

(1992) 02 MAD CK 0004
In the Madras High Court

Thirumuruga Kirupananda Variyar Thavathiru
Sundaraswamigal Medical Educational and Charitable Trust

APPELLANT

Vs

Tamil Nadu Dr. M.G.R. Medical University and Another

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 37B

Citation : (1993) 1 MLJ 307

Hon'ble Judges : K.S. Bakthavatsalam, J;K.S. Bakthavastsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavastsalam, J.—The above writ petition is preferred by the petitioner Trust challenging the order of Medical University (in short

as "the University") dated 16.8.1991 by which the application of the petitioner seeking affiliation to start the proposed Vinayaka Mission

Kirupananda Variyar Medical College at Salem for the academic year 1991-92 has been rejected.

2. On an earlier occasion, Govindasamy, J. in W.M.P. No. 20146 of 1991 in this writ petition by order dated 22.10.1991 directed the first

respondent University to grant provisional affiliation subject to the petitioner fulfilling all the requirements in a period of two years and pending

further orders. Against the said order a writ appeal was filed in W.A. No. 1377 of 1991 and a Division Bench of this Court consisting of the

Acting Chief Justice and Somasundaram, J. by order dated 26.11.1991 allowed the writ appeal setting aside the order of Govindasamy, J. in the

above mentioned W.M.P. No. 20146 of 1991, dated 22.10.1991 and further directed that the main writ petition itself be listed for hearing. That is

how they petition is before me.

3. W.M.P. No. 24518 of 1991 has been filed by the State praying to implead itself as a party in the writ petition and by order dated 17.12.1991 it

has been impleaded as the second respondent in the writ petition.

4. The facts leading to the filing of the writ petition are:

The petitioner is a Charitable Trust which has been imparting education in the fields of medicine and engineering by starting various educational

institutions. A pharamacy College, an Engineering College, a Dental College, a polytechnic, a Homeopathy Medical College and Industrial Training

Institute and certain other institutions are being run by the petitioner Trust The petitioner desired to start a private self-financing Medical College at

Salem. The petitioner Trust is already running a hospital at Salem Town under the name and style "Vinayaka Mission"s Hospital. Originally the

petitioner had submitted an application to the University of Madras and subsequently submitted an application to the first respondent University in

the month of October, 1988.

However, the said application submitted by the petitioner was not considered by the first respondent University on the ground that the petitioner

should obtain prior approval from the State, that is to say, a no objection certificate from the Government of Tamil Nadu. Aggrieved by this, the

petitioner preferred a writ petition in W.P. No. 2776 of 1989 praying to quash the order of the first respondent dated 28.11.1988 and to direct

the first respondent University to discharge its statutory obligations by considering the applications of the petitioner dated 2.12.1987 and

23.10.1988 for starting the Medical College and granting affiliation to it without insisting on any approval of the State Government or prior

approval of the Medical Council of India. By order dated 13.4.1989, Venkataswami, J. in the said writ petition directed the first respondent

University to consider the application of the petitioner without insisting upon prior permission of the Government and pass orders in accordance

with law within eight weeks from the date of receipt of the application to be filed by the petitioner. Consequent upon this order, the petitioner

submitted an application for affiliation with necessary fee to the second respondent in the month of October, 1989 with all relevant particulars.

However, the first respondent University once again declined to grant the affiliation for the academic year 1989-90 on the ground that the

application was a belated one. The said decision was challenged by the petitioner by way of a writ petition in W.P. No. 10453 of 1990.

Somasundaram, J. by order dated 1.2.1991 allowed the said writ petition setting aside the order of the first respondent University and further

directed the first respondent to re-consider the application of the petitioner on merits in terms of the order of Venkataswami, J. dated 13.4.1989 in

W.P. No. 2276 of 1989. It is alleged in the affidavit filed in support of the petition that the petitioner has been driven from pillar to post for

establishing a self-financing private medical college and that the request of the petitioner has been turned down by the first respondent University

for some reason or other. It is further alleged in the affidavit that the petitioner being a fairly well known educational Trust wanted to establish a self

financing medical college at Salem continuously, that even in the year 1988 the petitioner had purchased vast extent of lands in order to start a self-

financing private medical college, that as early as on 10.3.1990 the petitioner invested a sum of Rs. 50 lakhs in the fixed deposit in the joint names

of the first respondent and the petitioner in the Vysya Bank Ltd. and that said fixed deposit is valid upto 10.3.2000. It is further alleged in the

affidavit that the petitioner started construction of the Medical College in accordance with the prescribed norms, that it had completed,

construction of a full-fledged Medical College comprising of Lecture Theatres, Demonstration rooms, practical class rooms, Dissection hall,

Museum room, Library etc., that sufficient number of rooms have been provided for each of the branches, that it had provided workshop,

auditorium, play ground, quarters for staff, hostel facilities, administration block, gas plant, animal house, pharmacy, laundry and kitchen, and that

sufficient number of equipments as are required in terms of the specifications of the Medical Council of India for starting a Medical College with a

minimum strength of 100 students. It is further alleged in the affidavit that in respect of hospital facilities, the petitioner is running a private hospital at

