

(1997) 10 MAD CK 0111
In the Madras High Court

Thirumuruga Kirupnanda Variyar Thavathiru Sundara
Swamigal Medical Educational and Charitable Trust

APPELLANT

Vs

The University of Madras

RESPONDENT

Date of Decision : 18-10-1997

Acts Referred:

Citation : (1998) 2 MLJ 669

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—The petitioner seeks the issuance of writ of certiorarified mandamus or any other appropriate writ, order or direction, calling for the records comprised in the proceedings of the respondent dated 17.7.1997 in L.No.A.I.(G.J.)/95-97/1273, and quash the same, and consequently direct the respondent to grant affiliation to the petitioners Arts and Science College at Salem, from the academic year 1996-97, based on the Inspection Commission Report and recommendations rendered in December, 1996 and January, 1997, already available with the University, and consequently permit the students who were admitted during the academic year 1996-97 to pursue their courses of study to which they were admitted and allow them to take up necessary examinations and confer all recognitions and degrees.

2. In the affidavit filed in support of the writ petition, sworn by the Vice Chairman of the petitioner Trust, it is stated that the trust has established various educational institutions in Salem, including a Medical College, a Dental College, an Engineering College, a Homeopathy College, a College of Pharmacy and a College of Physiotherapy etc. It also wanted to start an Arts and Science College at Salem, and an application has been filed by the Trust to the Government of Tamil Nadu, for opening a self financing unaided Co-educational Arts and Science College in the name and style of "Vinayaka Mission"s Kirupananda Variyar Arts and Science College, Salem during the academic year 1995-96, with the following courses:-

- (1) B.Sc. Micro Biology.
- (2) B.Sc. Bio-Chemistry.
- (3) B.Sc., Catering Technology and
- (4) B.B.A.,

As per order dated 28.11.1995, the Government also sanctioned the starting of another course i.e., B.Sc., Computer Science with effect from the academic year 1996-97. At the time of granting the sanction by the Government, it was said that the same was subject to affiliation to be obtained from the respondent/University.

3. When request was made to the University on 4.12.1995, the respondent has informed the petitioner that since the academic year has already started this will be considered only for the next year. The petitioner, therefore, moved a reminder for considering the affiliation as per letter dated 2.2.1996, and wanted an inspection commission to be appointed. It is said that in respect of the five courses, the, proposed intake was 120 students each. The respondent/University appointed an Inspection Commission to consider the question of affiliation with effect from the academic year 1996-97. though the inspection committees visited the college, the report was not in favour of the petitioner. On the basis of the first report of the inspection committee, the syndicate of the University was not inclined to grant affiliation, and therefore, the petitioner was informed by the respondent by letter dated 25.7.1996 accordingly. On the same date, the petitioner sent a representation to the respondent, pointing out that the various defects pointed out by the Inspection commission during the time of inspection had been complied with, and wanted another Inspection commission to be appointed. The respondent/University agreed for the said suggestion, and again deputed another Inspection Commission.,

4. It is said in the affidavit that the second Inspection commission visited the college on 6.9.1996 and considered the petitioner's proposal for grant of affiliation to the five courses with an intake of 6 students each. The second Inspection commission recommended the admission of the following number of students in respect of each of the courses as opposed to the proposal of the petitioner to admit 60 students each.

(1) B.B.M. 40 (2) B.Sc. Bio Chemistry 32 (3) B.Sc. Com. Science 24 (4) B.Sc., Catering Technology 32 (5) B.Sc. Microbiology 32 It is said that the commission recommended grant of temporary affiliation for the academic year 1996-97 onwards in respect of the above courses. On the basis of the above report, the petitioner again wrote to the respondent for granting the affiliation without any further delay. The respondent, thereafter, sent a reply, stating that it wanted the production of documentary evidence, in respect of total lands where the college has been built, approved site plan, approved plan of temporary building, procurement of books on computer science etc., and also the details of the

appointment of the Teachers. The petitioner says that such request of the University was also clarified by the petitioner in his reply dated 24.10.1996. In spite of the receipt of the reply, the respondent again insisted another inspection. In the third time, the Inspection committee visited the petitioner's college on 24.1.1997, and also recommended for the grant of affiliation, and took into account all the requirements, which were to be complied with for running the college. On submission of that report, the petitioner again by letter dated 27.2.1997 pointed out that since it has complied with all the requirements, early action on the application for affiliation be taken. It was also brought to the notice of the respondent that even for the academic year 1996-97, students have been admitted, which fact has also been taken note of by the Inspection commission. While the petitioner was expecting the order of affiliation, he received a letter dated 8.5.1997, requesting for production of documents regarding purchase of library books, approved building plan of rental building with its dimensions, particulars of staff appointed for the department of management studies. Hotel Management and Computer Science, purchase of computers and approved building plan for the permanent building. Even though the said documents were available with the Inspection Commission, for convenience, the petitioner has sent a further copy of the same, with their reply dated 28.5.1997. While the matter has reached at that stage, the petitioner received a letter dated 17.7.1997. On the basis of a resolution passed by the syndicate, wherein it was informed to the petitioner that the syndicate has condemned the action of the petitioner in admitting the students in the college, which is yet to be affiliated. It was also informed to the petitioner, by that letter, that the University cannot grant affiliation on the basis of the Inspection reports and wanted further verification. The said under is now challenged by the petitioner in this writ petition.

