

(2023) 11 KL CK 0035
In the High Court Of Kerala
Case No : Writ Petition (C) No. 34522 Of 2023

The Principal

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-11-2023

Acts Referred:

Kerala University of Health Sciences Act, 2010 — Section 12, 23(i), 23(v), 25(xix), 40(2)(xi), 41

Citation : (2023) 11 KL CK 0035

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : P.M.Saneer, Kurian George Kannanthanam, Tony George Kannanthanam, Abraham P.Meachinkara, P.Sreekumar, Premchand R.Nair

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The petitioner is the Principal of a Self-Financing Nursing College. The college was started in the year 2008 with an initial intake of 50 students for B.Sc.Nursing. Initially, the college was affiliated to Calicut University. After the formation of the Kerala University of Health Sciences in 2010 (KUHS), the affiliation was transferred to KUHS. In the year 2021, the annual intake of students was increased from 50 to 70. In the year 2023-24, the petitioner sought for enhancement of the seats from 70 to 90. On an application filed before the Government for a No Objection Certificate (NOC), an inspection was conducted through the Director of Medical Education and thereafter the Government granted the NOC. The petitioner applied for approval by the Kerala Nurses and Midwives Council (KNMC). After conducting an inspection, the KNMC also granted approval. Thereafter, the petitioner applied before the KUHS for affiliation. The application was rejected on 11.10.2023 as per Ext.P15. The reason stated in Ext.P15 is that as per UO No.69/2022/Academic/KUHS dated 7.2.2022, if seat enhancement was already permitted in an existing course and

the application is for further enhancement of seats, the batch in which the enhancement was last sanctioned shall be treated as the first batch for the purpose of considering the further enhancement of seats. It is further stated that in the case of the petitioner, the batch to which the seat enhancement was granted, i.e., 2021-22, has not passed out from the Institution, and hence, affiliation for further enhancement cannot be granted. It is also stated that as the validity of the application will expire on 30.12.2023, a fresh online application may be submitted in subsequent academic years after the enhanced batch passes out from the Institution. Aggrieved by Ext.P15, the petitioner has approached this Court.

2. A statement has been filed by the Standing Counsel for the 4th respondent. In paragraph 3, it is stated that in terms of the provisions contained in Ext.P17, which is the amended statute regulating affiliation for enhancement of seats in a course, it is necessary that the first batch in the said course in the applicant institution, should have completed their course. It is further stated that the University, being the affiliating and examining body, has the primary duty to ensure that the standards in the institution are properly maintained and only qualified health professionals pass out of the institution. It is stated that the evaluation of the standards is a continuous process and the same could be assessed only through the evaluation of the performance of the batches of students. In the case of nursing courses, the student-patient ratio of 1:3 and the teacher-student ratio of 1:10 are to be maintained. It is hence submitted that the University would be justified in treating the batch with an increased intake as a fresh batch to assess the performance of the Institution with the increased intake. It is further stated that a reading of Exts.P16 and P17 would show that they operate in a different context and as permitted under Ext.P18 Statutes itself. Reference is made to Statute 10 of the pre-amended First Statutes. Statute 10 dealing with the grant of affiliation, states that the grant of affiliation shall depend upon the fulfilment by the management of all the conditions that are specified or that may be specified later for the satisfactory establishment and maintenance of the proposed institution/courses of studies. In the judgment in W.P.(C)No.15368 of 2016, this Court, while dealing with the contention that the norms of affiliation could be fixed only through Statutes, held that the Statute itself permits fixation of norms through other means, relying on the words "that may be specified later". In the amended statutes, instead of saying "that may be specified later", it is stated as "that may be specified additionally". It is hence submitted that there is no substantial difference in the Statute as amended and the interpretation placed in the judgment in W.P.(C)No.15368 of 2016 will apply. Annexure R4(a) produced along with the statement is a true copy of the notification published in the Gazette Extraordinary dated 15.12.2021. It is stated that the said notification gives legality and clarity to the provisions contained in Ext.P16 and P18, regarding additional intake. It is further stated that the very purpose of incorporating the condition regarding passing out of the first batch in the same stream is to ensure that the college can manage the required minimum