Salem with 60 beds of its own, that it is presently putting up a full fledged hospital with 1000 beds for which construction has already started and

to be completed before March 1993, that the petitioner had appointed teaching staff for the first M.B.B.S. course comprising of 33 staff members

in various discipline, that the petitioner has been paying salary to all those staff and teaching personnel, that the petitioner has to undergo all such

formalities, because as per the University norms, the first respondent University will grant affiliation to a college only when it has already become functional and operational in all respects, that the petitioner has invested huge amounts in the establishment of the college so as to get the grant of affiliation, since the first respondent University will grant affiliation only to a college which has become already functional and not for institutions which are just springing up or likely to spring up and that the investment made by the petitioner is running to several crores of rupees which was obtained from financial institutions for which the petitioner is paying huge interest. It is further stated in the affidavit that the petitioner was very hopeful to get the affiliation from the first respondent University from the academic year 1991-92 onwards in terms of the directions of this Court given by Venkataswami, J. and Somasundaram, J. as it had satisfied all the norms and prescriptions, that the first respondent University appointed an Inspection Commission to inspect the petitioner College for which the petitioner had paid the necessary fees to the University, that the Inspection Commission has been appointed, that it inspected the petitioner college on 13.7.1991 and that it reliably understands that the report of the Inspection Commission is in favour of the petitioner stating the petitioner Trust satisfied all the norms prescribed for being affiliated. It is stated that at this stage, the petitioner has received the impugned communication. It is also stated in the affidavit that the first respondent University has not even chosen to call for the details from the petitioner before passing the impugned order and that had it been done, affiliation would have been granted to the petitioner in view of the earlier orders of this Court, mentioned hereinabove. It is further stated that the first respondent has acted arbitrarily and in an unreasonable manner without even giving an opportunity to the petitioner to put forth the relevant materials.

5. The petitioner further alleges in the affidavit that the impugned communication is illegal and is in violation of the principles of natural justice. It is stated in the affidavit that the first respondent University, in the impugned communication has pointed out that the application submitted by the petitioner for affiliation has to be rejected on four grounds, that none of the grounds is valid and sustainable in law. It is further alleged in the affidavit that with regard to the first ground that the buildings or administration blocks were not ready, the said buildings were ready several months

ago and they were ready even during the month of March, 1991. It is further alleged in the affidavit that with regard to the second ground stating that there is no hostel blocks within the Medical College campus itself, that neither the norms of the Medical Council of India nor any other Statutes in force compels any Medical College to have the hostels within the College campus itself. It is further stated in the affidavit that several professional colleges have hostels elsewhere and some colleges do not have even hostel facilities. It is further stated in the affidavit that Mohan Kumaramangalam Government Medical College run by the Government at Salem and even the Madras Medical College do not have hostel facilities in those colleges is situated away from the college and that the first respondent has failed to note that the petitioner had already made arrangements for hostel facilities at Fairlands Salem and had also made suitable arrangements for ferrying students from the college to the hostel and back by arranging private buses. With regard to the third ground of deficiency pointed out by the first respondent University, the petitioner alleges that there was sufficient evidence which was made available even before the Inspection Commission that a full-fledged hospital would be ready before March, 1993, that there is sufficient hospital facilities available for the first year students, who are to undergo clinical training, which they have to undertake only after the completion of 18 months course after admission, that the petitioner had already made tie up arrangement with leading hospitals at Salem and that the first respondent University in respect of Self Financing Medical Colleges such as P.S.G. Institute of Medical Sciences, Coimbatore, the Medical College situated at Annamalai University and in respect of Sri Ramachandra Medical College, Madras, did not insist upon them the hospital facilities at the beginning when they were affiliated. It is further pointed out that even as on date some of the abovementioned Colleges still continue with the tie up arrangement only inspite of more than 5 or 6 years have elapsed after their affiliation. It is further stated that in the case of the petitioner, even prior to the affiliation being granted, it had made tie up arrangement with various hospitals, that it had provided facilities for 540 beds in various disciplines required at the end of 18 months and that the petitioner is constructing a big hospital of its own with 1000 beds and the said construction is expected to be finished even before March, 1993 and that it is not in any event essential that a

hospital should be ready within 18 months if there is alternate tie up arrangement with other medical hospitals. With regard to the last ground mentioned in the impugned order for rejecting the application of the petitioner, it is alleged in the affidavit that the Inspection Commission did not ask for the encumbrance certificates and that had they been asked they would have been produced. It is pointed out in the affidavit that the petitioner had already obtained encumbrance certificates for a period of 13 years and patta and adangal extracts, that the said lands were purchased after obtaining legal opinion, that the lands had been sold by the kartha of the Hindu undivided family for the benefit of the minors and that no court permission is necessary since the property is a joint family property and the Kartha was entitled to deal with the property. With regard to the last ground of deficiency that no clearance certificate was obtained from the Authorised Officer under the Tamil Nadu Land Reforms Act, it is stated in the affidavit that the matter is pending with the Government u/s 37-B of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. According to the petitioner all the grounds shown in the impugned communication as entitled for rejection of the application are not valid in the eyes of law. It is further stated in the affidavit that the action of the first respondent University is liable to be set aside as the first respondent has neither furnished the copy of the inspection report nor has given effective opportunity to rebut the defects pointed out therein. It is also stated that the first respondent has acted arbitrarily and in an unreasonable manner finding out some reason or other to reject the application of the petitioner, that the treatment meted out to the petitioner is totally discriminatory, that neveral other Medical Colleges which had already been granted affiliation were treated favourably and that the action of the first respondent University is in violation of Article 14 of the Constitution of India. It is further stated that the action of the first respondent University is without any rationale and that it is violative of the principles of natural justice. With these allegations the petitioner Trust has come up to this Court praying for the issue of a writ of certiorarified mandamus to call for the records of the first respondent dated 16.8.1991 and quash the same and consequently to direct the first respondent University to grant permanent affiliation for the petitioner's college viz., Vinayaka Missions Kirupananda Variyar Medical College, Salem, for the academic year 1991-92.

