

(2012) 02 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No. 19644 of 2011 and M.P. No's. 1, 2 and 3 of 2011

The Manakula Vinayagar Academy of Higher Education,
Research and Technology (SMART)

APPELLANT

Vs

Union of India and The University Grants Commission

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 3, 47
University Grants Commission (Institutions Deemed to be Universities) Regulations,
2010 — Article 23, 23
University Grants Commission Act, 1956 — Section 3

Citation : (2012) 02 MAD CK 0104

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : N.R. Chandran assisted by Mr. N. Sivakumar, for the Appellant; G. Arul Murugan for R1 and Mr. K. Ravindranath for R2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. Petitioner has invoked extra-ordinary equitable jurisdiction of this court, to challenge the order dated 26.10.2010 passed by the University

grants commission. The impugned order reads as under:

This has reference to the proposal submitted by the Institution for conferment of Deemed to be University status u/s 3 of the UGC Act, 1956. The

University Grants Commission has published the UGC (Institutions Deemed to be Universities) Regulations, 2010 in the official gazette of India on

26th May, 2010. Article 23 of the UGC Regulations is reproduced as under:

Consideration of old proposals All proposals (whether seeking declaration as an institution deemed to be university or seeking approval for

establishing off-campus centres/off-shore campus(es) of inclusion of off-campus Centres in the ambit of the institution deemed to be university),

which are either pending/in process in the commission or have been received by the Central Government, shall be governed by these Regulations.:

In view of the above, I am directed to inform you that UGC cannot consider your proposal for Deemed to be University status in the present form

as it is not as per UGC (Institutions Deemed to be Universities) Regulations, 2010. However, if you so desire, you may submit revised proposal

for deemed to be University status in the format prescribed by the UGC, through Government of India, Ministry of Human Resource Development

in case the Institute fulfills all the conditions contained in UGC (Institutions Deemed to be Universities) Regulations, 2010. The Regulations and the

application format prescribed by the UGC are available on the UGC website www.ugc.ac.in/inside HE/Deemed Universities/The Gazette of India

Notification:UGC (Institutions Deemed to be Universities) Regulations, 2010.

2. The petitioner is running Manakula Vinayagar Medical College and Hospital at Kalitheerthalkuppum, Puducherry and Sri Manakula Vinayagar

Engineering College, at Madagadipet, Puducherry.

3. The petitioner institution is one among the best institution which is preferred by the parents and students for its quality, infrastructure and its

experienced and devoted faculty members and the management. In terms of Section 3 of the University Grants Commission (UGC) the petitioner

submitted its proposal to the Union of India seeking status of Deemed University.

4. The proposal was submitted on 15.11.2004 as per the regulations in force. The application of the petitioner was forwarded to the UGC for

consideration and submission of the report. After the receipt of the application the 2nd respondent entered into correspondence seeking

clarification on number of points. After the requisite information was submitted to the 2nd respondent, an inspection committee was constituted for

spot verification of the infrastructure facility available with the petitioner's institution to consider the proposal for grant of Deemed University status.

5. Thereafter second enquiry committee was constituted. The inspection committee after the spot inspection vide letter F.No.501-

5/DUAICTE/2009 dated 23.01.2009 recommended to the 2nd respondent for grant of Deemed University status to petitioner institution.

6. The University Grants Commission in their 455th meeting held on 27.01.2009, considered the reports of the committees constituted for granting

the Deemed University Status, under de novo category.

7. It was resolved in the meeting as under:

14.....The Commission considered the Expert Committee Report constituted by the Chairman, UGC, presentation made by the institute, AICTE

expert Committee Report and advice of AICTE and agreed to recommend to the Ministry of Human Resource Development for conferment of

Deemed to be University status to Sri Manakula Vinayagar Engineering College and Sri Manakula Vinayagar Medical college and Hospital in the

name and style of the petitioner's institution under De-Novo category u/s 3 of the UGC Act, 1956 subject to its confirmation after five years on

the basis of performance report of the UGC review Committee done annually for a period five years.

The pleaded case of the petitioner is that in the same meeting the case of the some other institutions were also considered, and on the

recommendation similar to that of petitioner those institutions were granted status of Deemed University, where as the case of the petitioner stands

rejected merely on the ground, that new regulation have come into force therefore, the petitioner will have to apply under the new regulations.

8. The impugned order is challenged, by the petitioner on the ground that the regulation on 2010, cannot apply to the pending cases, as the

regulations cannot be applied retrospectively.

9. It is the contention of the learned Senior counsel for the petitioner, that the impugned order cannot be sustained as the only ground for rejection

was that after coming into force of new regulation the application submitted prior thereto have to be resubmitted as per the new regulation which

cannot be sustained, as the case of the petitioner is required to be considered and decided under old regulations.

10. This writ petition is opposed by the learned counsel for the respondents by placing reliance on regulation 23 of 2010 which stipulates that even

pending applications were to be considered and decided under new regulation.

23. Consideration of Old proposals

All proposals (whether seeking declaration as an institution deemed to be university or seeking approval for establishing off-Campus Centres/off-

shore Campus(es) or inclusion of off-Campus Centres in the ambit of the institution deemed to be university), which are either pending/ in process

in the Commission or have been received by the Central Government, shall be governed by these Regulations.

On consideration, I find that this writ petition deserves to succeed. The impugned order is based on regulation 23 of 2010 regulations.

11. The Hon"ble Division Bench of this Court in W.A.No.1004 of 2011 (The Govt of India, Ministry of Human Resource Development,

(Department of Higher Education), New Delhi vs SRM University, Rep. by its Registrar, Kancheepuram District & Another) decided on

24.01.2012, has laid down that regulation 23 of 2010, regulation would have no effect on the pending applications by interpreting the 2010

regulations.

