyond it or in excess of it. If the Statutes mandate that the University operates in a particular manner, it shall be the manner in which the University shall so operate.

15. The provisions of the Statute, as I have extracted above, are admittedly silent as to whether the University is under the rigor of prior permission from the Government. If the Statutes are silent that the Universities are required to obtain prior approval from the Government, then it would mean that they are not so mandated to obtain any prior acquiescence.

16. The concept of an NOC, therefore, defies logic because NOC means a No Objection Certificate and it is in the nature of a prior permission or imprimatur. Nowhere does the provisions of the Statutes, as I have extracted above, show that the University is bound by a prior approbation of the Government. They are not subservient to the Government but are expected to act autonomously and independently under the provisions of the Act that empowers and enlivens them. It is ironical that the Universities are sufficiently empowered by the Statutes but the Universities take it upon themselves to feel that they are merely adjuvant to the dictates of the Government. They seem to harbour a belief that they are

under a duty to go to the Government first and obtain an NOC before which they can act. To exacerbate the situation, it is not merely that they feel that they should go to the Government but they obligate the applicants to approach the Government and obtain an NOC as a pre-condition for consideration of their applications for affiliation. I do not understand on what basis or logic that the Universities have acted so. I have a feeling that the Universities believe that they are under the executive control of the Government and that it is under this misconception that the Universities have acted in issuing the impugned notification mandating the applicants to obtain prior NOC from the Government. I believe that it is now time that the Universities are told that they are not under the Government and that they can act independently.

17. For fear of being mistaken, I clarify that I am not saying that the views of the Government cannot be obtained by the Universities. But I am only saying that the Universities should not think that they are obligated by the requirement of obtaining prior permission from the Government before they can perform their imperative functions under the Statutes. I am clear in my mind that the Universities are under no such obligation and no such constraint or manacle and that it would not require the University to ask the applicant to obtain an NOC from the Government. Euphemistically, NOC only means the dictate of the Government. I do not think that when the Universities are to only function under the operational realm, obtained under the relevant Acts and Statutes, they are in any manner sequestered by the dictate of the Government. They have to act independently and dispassionately within the confines of the power granted to them under the Acts. It is only therefore that I say that the condition imposed by the University in asking the applicants to obtain an NOC is not merely superfluous but it is completely illogical and without reason.

18. I understand, as has been submitted by the learned Standing Counsel for the University, that the University apprehends that if an affiliation is granted to a college and that if that affiliation runs into trouble, then in such event that, they would be obligated to answer all consequences because the Government was not initially consulted in the matter which may then lead to other deleterious corrolaries. I am afraid, I cannot countenance these submissions of hypothetical apprehensions because I see that the forensic provisions provide that the University is authorised to act in such manner as is required for the satisfactory establishment and maintenance of the institution and the course. This power is of wide plentude and can be used by the University to prescribe any such condition as is required, within the confines of the relevant laws, to ensure that the affiliated colleges act in the manner as it is expected to. However, this does not mean that the NOC of the Government is required to be obtained as a pre-condition. If the University feels that it requires the concurrence of the Government in any manner, it is always free to refer to them even under the provisions of the Statute, subject to submissions to the contrary and the contest by the applicants, which I am not considering now, to seek the views of the Government with relation to the affiliation of a college and to abide by such

views or to reject them and pass appropriate orders. In any view of the matter, since under the relevant Acts the Government of Kerala has no role at all and it is purely up to the Universities to decide the affiliation, they will have to consider the applications after such inputs or reports that they would require either from the Government or from other agencies and then to pass an order independently without being constrained or confined by the dictates of even the Government of Kerala.

19. The Universities are obligated to consider the applications for affiliation and consent for affiliation on a case by case basis and to deal with the factors on a case to case basis.

20. What I am now saying in this judgment, I am aware, is not something totally ab ovo and I draw fortitude to my views from what has been spoken to by Judges in various judgments in the past. That is why I started my judgment by saying that I do not require to indite all the facts that are involved in this case because these are issues which are covered even before this judgment of mine. I use for support the judgment of a Division Bench of this Court in *St. Joseph's Hospital Trust v. Kerala University of Health Sciences* (2012 (4) KLT 444), which virtually concluded on these lines and which confirmed the law as was declared by the Hon''ble Supreme Court earlier.

21. It is stated by the learned Special Government Pleader that this judgment was taken in appeal by the Government and that the Hon''ble Supreme Court has confirmed it but leaving liberty to the University to obtain, if they so require, the views of the Government which can also be then considered by them in granting or denying affiliation. The conclusions that I have reached here are virtually on the same lines as the Hon''ble Supreme Court has concluded on the issue as noticed above and I am in respectful conformity and affirmation of the views of the Hon''ble Supreme Court being bound by it as a binding precedent.

22. In summation of all that I have stated above, the position of law is, to my considered opinion, that the University is obligated to consider the applications for affiliation of the applicants independently and without being bound by the dictates of the Government. Under the relevant Acts, they may have the liberty to seek the views of other agencies including the Government of Kerala and if it so permitted, they would be entitled to seek the views of the Government of Kerala in such manner as would be appropriate and requisite. On receiving such views of the Government of Kerala, it would be up to the University to consider the applications, including the sanction for affiliation for medical institutions under the provisions of the MCI Act, in such manner either accepting the views or rejecting it or in modification of it but in strict compliance with the procedure and mandate of the governing Acts.

23. What I mean to say in other words is that even if the views of the Government are to the contrary, the University will be obligated to consider the application without being manacled by such views and without being completely

confined by it. It will have to make an independent evaluation of all the circumstances by taking into account all relevant factors as are involved, one of which may be the views of the Government of Kerala. It is so ordered in all these cases.

24. My opinion as above being recorded, the learned counsel for the petitioners in W.P.(C)Nos.6710/2017 & 11069/2017 say that today is the last date under the provisions of the relevant Acts for the applications to be submitted to the Central Government for PG courses. Since I have noticed in this judgment that the delay has been caused by the University in fixing an arbitrary clause in their notifications, I am of the view that the petitioners cannot be prejudiced merely because of the delay in consideration of these cases by this Court. In such view of the matter, I direct the Central Government not to reject the applications in these writ petitions merely because the time for production of the consent from the University concerned has expired. However, the Central Government will forward the applications to the MCI only after the petitioners obtain the consent for affiliation from the university concerned. I clarify that I do not intend to interfere with the time frames relating to approvals because I am aware that it has to be treated virtually as a sacrosanct process under the orders of the Hon"ble Supreme Court of India. However, I am making this order only because of the peculiar circumstances of the case and I do not think that the petitioners should be prejudiced because of the actions of the Universities. I direct the Office of the Assistant Solicitor General to convey the essence of this judgment to the competent authority for compliance today itself.

25. As far as W.P.(C)Nos.36678/2016 and 6491/2017 is concerned, I notice that in addition to the challenge against the University imposing a condition for NOC from the Government, there is a condition imposed by the Kerala Nursing Council also for such purpose. I am sure that the law relating to the affiliation would be common as regards these two institutions are concerned and therefore, everything that I have said above would relate to the Kerala Nursing Council also, as least as far as the case of the petitioner is concerned.

26. The writ petitions are ordered as above. In the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.