6. A counter affidavit has been filed by the first respondent University. It is claimed in the counter affidavit that only on the recommendations of the Inspection Report dated 15.7.1991 and following the Statutes of the first respondent University, the application of the petitioner for affiliation has been rejected, that it is the duty of the petitioner to put forth all necessary and relevant documents to convince University to establish that it had complied with all the, requirements required under law and that it is not for the University to give an opportunity to the petitioner in such matters. It is further claimed in the counter affidavit that the petitioner cannot plead that it has not been given reasonable opportunity, that it is for the petitioner to satisfy the Inspection Commission that the Administration buildings are ready and that the petitioner has not produced any certificate from the architects and engineers. It is further claimed in the counter affidavit that with regard to hostel facilities, it is for the petitioner to prove that it was taking steps to construct hostel within the campus and it had made arrangements for ferrying students from the hostel to the college and back by arranging buses. It is further claimed in the counter affidavit that the Inspection Commission has pointed out that no activity is in evidence about the construction of a hospital which could be ready within 18 months, that there has to be a functioning outpatient department and that the functioning hospital of about 300 beds even at the time of initial inauguration of the college should progressively increase to 600 beds with two or three years and to 800 beds before the first batch reaches final year. It is also claimed in the counter affidavit that it is for the petitioner to prove that it had tie-up arrangements with leading hospitals at Salem and obtained necessary consent letters from the hospital in this regard, It is further claimed in the counter affidavit that with regard to the colleges mentioned by the petitioner in its affidavit, affiliation was granted to those colleges by the University of Madras and not by the first respondent University and that those colleges have obtained prior permission of the Government as per G.O.Ms. No. 1196, Health and Family Welfare Department, dated 24.7.1985, that there is no evidence produced by the petitioner that the tie up arrangements with the private hospitals would continue till the construction of its own hospital and that those are only consent letters and there is no binding agreement between the petitioner Trust and tie up arrangements. It is further claimed in the counter affidavit that a functional hospital is

needed for teaching, that the first respondent University has acted as per the recommendations of the Inspection Commission which in turn has

considered the question from all aspects. With regard to infrastructural facilities, it is claimed in the counter affidavit that it is for the petitioner to

prove and that it is not for the University to give an opportunity. With regard to the permission u/s 37-B of the Tamil Nadu Land Reforms (Fixation

of Ceiling on Land) Act, 1961 to hold excess lands for running an educational institution for students hospital staff quarters, auditorium etc., no

permission has been granted by the Government so far to the petitioner Trust to hold excess . lands and that the appointment of the Inspection

Commission itself is an opportunity to the petitioner to put forth its pleadings and all the relevant records etc. and that the petitioner cannot now

plead that no opportunity was given to it. It is . further claimed in the counter affidavit that there is no violation of Article 14 of the Constitution and

that the first respondent University has not acted in an arbitrary manner as contended by the petitioner. It is categorically claimed in the counter

affidavit that it had acted only on the basis of the recommendations of the Inspection Commission.

7. A counter affidavit has been filed by the State of Tamil Nadu which has been impleaded as a party respondent in this writ petition. It is pointed

out in the counter that the Government issued G.O.Ms. No. 1196, Health, dated 24.7.1985 prescribing certain conditions for starting private

medical colleges, that an amendment was brought to the Tamil Nadu Dr. M.G.R. Medical University Act 1987 (Tamil Nadu Act 37 of 1987) by

Act 32 of 1990 that the above Act was given retrospective effect with effect from 24.9.1987, that in view of the amendment as mentioned

hereinabove, obtaining prior permission from the Government has been made a condition precedent for affiliation, that inasmuch as the petitioner

has not obtained prior permission from the Government, the University cannot grant affiliation and that therefore the present writ petition seeking a

writ of certiorarified mandamus is not maintainable in law. It is further claimed in the counter affidavit that no mandamus can be issued against the

provision of the Statute and as such this Court should not accede to the request of the petitioner. It is pointed out in the counter affidavit that this

Court has upheld that validity of the amended Act made to Act 37 of 1987 in W.P. Nos. 10952 and 17075 of 1990. It is further claimed in the

counter affidavit that when the petitioner challenged the order of the first respondent University insisting upon the prior approval of the University,

by way of a writ petition. In W.P. No. 2776 of 1989 an order has been made by Venkataswami, J. on 13.4.1989, and that the earlier order

passed in the above writ petition was based on the statement made by the counsel for the University who was also the then Government Pleader

and the order was not made following any earlier decision of the Government. It is further claimed in the counter affidavit that originally there was

no provision in the Tamil Nadu Dr. M.G.R. Medical University Madras Act, 1987 (Tamil Nadu Act 37 of 1987) requiring prior approval of

Government and as such the petitioner cannot rely upon the judgment of Venkataswami, J. mentioned hereinabove. It is further claimed in the

counter affidavit that by the Tamil Nadu Act 32 of 1990 an amendment has here introduced with retrospective effect, that as per the amended

provisions of the Act for obtaining affiliation, prior permission from the Government is, mandatory and therefore while disposing of the petition, the

statutory authorities are bound in law to take into account the change of position in law. It is further claimed in the counter affidavit that the

application of the petitioner seeking for affiliation is still pending and that the petitioner cannot contend that in view of the earlier orders of this Court

in W.P. No. 2776 of 1989, no prior permission is necessary. It is further claimed in the counter affidavit that the order of Somasundaram, J. in

W.P. No. 10453 of 1990 dated 1.12.1991 will not bind the State since the State was not a party in that writ petition, it is further claimed in the

writ petition that the petitioner Trust applied for prior permission on 29.10.1986, 19.1.1987 and 13.2.1987, that the Government after considering

the matter on 3.8.1988 rejected the application of the petitioner, that the petitioner Trust made an application on 6.2.1989 and that even after the

disposal of Writ Petition No. 2776 of 1989 on 13.4.1989, a letter was addressed to the then Chief Minister by Mr. Kripananda Variyar on

23.7.1990 and that a reply has been given to the petitioner.

8. A reply affidavit has been filed by the petitioner. It is stated that the Tamil Nadu Act 32 of 1990 cannot be made applicable to the petitioner's

case in view of the orders passed by Venkataswami, J. in W.P. No. 2276 of 1989 dated 13.4.1989 in which the University as well as the

Government are parties. It is further stated in the reply affidavit that in view of the orders of Venkataswami, J. in W.P. No. 2776 of 1989 dated

13.4.1989 a right has been crystalised in favour of the petitioner, that both the University and the Government were parties and that once the right

is crystalised in favour of the petitioner, it is not necessary for the petitioner to have made the Government as a party in the subsequent W.P. No.