standards in the institution. It is stated that the amendment led to a situation where the words "first batch" were interpreted in a manner that defeated the very purpose of the amendment and that the University will be failing in its duty to monitor the standards in the case of an enhanced intake, if additional seats are permitted before the college shows that they are capable of maintaining the minimum standard requirements for the already enhanced intake for the course period. It is also stated that pending amendment of the affiliation Statutes, Ext.P18 Statute cannot be permitted to operate with lack of clarity regarding the words "first batch of the stream" which required issuance of Exts.P16 and P17 by the Vice Chancellor who is competent to act on the emergent situation became necessary. It is stated that Ext.P16 is to be viewed as a clarification or a norm which is covered by the words "that may be issued additionally". Another contention taken is that 'affiliation' is distinct and different from "permission and recognition" and that the University is the sole authority to prescribe the norms for the grant of affiliation and to grant the same. It is submitted that the number of intake to be permitted is regulated by statutory provisions and the same does not give any primacy to statutory councils or the Government. Reliance is placed on the judgment of a Division Bench of this Court in W.A.No.1508 of 2020, wherein a contention that the University is bound by the intake permitted by the Statutory Council was rejected. It is submitted that the said judgment is under challenge in SLP No.1689 of 2021 before the Hon'ble Supreme Court. It is stated that in terms of Ext.P19, the admissions to the B.Sc. Nursing Course is to be closed on 07.11.2023 and as far as the application submitted by the petitioner is concerned, the same stands rejected and the University has not even conducted an inspection to assess the availability of the facilities in the College. It is stated that an inspection is to be followed by a scrutiny of the report, intimation of remediable shortfalls, if any, consideration of the records of the sub-committee of the Governing Council, etc., and that considerable time is required to complete the above process and there is no possibility of permitting admissions for the additional seats in the current academic year.

3. Heard Sri Kurian George Kannanthanam, Senior Advocate, instructed by Sri.Saneer P.M, on behalf of the petitioner, Sri P.Sreekumar, Standing Counsel for the 4th respondent and Sri Premchand R. Nair, Senior Government Pleader on behalf of respondents 1 and 2.

4. As per Section 23(i) of the Kerala University of Health Sciences Act, 2010 (the Act for short), subject to the provisions of the Act, the Governing Council has the power to make Statutes, subject to the approval of the Chancellor. As per Section 23(v), it is for the Governing Council to grant affiliation to medical institutions in accordance with the terms and conditions of affiliation provided by the Act and the Statutes. When reading Section 25(xix) of the Act, it would appear that there is some inconsistency since it says that it is for the Academic Council to grant affiliation to Colleges in accordance with the Statutes, Ordinances, and Regulations. Section 40(2)(xi) empowers the Governing Council to make Statutes to provide for the conditions and procedure for the grant or withdrawal of

affiliation of Colleges. Section 41 of the Act, which deals with the procedure for making a Statute is extracted below.

"41. Procedure for making Statutes.-

(1) Notwithstanding anything contained in this Act, the Government shall make the first Statute of the University

(2) The Governing Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1).

(3) The Statute may be made, amended or repealed by the Governing Council in the manner hereinafter provided :-

(i) The Governing Council may take into consideration the draft of a Statute either moved by any member of the council or on a proposal by the Vice-Chancellor;

(ii) The Governing Council, if it thinks necessary may also obtain the opinion of any officer, authority or body of the university in regard to any draft Statute which is before it for consideration; Provided that, there any such draft Statute pertains to academic matters, the Governing Council shall obtain the opinion of the Academic Council before considering the same;

(iii) The Governing Council shall not propose the draft of a Statute or of an amendment to a Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal and any opinion so expressed shall be in writing and shall be considered by the Governing Council.

(iv) No Statute providing for the conditions for, or procedure relating to, the affiliation of private colleges shall be passed by the Governing Council without the previous approval of the Government.

(v) Every Statute passed by the Governing Council shall be submitted to the Chancellor who may give or withhold assent thereto, or send it back to the Governing Council for reconsideration;

(vi) No Statute passed by the Governing Council shall be valid or shall come into force until assented to, by the Chancellor.