12. The Hon"ble Division Bench has laid down as under:

39. But the issue that is to be considered is in respect of the application filed in the form of proposal before the coming into effect of the

Regulations, 2010, in respect of which Clause 23 of the Regulations, 2010 operates. Clause 23 of the Regulations, 2010 is as follows: 23.0.

Consideration of old proposals:

All proposals (whether seeking declaration as an institution deemed to be university or seeking approval for establishing off- Campus Centres/off-

shore Campus(es) or inclusion of off- Campus Centres in the ambit of the institution deemed to be university), which are either pending/in process

in the Commission or have been received by the Central Government, shall be governed by these Regulations.

40. Even though there is an apparent conflict between Clause 1.2 and Clause 23.0 of the Regulations, 2010, the terms are to be harmoniously

construed to see that no damage is caused to the Regulations, 2010, which is, of course, framed with the noble object of streamlining the deemed

to be universities in orderly manner and also to prevent institutions of dubious quality from being declared, as it is enshrined in the preamble of the

Regulations, 2010.

41. While the intention of the makers of the Regulations, 2010, as it is seen in the initial portion, is very categoric that the Regulation is applicable

only prospectively, Clause 23 can be applied only in cases where the proposals

are still pending with the University Grants Commission or received by the Central Government. Therefore, it is to be construed, in my considered opinion, that in cases where the process of the University Grants Commission has been completed, which is possible as per the provisions of the Act and Regulations governing the University Grants Commission after receiving the expert's opinion about the infrastructural facilities and having satisfied about the proposal and making recommendation to the Central Government, the same cannot be held to be pending process before the University Grants Commission, in which event Clause 23 of the Regulations, 2010 will not apply.

25. In our view, the learned Single Judge was perfectly right in observing that clause 23 would have application to cases where the proposal were still pending with the UGC or have been received by the Central Government. There may be cases where, the UGC might have appointed expert committee to inspect the institution and such committee may have inspected and report awaited or inspection might not have been carried out and therefore, there was no occasion for the UGC to take a decision on the proposal. Admittedly, after compliance of all the requirements as per the guidelines of UGC, the final approval of UGC was granted on 30.09.2009 and on and after the said date, there was nothing pending with UGC.

The Medical Council of India also had granted approval with the annual intake of 150 students.

26. In paragraph 44 to 49 of the impugned judgment, the learned Single Judge had rightly distinguished the various decisions relied on by the learned Additional Solicitor General and the learned Senior counsel for the UGC. Infact the decisions cited before us, are also to the same effect and some of which has also been considered by the learned Single Judge. In any event, all those decisions do not arise out of interpretation of the provisions of the UGC Act, its guidelines and Regulations, but arose under various other enactments such as Town and Country Planning Act, Mines and Minerals Act and Motor Vehicles Act etc. We may safely conclude by saying that while interpreting as to whether a proposal is said to be pending or not, in the light of language employed in Regulation 23 of the 2010 Regulation, we are first required to examine the facts of the case vis-a-vis the Regulation. In the preceding paragraphs, we have examined the

same, we are in full agreement with the learned Single Judge in

holding that the first respondent's proposal cannot be held to be pending process before the UGC.

27. Having said so, the next question would be whether the proposal can be said to be pending/ in process with the Central Government. We may

at this stage, quote the observations/findings of the learned Single Judge on this point.

50. Moreover, if the Central Government, on receipt of the report and recommendations of the University Grants Commission, has passed orders

before the commencement of the Regulations, 2010, based on the recommendations of the University Grants Commission dated 30.9.2009 which

has become final, such order of the Central Government would have been valid as per the Guidelines, 2000. The non consideration of the

recommendations of the University Grants Commission in respect of the petitioner/institution by the Central Government is not on the basis of any

materials found on the inspection conducted by the statutory authorities in accordance with various provisions of the UGC Act, but accidentally

due to the reason that the Government and the University Grants Commission want to revamp the functioning of the deemed to be universities and

it was in that consultation process, the Government has not passed orders. Therefore, the non passing of the order by the Central Government

based on the recommendations of the University Grants Commission itself cannot be taken as a ground for applying the provisions of the

Regulations, 2010. Hence, there is no conflict between Clause 1.2 and 23.0 of the Regulations, 2010 and the same, in my firm opinion, have to be

harmoniously construed based on the factual aspect about the consideration of application by the University Grants Commission and the Central

Government.

51. Under such circumstances, it is not possible to accept the contention of the learned Senior Counsel appearing for the second respondent as if

Clause 23 of the Regulations, 2010 has to be construed as a special rule and Clause 1.2 of the Regulations, 2010 as a general rule. There is

absolutely no comparison between Section 47 and Order 21 Rules 2 and 3 of the Code of Civil Procedure, which was considered by the Apex

Court in Sultana Begum Vs. Prem Chand Jain, .

52. For the foregoing reasons, I have no hesitation to come to a conclusion that the application made by the petitioner dated 28.8.2007 for starting off-campus centre at Tiruchirapalli in respect of a medical college and engineering college as a constituent of the petitioner deemed to be university cannot be considered under the Regulations, 2010. Accordingly, the impugned order of the Government, even though the same was passed in consultation with the University Grants Commission which is stated to have recommended for application of the Regulations, 2010 in respect of the petitioner in its advice dated 9.11.2010, cannot be sustained.

This writ petition is therefore squarely covered by the decision of Hon''ble Division Bench, in W.A.No.1004/2011 (supra).

13. Consequently, writ petition is allowed. Impugned order is set aside, and case is remitted back to 1st respondent to consider the case of the petitioner for grant of Deemed University status under the old regulation. No costs. Connected miscellaneous petitions are closed.