10453 of 1990. It is further stated in the reply affidavit that the facts of the writ petition where the validity of the Act 32 of 1990 has been upheld,

are different from the facts of this case, that if the amended Act is applicable then the statutes subsequently framed by the University would also be

applicable and that would lead to an anomolous position wherein the very application originally submitted by the petitioner would be defective by

subsequent enactment and that the application of the petitioner should be disposed of only in accordance with the provisions of the law which was

prevailing as on the date of the application and in view of the orders passed by Venkataswami, J. in W.P. No. 2776 of 1989 dated 13.4.1989. It

is further stated in the reply affidavit that in the abovementioned case, the learned Government Pleader represented not only the first respondent

University, but also the Government, that the orders of Venkataswami, J. became final and that it is not correct to state that the petitioner is

estopped since it had already made application because they were all made without prejudice to the rights of the petitioner and that cannot be a

ground which would attract the principles of estoppel.

9. Mr. Mohan Parasaran, the learned Counsel appearing for the petitioner contends that when Venkataswami, J. has passed an order in W.P. No.

2776 of 1989 dated 13.4.1989, both the University and the Government were parties, that order had become final and that it is not open to the

State or the University to insist upon the prior permission of the Government for affiliation, taking shelter under the amended Act 32 of 1990.

Learned Counsel refers to the decision in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , for the proposition regarding

the issue of a writ of mandamus and submits that the petitioner has got consent letters from other hospitals for tie up facilities and that the

construction of the petitioner's own hospital building is being completed. He further contends that the application of the petitioner should be

considered as if the amending Act has not come into force, that the date of submission of the application is the criteria, and that the procedure as

on the date of application has to be adopted and not on the date of the consideration of the application. For this purpose, the learned Counsel

relies upon the decision in State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, . The learned Counsel also raised contention based

on the principle of estoppel relying upon the decision in Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir, . He further states that

the petitioner Trust has invested huge amounts. He further contends that hostel facilities are provided for, that tie-up arrangements are made with

other hospitals, that with regard to title deeds, legal opinions have been obtained and that with regard to clearance u/s 37-B of the Tamil Nadu

Land Reforms (Fixation of Ceiling on Land) Act, the matter is pending before the Government. According to the learned Counsel, the first

respondent University has not considered these matters in the proper perspective.

10. Mr. Sukuntharaj, the learned Counsel appearing for the first respondent University refers to statute 4 of the Tamil Nadu Dr. M.G.R. Medical

University Act which has been published on 20.3.1991. According to the learned Counsel the affiliation to the petitioner College was rejected on

the basis of the Inspection Commission report made on 13.7.1991. The application for affiliation was made on 13.10.1989. The application for

affiliation was made on 13.10.1989. The learned Counsel fairly states that nothing is said in the impugned order about the prior permission of the

Government.

11. Learned Advocate General, who appears for the second respondent State, contends that the representations made by the then Government

Pleader before Venkataswami, J. in W.P. No. 2776 of 1989 dated 13.4.1989 will not bind the Government since it was not made on instructions

from the Government. It is further stated by the learned Advocate General that representations were made by the then Government Pleader in the

above mentioned writ petition only on behalf of the University since same counsel appeared for both the Government and the University.

According to the learned Advocate General, how far the representations of the then Government Pleader will-bind the Government is a question to

be considered by this Court. Learned Advocate General has pointed out that Venkataswami, J. In W.P. No. 2776 of 1989 by order dated

13.4.1989 directed the respondent University to pass orders on the application of the petitioner for affiliation ""in accordance with law"" and as such

the petitioner has to obtain prior permission from the Government as per law stands to-day. Learned Advocate General further argues that

assuming any concession has been made by the then Government Pleader, it will not bind the Government and refers to the decision in Periyar and

Pareekanni Rubbers Ltd. Vs. State of Kerala, , for this proposition. He further points out that the prayer in the writ petition W.P. No. 2776 of

1989 has been asked only against the University and not against the State. He further points out that the amending Act came into force on

6.7.1990, that the W.P. No. 10453 of 1990 has been filed by the petitioner on 9.7.1990, i.e., only after the amending Act came into force and

that since the Government was not a party to the said writ petition the attention of the learned Judge was not drawn to the Amending Act. It is

further contended by the learned Advocate General that the prayer in the writ petition is for permanent affiliation for the year 1991-92 and that the

writ petitioner has been filed on 23.9.1991. With regard to the decision relied on by the petitioner in Madan Mohan Pathak and Another Vs.

Union of India (UOI) and Others, , the learned Advocate General pointed out that Venkataswami, J. in W.P. No. 2776 of 1989 did not issue any

rule nisi, that no relief was given and that the principles applied in the abovementioned cases will not apply to the facts of the case. According to

the learned Advocate General, the principles laid down in A.V. Nachane and Others Vs. Union of India (UOI) and Another, , also will not apply

to the facts of the case since no relief was asked for in the earlier writ petition. It is also pointed out by the learned Advocate General that no

mandamus can issue against the first respondent University not to perform statutory obligations in view of the amending Act. He further points out

that this Court has upheld the validity of the Amending Act 32 of 1990 in W.P. No. 10952 of 1990 and as such prior permission is necessary for

seeking affiliation. The learned Advocate General also relies upon the decision in Kaikhusroo Phirozshah Doctor Vs. State of Bombay, , for

hardships.