5. The Government of Kerala made the First Statutes in 2013. Chapter 21 of the First Statute deals with the affiliation of colleges. Statute 10 deals with the grant of affiliation. Statute 10(2) says that the grant of affiliation shall depend upon the fulfillment 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 institutions/courses of studies and on the reports of inspection by the commission or commissions which the university may appoint for the purpose. Statue 10(3) says that 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. By Exhibit P18 dated 24.2.2020, the Governing Council of the University, with the approval from the Government of Kerala, amended Chapter 21 regarding affiliation. The amendments were assented to by the Chancellor on 02.12.2019, and they have to come into force with effect from that date. Regarding the procedure for affiliation, Statute 2(5)(ii)(v) of Ext.P18 says that in the case of additional courses and/or for enhancement of seats, the colleges shall satisfy the condition that first batch of the courses in the institution under the same stream shall be passed out and the details of the average of pass percentage of previous regular examinations of all the existing batches of the same course at the time of submitting the application and a declaration that the percentage is not below the minimum prescribed by the Governing Council in the Notification issued by the University for the purpose of the addition/enhancement concerned. The Statutes, as it originally stood, did not deal with the enhancement of seats in an already affiliated course.

6. On 26.3.2021, an order was issued by the University seeking to modify Clause 2(5)(ii)(v) of the amendment brought about by Ext.P18. It says that the University is facing several issues while processing applications for additional courses/enhancement of seats as the intended objective of the amendment is not seen met. It further says that while processing applications for provisional affiliation for starting new courses/enhancement of seats, most of the applications are being rejected as the "first batch" of all courses in the institutions may not have passed out, making it practically impossible to sanction additional courses or enhancement of seats in the existing affiliated courses. After noticing the above problem, the order says that Clause 2(5)(ii)(v) is modified by adding sub-clauses "A" and "B" which read as follows:

"A. For additional course the average of pass percentage of all regular examinations of the existing batches of all courses under the same stream is not below the minimum prescribed by the Governing Council in the Notification issued by the University from time to time for the purpose of additional course concerned. If the norm above is contrary to the norm of apex council if any, then the norm of apex council shall prevail.

B. For enhancement of seats the first batch of the same course to which enhancement is requested by the college shall be passed out and the average of pass percentage of all regular examinations of the existing batches of that particular course is not below the minimum prescribed by the Governing Council in the Notification issued by the University from time to time for the purpose of enhancement concerned. If the norm above is contrary to the norm of apex council if any, then the norm of apex council shall prevail."

The order is seen to have been issued by the Registrar.

7. On 7.2.2022, the University issued Ext.P16 order which says that Clause 2(5)(ii)(v) of the amendment of the First Statute in the matter of affiliation of

colleges requires further modification since the calculation of the average of pass percentage will have to be made afresh when applications are processed in subsequent years. It is stated that the Governing Council, in its 67th meeting dated 30.12.2021, considered the matter in detail and decided to add sub-clauses "C" and "D" below sub-clauses "A" and "B" to clause 2(5)(ii)(v) which read thus:

"C. For the purpose of considering applications for enhancement of seats/ additional courses, the average of pass percentage as noted in sub-clause "A" and "B" above shall be minimum 50%(Fifty percentage). The relevant date for considering the pass percentage shall be the last date fixed for receipt of such applications as per notification issued by the University from time to time. In case of applications which have validity of 3 years, if the applications are to be considered in the subsequent years, the last date fixed for receipt of the applications as per notification issued by University in the current year shall be the relevant date for considering the pass percentage. If no notifications are invited by the University in a particular year, the date on which the institution concerned is to achieve the average pass percentage required shall be decided by the Governing Council

D. If seat enhancement is already permitted in an existing course and the application is for further enhancement of seats, the batch in which enhancement was last sanctioned shall be treated as first batch for the purpose of considering further enhancement of seats."

8. Senior Counsel argues that if the Statute prescribes the manner in which an amendment is to be carried out, then it should be done in the said manner or not at all. The above proposition is well settled. The question is whether what has been done by Exts.P16 and P17 is an amendment. According to the Standing Counsel for the University, Exts.P16 and P17 are not amendments of the Statute. He submits that pending the amendment, which is a time-consuming process, the Vice Chancellor has exercised his powers under Section 12 of the Act to provide for exigencies by introducing Exts.P16 and P17. It is submitted that such a process is permitted by the Statute as amended by Ext.P18. Specific reference is made to Statute 10(2), which says that the Management shall fulfill all the conditions that are specified in the Statute "or that may be specified later", and to the provision in Ext.P18 whereby the word "later" is replaced by the word "additionally". It is contended that Ext.P16 and P17 are only conditions that are specified additionally. It is submitted that for such a specification, the University need not go through the rigour of the amendment process. The Standing counsel further contends that the use of words "modified" used in Exts.P16 and P17 are of no real consequence, since what is intended is not an amendment as provided in the Act and the Statutes.