12. Replying to those contentions Mr. Mohan Parasaran, the learned Counsel for the petitioner Trust, contends that the relief asked for in the curlier writ petition was in the negative fashion against the Government, that the judgment relied on by the Advocate General in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , is only "obiter", that the Supreme Court did not narrated. Principle any in the above-mentioned decision. The learned Counsel further submits that the Government Pleader in the High Court is a responsible officer than a law officer in the mofussil Courts, that no counter affidavit has been filed even now by the State to the effect that it had not given any instructions to the then "Government Pleader, that by order of Venkataswami, J. in W.P. No. 2776 of 1989 dated 13.4.1989 issuing a writ of mandamus, a right has accrued and crystalised in favour of the petitioner and that it cannot be taken away when the said order has become final infer parties. The learned Counsel further submits that the first respondent University should be asked to consider the application of the petitioner on the basis of law prevailed in the month of October, 1989 and he relies upon an unreported decision of a Division Bench of this Court in The Tamil Nadu Christian Revival Mission Organisation Rep. By Its Secretary and Ors. v. The State of Tamil Nadu represented by Secretary, Education Department, Madras and Ors. W.A. No. 543 of 1991, dated 16.4.1991, wherein the Division Bench has held that old Rules are applicable with regard to minority institutions. Learned Counsel also relies upon the decision in Rajah Muthiah Medical College Students Council v. State of Tamil Nadu 1991 W.L.R. 959, for the proposition that an application has to be considered as per the law prevailed on the dated of application and that the subsequent change in law could not be considered.

13. I have given my careful consideration to the arguments of Mr. Mohan Parasaran, the learned Counsel appearing for the petitioner Trust, Mr. Sukuntha Raj, the learned Counsel the learned Counsel appearing for the first respondent University and of the learned Advocate, General appearing for the State of Tamil Nadu, the second respondent herein. I have also perused the files produced before me.

14. On the facts and circumstances of the case, the first point to be considered is what is the effect of the order of Venkataswami, J. Passed in

W.P. No. 2776 of 1989 dated 13.4.1989. In the abovementioned case, the writ petition was filed by the petitioner Trust praying for the issue of a

writ of certiorarified mandamus calling for the records comprised in the proceedings of the respondent University dated 8.12.1987 and

28.11.1988 and quash the said proceedings as invalid and also to direct the respondent University to discharge its statutory obligations by

considering the applications of the petitioner dated 2.12.1987 and 23.10.1988 for starting the Medical College and granting affiliation to it without

insisting on any approval of the State Government or the prior approval of the Medical Council of India. In the abovementioned writ petition,

Venkataswami, J. on 13.4.1989 passed an order which is to the following effect:

By consent, main writ petition has been taken up for final disposal.

After hearing Mr. Mohan Parasaran learned Counsel for the petitioner and the learned Government Pleader following order is passed in view of

the fact that the learned Government Pleader now states that the University will not insist upon prior permission of the Government.

The petitioner will apply for affiliation in the prescribed form, for which purpose, on requisition the second respondent University will supply the

same on payment of required fee. As and when the petitioner files the application in the prescribed forms, second respondent University will

consider the same on merits, without insisting upon prior permission of the Government and pass orders in accordance with law. The University

will dispose of the application as mentioned above within 8 weeks from the date of receipt of the application as mentioned above. The writ petition

is ordered accordingly....

Subsequently, the petitioner came before this Court by way of filing a writ petition in W.P. No. 10453 of 1990 and Somasundaram, J. by order

dated 1.2.1991 allowed the said writ petition and the operative portion of the order reads as follows:

The impugned order is set aside and the first respondent is directed to reconsider the application of the petitioner dated 30.10.1989 on merits in

terms of the orders of this Court dated 13.4.1989 in W.P. No. 2776 of 1989 and pass orders on or before 1/7.1991.

The abovementioned writ petition was filed for the issuance of a writ of certiorarified mandamus to call for the records of the respondent University

dated 15.12.1989 and to quash the same and to direct the respondent University to reconsider the application of the petitioner dated 30.10.1989

on merits in terms of the orders of this Court made in W.P. No. 2776 of 1989 dated 13.4.1989, cited supra. So, both the abovementioned writ

petitions were filed by the petitioner seeking for affiliation. In both the writ petitions mentioned hereinabove, the relief sought for by the petitioner

was one and the same though in the later writ petition, the Government of Tamil Nadu was not a party. Though no relief was sought for by the

petitioner against the Government in the earlier W.P. No. 2776 of 1989, as pointed out by the learned Advocate General, yet the Government was

made a party therein and the then Government Pleader represented the Government in that case before Venkataswami, J. When a responsible law

officer of the High Court, who represents the Government, makes a statement before the Court, I do not think that the same cannot be brushed

aside so lightly by the Court. It is true that the same counsel represented both the Dr. M.G.R. Medical University and the Government in the

abovementioned case. If the Government had really felt that at that point of time the law officer of the court had accepted an order without getting

the instructions of the Government, it should have preferred an appeal against the said order of Venkatasami, J. made in W.P. No. 2776 of 1989,

dated 13.4,1989. It is not as if institutions are started without obtaining permission from the Government at that point of time. As seen from the

counter affidavit, self-financing private medical colleges were started only after obtaining prior permission from the Government. The only

difference is now the Legislature has enacted a proviso as an Amendment to the section of the Act requiring prior permission as mandatory for

getting affiliation which was given earlier by way of an executive order. When the order of Venkataswami, J. in W.P. No. 2776 of 1989 dated

13.4.1989 had become final and no appeal has been preferred against the said order, I do not think the State can rely upon the amendment made

in the year 1990 and use, it against the petitioner and contend that the prior permission has to be obtained in view of the amended Act which came

into force in the year 1990 with retrospective effect. A similar question was considered by the Supreme Court in Madan Mohan Pathak and

Another Vs. Union of India (UOI) and Others, . In that case a writ or mandamus was issued by the Calcutta High Court directing the Life

Insurance Corporation of India to pay annual cash bonus to Class III and Class IV employees in terms of a settlement and that order has become

final. Immediately after the said decision, the Parliament passed an enactment. Even after passing the enactment of Legislature whether the issue of

the writ of mandamus by the Calcutta High Court is effective was the question. The Supreme Court in that case has held that the issue of writ of

mandamus issued by the Calcutta High Court remain untouched and that the same was not taken away by the enactment passed by the Parliament

subsequently. The Supreme Court has further held in that case that the issue of a writ of mandamus passed in favour of the employees of L.I.C.

had become crystalised in the said judgment and therefore they become entitled to enforce the writ of mandamus granted by the Calcutta High

Court. It is further held in the said judgment that as the judgment of the Calcutta High Court was allowed to become final and the appeal against it

was not pressed, the judgment could not be disregarded or ignored and in any event irrespective of whether the Act was constitutionally valid or

not, the Life Insurance Corporation of India was bound to obey the writ of mandamus issued by the Calcutta High Court. Speaking for the Bench,

Beg, C.J. has observed as follows : (at p.804)

...The rights of the citizen against the State which had passed in those embodied in a judgment and become the basis of a mandamus from the High

Court could not be taken away in indirect fashion, by enacting such an ordinary Act of Parliament....

In *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, , a writ was issued by the Supreme Court directing the Life Insurance

Corporation of India to give effect to the terms of 1974 settlements relating to bonus until superseded by a fresh settlement. The effect of that order

came for consideration in *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, , and the question arose in that case was whether

Rule 3 of the Life Insurance Corporation of India Class III and Class IV Employees (Bonus and Dearness) Allowances can nullify the effect of a

writ issued by the High Court in the case of *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, . In that case it has been held that

Rule 3 cannot make the writ issued by the Court nugatory in view of the decision of the majority in *Madan Mohan Pathak and Another Vs. Union*

of India (UOI) and Others, . In the abovementioned case, Chinnappa Reddy, J. has observed as follows:(at p.1137)

...The attempt made to supersede the settlements, in so far as they related to the payment of bonus by enacting the Life Insurance Corporation

(Modification of Settlement) Act, 1976 failed, firstly because the Act was held to violate the provisions of Article 31(2) of the Constitution and

secondly because the Act could not have retrospective effect so as to observe the Life Insurance Corporation from obeying the writ of mandamus

issued by the Calcutta High Court, which had become final and binding on the parties. This was the decision of this Court in Madan Mohan Pathak

and Another Vs. Union of India (UOI) and Others, all the seven Judges who constituted the Bench agreeing that the Act violated the provision of

Article 31(2) and four out of the seven Judges, namely, Beg, C.J., Bhagawati, Krishna Iyer and Desai, JJ., taking the view that the Act did not

have the effect of nullifying the writ of mandamus issued by the Calcutta High Court and the other three Judges, Chandrachud, Fazal Ali and

Shinghal, JJ., preferring not to express any view on that question....

In view of the categorical decisions rendered by the Supreme Court which are heavily relied on by Mr. Mohan Parasaran, the learned Counsel

appearing for the petitioner, I am of the view that in so far as the order of Venkataswami, J. in W.P. No. 2776 of 1989 dated 13.4.1989 has not

been touched upon or set aside, I do not think the learned Advocate General can rely upon the amending Act to set at naught the right which has

crystalised in favour of the petitioner. In the order of Somasundaram, J. in W.P. No. 10453 of 1990 dated 1.2.1991, it is seen that though the

State is not made a party therein, yet the prayer in the said writ petition is to follow the directions given by Venkataswami, J. in W.P. No. 2776 of

1989 dated 13.4.1989. So, it is clear that the first respondent University is bound by the abovementioned orders of this Court and that is why the

first respondent University has conveniently omitted to mention the amending Act in the impugned order. There is no whisper about the amending

Act in the impugned order and that the University has not stated therein that prior permission is necessary for getting affiliation. It is only the State

Government, which has been impleaded itself in the writ petition subsequently, has taken the stand based upon the amending Act. So I am of the

view, that for all practical purposes, the first respondent University has not relied upon the amending act in the impugned order. It is clear that the

first respondent University has not applied its mind before passing the impugned order and it has left out purposely the amending Act in the

impugned order.

15. I have gone through the files produced by the State. As soon as Venkataswami, J. has passed an order in W.P. No. 2776 of 1989 on

13.4.1989, the Registrar of the first respondent University was required to furnish some particulars with regard to the disposal of the said writ

petition. For this, the Registrar of the University on 6.12.1989 has written a letter to the then Joint Secretary to Government, Madras, stating

regarding the statement of the Government Pleader before the Court with regard to Government Permission the Government Pleader was of the

view that permission of the State Government for granting affiliation to Professional Colleges cannot be insisted upon in view of the decisions of the

orders of this Court. He mentioned in his letter the orders of a Division Bench of this Court in W.P. No. 6930 of 1988, dated 23.2.1989 and also

the judgment of another Division Bench of this Court which is reported in P. Kasilingam v. P.S.G. College of Technology 1984 L. I.C. 1134. It is

also seen from the file that since the Tamil Nadu Amending Act is still awaiting the assent of the President of India all those factors would have

prompted the then Government Pleader to make the statement in question. The above-mentioned letter has been written by the Registrar of the

respondent University to the State as early as 6.10.1989 and the State has kept quiet and allowed the order of Venkataswami, J. in W.P. No.

2776 of 1989 dated 13.4.1989 to become final. So it is not as if the State was not aware of the fact of what has been happened before

Venkataswami, J. and nothing prevented the State from taking the matter on appeal. Having failed to do so in view, the learned Advocate General

cannot be allowed to contend that the order of Venkataswami, J. in W.P. No. 2.776 of 1989 dated 13.4.1989 has become ineffective in view of

the amending Act 32 of 1990. Therefore, I am of the view that the contention of Mr. Mohan Parasaran, the learned Counsel for the petitioner

based on the Principles laid down by the Supreme Court in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , and A.V.

Nachane and Others Vs. Union of India (UOI) and Another, , has got to be upheld.

16. I do not think the reliance made by the learned Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , will apply to the facts of this case.