9. The Standing Counsel relied on the judgment of this Court in *The Secretary, Perpetual Succour Charitable Trust v. The Kerala University of Health Sciences & Anr.* [2016 (3) KLT 608]. In the said judgment, this Court had considered the

effect of the words "that may be specified later" in Statute 10(2) prior to the amendment by Ext.P18. The Court held that if the intention of the Statute maker was that the conditions of affiliation could be specified only by an amendment of the Statutes, then there was no need to use the words "that may be specified later". The Court held that the words used in a Statute would be rendered redundant and it is with a specific purpose that the Statute is framed in a particular manner. The Court was concerned by the insistence of the University that a 300 bedded hospital was required for sanctioning a Nursing College. The contention was that as per the guidelines of minimum requirements prescribed by the Indian Nursing Council, a 100 bedded hospital alone is required. It is hence submitted that the University could not have, without the prescription in the Act, Statute, Ordinance or Regulations, prescribed a condition that a 300-bed hospital should be provided by the Management. The counsel also relied on the decision in KVM Trust v. Kerala University of Health and Allied Sciences [2011 (4) KHC 948] to submit that the grant of affiliation is not an empty formality. The judgment in W.A.No.1508 of 2020 is also to the same effect. In Sree Anjaneya College of Nursing v. State of Kerala & Ors. [2022 (1) KLT 26], a learned Single Judge considered the provision regarding the enhancement of seats and the condition that the first batch of the course in the Institute under the same stream should have passed out. The interpretation sought to be placed by the University that the first batch would mean the enhanced batch and that for grant of enhanced intake even for the same B.Sc. Nursing stream, the batch for which enhancement was granted shall have to pass out, was not accepted by the Court.

10. Even though the arguments advanced by the Standing Counsel would appear to be unimpeachable at first blush, I am not inclined to accept the arguments for the following reasons;

11. The specification of a condition that is to be satisfied by a Management is different from the requirement that the first batch of the course in the Institution should have passed out. The period that has to be undergone for completing a course is pre-determined. The Management cannot change it. If the course is for a period of four years, necessarily the batch will complete it only after four years. It was not a condition that the Management could satisfy, but rather a requirement that is prescribed in the Statute. The word "first batch" is not defined either in the Statutes or in the Act. The word can have only the general meaning that can be attributed to it. The judgment of this Court in Perpetual Succour Charitable Trust (supra) was regarding a condition that had to be satisfied in the sense that the Management should provide a 300-bed hospital. Neither Exts.P16 nor Ext. P17 makes any reference to Section 12, and they do not say that they have been issued by the Vice Chancellor in the exercise of the power available to meet the exigency of the situation. Ext.P16 proceeds as if the Statute is being modified, and it specifically says that the addition of Clauses C and D is to bring about clarity in the matter. Ext.P17 also proceeds on the basis that the Vice Chancellor had accorded sanction to modify the clause in the First Statute till further amendment is made, subject to ratification of the Academic

Council and the Governing Council. The wording of Exts.P16 and P17 cannot be improved at the time of arguments by stating that they are not intended to be amendments but are intended to be additional conditions laid down in accordance with Statute 10 as amended. As already held, the prescription regarding completion of the course by the First Batch cannot be understood to be a condition that has to be satisfied by the Management but can only be treated as a requirement for the grant of affiliation. If such a requirement is to be modified, it necessarily must be done in the manner prescribed under the Statute and the Act. Even if Section 12 is to be invoked, it must be in the manner prescribed in the Statute and in no other way. As such, the reliance placed on Exts.P16 and P17 to reject the request for affiliation submitted by the petitioner cannot be said to be legally correct. The interpretation sought to be put to a provision contained in the Statute by means of an order in the nature of Exts.16 or P17, cannot be legally permitted, and it cannot be in any manner treated as an additional condition as stipulated in Statute 10(2). An additional condition can only be additional and cannot be a tool to read into the Statutes, something which is not there.

In view of the above discussion, the writ petition is allowed. It is declared that Exts.P16 and P17 are bad in law to the extent they seek to define the words "First Batch" contained in the Statutes to mean the first batch of students who have completed the course after enhancement of seats. Since it is submitted that the admissions are to be completed only by the end of this month, there will be a direction to the 4th respondent to consider the application for affiliation of the enhanced intake of B.Sc. Nursing seats from 70 to 90 in this academic year itself and pass necessary orders on or before 23.11.2023 after following the procedure prescribed.