The above mentioned case arose under the Land Acquisition Act. A concession was made by the local Government Pleader in the trial Court with

regard so a document which will form the basis for determination of the market value and in such circumstances, the Supreme Court has observed

as follows:

...Any concession made by the Government Pleader in the trial Court cannot bind the Government as it is obviously always unsafe to rely on the

wrong or erroneous or wanton concession made by the counsel appealing for the State unless it is in writing on Instruction from the responsible

officer. Otherwise it would place undue and needless heavy burden on the public exchequer But the same yardstick cannot be applied when the

Advocate General has made a statement across the bar since the Advocate General snakes the statement will all responsibility....

I am of the view that the judgment of the Supreme Court mentioned hereinabove has to be confined to the facts of that case alone. I do not think

that any principle is decided in that case. Even otherwise, as I have already said the State Government was aware of the order of Venkataswami,

J. passed in W.P. No. 2776 of 1989 dated 13.4.1989 and asked the University about it and the University has also replied as to how the learned

Government Pleader has made a statement before Venkataswami, J. That apart, as I have already stated the Government Pleader in the High

Court cannot be equated to a Government Pleader of a mofussil Court. The Government Pleader in the High Court has certainly got more

responsibility than a Government Pleader in a mofussil Court. In Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , the Supreme Court

was concerned about a Government Pleader in a mofussil Court. In my view, the Government Pleader in the High Court has to be held as a-

responsible officer and his statement cannot be equated with a statement made by a Government Pleader in the trial Court. I am equally of the view

that the Government Pleader in the High Court is responsible for the Government and he is equally a responsible officer of the Court also. It would

even go to the extent of saying that all law officers of the High Court are

responsible for the statements so made to the High Court. Moreover, the statement made by the then Government Pleader before Venkataswami, J. in W.P. No. 2776 of 1989 is on a point of law and not on facts. I think the law officer is a person who can decide about the question of law and argues when considering the facts and circumstances of a particular case in which he appears before the court. I am also cannot, satisfied with the contention of the learned Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , the Supreme Court was considering a case about wages, the principle will be different on the facts of this case. Whether the relief sought for is for wages or for any other reliefs, the principle will be one and the same. The statement made by the then Government Pleader before Venkataswami, J. in W.P. No. 2776 of 1989 is that the respondent University will not insist upon prior permission of the Government. As such I do not think the University or the State can now build up an argument supported by the amending Act 32 of 1990 which came into force in the year 1990. But the writ sought for here is to quash the order of the first respondent University refusing the grant of affiliation. Obtaining prior permission of the Government as a mandatory provision, come only at the later stage. As I have already stated, in the impugned order, there is no mention about the amending Act 32 of 1990.

17. As I am concerned only with order of the University, which is impugned before me, I am of the view that the reasons stated in the impugned order are wholly extraneous. Ail the reasons which have been stated in the impugned order could have been verified with the petitioner before passing such an order. On a scanning of the affidavit and after having given due consideration to the arguments of Mr. Mohan Parasaran, the learned Counsel appearing for the petitioner, I am of the view that all the reasons stated in the impugned order for refusing grant of affiliation are not correct. The buildings are ready and tie up arrangements were made with other hospitals and with regard to encumbrance certificate and clearance certificate u/s 37-B of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, the respondent University could have easily obtained a reply from the petitioner Trust by asking it to explain. So I am fully satisfied that the reasons stated in the impugned order are not convincing to reject the application of the petitioner dated 30.10.1989 praying

for affiliation to start a Medical College for the academic year

1990-91. In the reply affidavit filed by the petitioner, it has been clearly explained as to how the rejection of the application of the petitioner shows

that non-application of the mind of the respondent University. In my view, the respondent University has not consider the aspect of granting of

affiliation in the correct perspective. So I am of the view that the respondent University has taken irrelevant and extraneous considerations while

rejecting the application of the petitioner for affiliation. I am of the view that on this ground alone the impugned order has to go.

18. The contention raised by Mr. Mohan Parasaran, the learned Counsel for the petitioner on the basis of an unreported decision of a Division

Bench of this Court in The Tamil Nadu Christian Revival Mission Organisation rep. by its Secretary and Ors. v. The State of Tamil Nadu

represented by Secretary, Education Department, Madras and Ors. W.A. No. 543 of 1991 dated 16.4.1991, has no substance. A reading of the

above mentioned Judgment will show that no principle has been decided in that case.

19. With regard to the contention raised by Mr. Mohan Parasaran regarding the principle of estoppel, I do not think that it will apply to the facts of

the case on hand, as no promise was given either by the respondent University or by the state that affiliation will be granted. As rightly stated by the

learned Advocate General, the application of the petitioner for affiliation is still pending.

20. Coming to the question regarding statute framed it is necessary to go through some of the provisions of the Dr. M.G.R. Medical University

Statutes. Sub-section (3) of Section 67 of the Dr M.G.R. Medical University Tamil Nadu Act, 1987, reads as follows:

Notwithstanding anything contained in Sub -sec(1), all statutes, ordinances and regulations made under the said Acts, and in force on the notified

date shall in so far as they are not inconsistent with this act, continue to be in force in respect of the Colleges and institutions referred to in the said

Sub-sec(1) until they are replaced by the statutes ordinances and regulations to be made under this Act....

In view of the above said provision, the Statutes framed under the Madras University Act, 1923 will be applicable till now statutes are made. u/s

42 of the Dr. M.G.R. Medical University Act, statutes are framed and published in the Gazette dated 20.3.1991 and the University has framed

statutes elaborately for affiliation of Medical Colleges. The statutes received the assent of the Chancellor on 19.9.1990 and 14.12.1990. Under

statute 1, the statute shall come into force from the date of assent of the Chancellor. As such, factually the statutes are framed now by the Dr.

M.G.R. Medical University and the statutes made under the Madras University Act will no longer apply for the purpose of affiliation. It is seen that

Section 42(2)(n) of the Dr. M.G.R. Medical University Tamil Nadu Act, 1987 provides for conditions of affiliation of colleges to the Dr. M.G.R.

Medical University. As such, as on date, the statutes framed by the Dr. M.G.R. Medical University have come into force and they have to be

followed. Statute 4 is in the following terms:

4(1)(i) Only Educational Trusts/Societies with sufficient financial soundness and which satisfy the conditions stipulated hereunder shall be eligible to

apply for certificate of Registration for starting a private medical college,

(ii) Conditions to be satisfied by the Trust/ Society applying for Certificate of Registration - (a) The Trust/Society shall be in possession of a

hospital being run by it with not less than 300 beds with an administrative block,

(b) The hospital and the administrative block are to have been

located in an area of 50 acres in urban agglomeration or 100 acres in other area.

(2) Application from individuals for Certificate of Registration will not be entertained....

Statute 44 of the Dr. M.G.R. Medical University in the following terms:

...It shall be competent for the University to send an Inspector at any time to inspect the Medical College after two weeks notice to the

management of the college and on receipt of report from the Inspector, the University may take any decision which in its opinion deems fit and

necessary....

So I am not convinced with the arguments of Mr. Mohan Parasaran that the law as it stood in the year 1990 has to be followed in granting the

affiliation. It is well settled that no mandamus can issue against a statute. I do not think any authority is needed to be cited for this proposition. So

when the Tamil Nadu Dr. M.G.R. Medical University to ignore the statutes and grant affiliation. A Division of this Court in Adhiyaman Educational

and Research Institutions Vs. The State of Tamil Nadu and others, , has come down heavily on the Madras University in granting provisional

affiliation under Statute 44(a) of the Madras University. In that case, the Division Bench of this Court has observed as follows: (at p.226)

...But, admittedly the University of Madras had been following an unhealthy and unwarranted practice of granting affiliation or approval even

without satisfying itself that at least the essential conditions prescribed are satisfied or fulfilled by the concerned college. Admittedly, in the recent

years, the Syndicate of the University of Madras has been granting provisional affiliation to all the applicants, whether they satisfied the

requirements or not, but the grant is made with the direction that the conditions should be complied with by the applicants. By adopting the said

practice, the University of Madras has been doing a great disservice to the cause of education as well as the society. The members of the public

comprising parents and students are being misled by the grant of provisional affiliation by the University. It is also a matter for regret that the

University has been simply working at the commencement of colleges and courses by the aspirants for affiliation even before the actual provisional

affiliation. Invariably, the applicants for affiliation commence the colleges immediately after sending the applicants for affiliation. Even though the

University is fully aware of this illegal practice of commencement of colleges and admitting students therein, it has not taken any steps to prevent the

same. If the University has been strictly adhering to the procedure prescribed in Statutes 37 to 41, cases of this type would not have arisen. The

University could also have prevented thereby the mushroom growth of private educational institutions by persons who commence such institutions

purely as business and now as service to the society....

The Decision in the abovementioned case, has further observed as follows:(at p.267)

...Yet another aspect of the matter has to be referred to in this connection. The University of Madras grants provisional affiliation as a rule for a

period of one year only in the first instance and thereafter, extends the same on application by the colleges for such extension. This practice is

adopted irrespective of the number of years for which the concerned course is to be conducted. For example, if a course of study, say Bachelor of

Arts, is for three years, the University grants affiliation provisionally for one year leaving the matter of extension of affiliation for the second and

third years in doubt, or rather reserving its right to exercise the power of refusal to extend the provisional affiliation for the second and third years.

What is the fate of the students who get admitted into such colleges and commence their studies, if after their completing the first year are to be told

that the college will not have affiliation for the second and third years? Similarly, for Engineering courses which are known to be for four or five

years, provisional affiliation is being granted for one year initially with the uncertainty of its extension for the subsequent years. Here again, there

will be a hanging sword over the heads of the students who join the colleges which have obtained provisional affiliation for the first year and which

may not get extension for the subsequent years. The Madras University does not seem to have given any thought whatever to this aspect of the

matter. It is a mystery as to what prevents the University from satisfying itself that all the conditions prescribed for grant of affiliation or approval

are fulfilled and then grant affiliation provisionally or permanently for the entire course of three years, four years or five years as the case may be.

That will assure at least one set of students that they can have their education completed in one course in one college without being driven from

pillar to post during the course of study. It is very unfortunate that the University of Madras, which is the custodian of education in this State should

forego the interests of the students in this manner. It is high time that the University puts, an end to this illegal practice of granting provisional

affiliation to educational institution even without substantial compliance with the conditions prescribed therefor....

In view of what the Division Bench of this Court has said in the above mentioned case, I do not think the petitioner can even ask for provisional

affiliation, if not a permanent affiliation, as per the statutes. So, I agree with the argument of Mr. Sukuntharaj, the learned Counsel appearing for the

first respondent University that there are no provisions under the old statutes for giving affiliation without prior permission and only recently Statute

4 has been framed by the University which has been extracted above which will apply to the petitioner's case. The learned Counsel for the

petitioner relies up the decision in State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, , where permission was granted for opening

of new schools and unilateral action was taken by the Government later. I do not think that this will apply to the facts of the case on hand. In my view, the statutes framed with regard to infrastructural facilities will apply to the case of the petitioner though prior permission of the Government is not necessary.

21. In view of the abovementioned discussion, though prior permission is not necessary on the peculiar facts and circumstances of the case, I am satisfied that the reasons given by the first respondent University in the impugned order rejecting the application of the petitioner for affiliation are extraneous. In my view, had the respondent University verified the factual position with the petitioner Trust, they could have been satisfied with the reply of the petitioner Trust in granting affiliation. On the face of it, the impugned order is not correct and in my view, it has got to be set aside. It is open to the respondent University to consider the matter afresh after giving an opportunity to the petitioner Trust. Since the petitioner is driven from pillar to post from the year 1987, I do hope that the respondent University will pass orders on merits on or before 1.4.1992. As such, the impugned order of the first respondent University is set aside and the writ petition is allowed and the matter is remitted back to the respondent University with a direction to consider the matter as stated above and pass orders afresh on or before 1.4.1992 after giving notice to the petitioner Trust. However, there will be no order as to costs.