5. A detailed counter affidavit has been filed by the respondent, for the writ, petition and also for various writ miscellaneous petitions filed by the petitioner. The main objection raised in the counter affidavit is that the various conditions that are required for the proper running of the college are not complied with by the petitioner and in spite of the fact that three inspections were made, the deficiencies are only increasing and therefore, it is justified in not granting the affiliation. He has no objection in granting the affiliation, provided all the statutory requirements are complied with. In paragraph 9 of the counter, the gist of the Inspection Commissioner's Report had been extracted. In paragraph 13 of the counter, the various deficiencies noted by the second Inspection Committee had been extracted. It says that the land was purchased in the name of the Trust, and since the Trust is running a number of Institutions, it wanted the land and building to be transferred in the name of the Arts and Science College which is a statutory requirements. Regarding the appointment of Staff for Catering Technology it is said that none of them has got post-graduate degree. Even regarding the staff for Management Science, the M.B.A., degree of one of the teachers was not verified, and even the staff appointed for Computer Science,

such appointment has been commented upon class-rooms were found to be adequate only for one year. It is also stated that there was no evidence for the purchase of new computers and the few computers exhibited for inspection were found to be borrowed from other institutions and the computers as per specifications of the individual expert member has to be purchased. The commission recommended the grant of temporary affiliation, subject to the fulfillment of each of the above conditions, for the academic year 1996-97 only. The report was communicated to the petitioner, and on receipt of the same, the petitioner again wrote to the respondent, that he has satisfied all the other requirements, and therefore, the third inspection was made to verify the correctness of the reply. It is said that the third inspection commission was also made and minor defects were also noted. For the said report also the petitioner, replied that the defects had been rectified, and wanted affiliation. By the time, the respondent thought of appointing a fresh inspection commission, the present writ petition has been filed, and therefore, it could not proceed with. It further states that Dr. C.S. Shyamala Devi, who made two inspections already was directed to inspect the petitioner's college once again. The respondent concludes that the action taken by it, is proper and is according to statute and Rules.

6. I heard both the counsel.

7. Regarding affiliation of a college, which is just started or yet to be started, a recent decision of the Supreme Court reported in *Al-Karim Educational Trust and another Vs. State of Bihar and others*, . will be of much help. In paragraph 11 of the said judgment, Their Lordships had held that "It is impractical to insist, for a fool proof of absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the Institution has begun to function, students admitted to the Institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner." In the later portion of the same judgment, it is said that "the question to be posed is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set-up more efficient and more satisfactory, would be insisted as "a wooden" rule. Their Lordships further said that, "it may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view to see the minimum requirements are satisfied." Their Lordships had further said that "to insist" on fulfilling all requirements at a strength in modern conditions is not a practical proposition, and ordinarily, only those aspects or requirements, which in the minimal will give a good start for effectively imparting education, with ancillary requisites may be considered sufficient in the extraordinary circumstances of this case." In paragraph 12 of the same judgment, their Lordships have further held that "once the Institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies if they exist, shall be taken care of those in charge of the Institution. For taking such further

steps, the grant of affiliation need not wait."

8. From the above decision, it is clear that the respondent was also not practical in its approach and wanted all the defects to be cured at a stretch, which the Supreme Court itself has held that it is most impracticable or impossible. The approach of the respondent should be to see whether the minimum requirements are complied with for granting the affiliation, taking into consideration the important relevance of those conditions. The main requirement is that for the purpose of imparting education, whether the existing facilities are sufficient. The respondent has also taken note of the fact that the institution has only begun to function, and naturally the defects that have been pointed out could be cured only in course of time, and it is for the administrators to cure the same, taking into consideration the declaration of law by the Supreme Court. Even after the third Inspection report, the petitioner has written to the respondent, that it has complied with all the conditions and the affiliation may not be delayed. Though the sanction has been obtained from the year 1995-96 the affiliation could not be obtained even for the year 1996-97.

9. Taking into consideration the last letter of the petitioner, that it cured all the defects, and it has also placed the necessary records before the University along with the letter, it is not proper on the part of the respondent, again to reject the request and directing for a fresh inspection commission, to visit the college to consider the affiliation.

10. As per the letter dated 28.5.1997, all the defects that had been pointed out in the earlier report were stated to be cured and the same was supported by documents. The syndicate has not taken into consideration the letter dated 28.5.1997, which resulted in the impugned order. It had looked the /entire matter in a prejudiced way, on the ground that the students have been admitted in the college, before getting the affiliation. That approach of the Syndicate was also not proper. Under the above circumstances, I only direct the respondent to pass orders immediately on the application for affiliation, on the basis of the letter dated 28.5.1997 and if any minor defects or deficiencies are noticed, without delaying the application, it could direct the college authorities to cure the same in course of time.

11. The decision cited supra was concerning the affiliation of a Medical College where the arrangements to be made were little more strict than arrangements that have to be made for an Arts and Science College, which is the subject matter in this writ petition. But I should not be misunderstood that I am deluting the importance of fulfilling the principal requisites, even if it is a case of affiliation in respect of an Arts and Science College. Taking guidance from the above decision of the Supreme Court that the University also should not taken an unreasonable attitude, nor should there be an unreasonable delay in granting affiliation, and adherence to the requirements must be on the basis of the importance of the conditions of their relevance, and minor matters should not keep the authorities delaying the affiliation.

12. In the result, the respondent is directed to pass final orders on the application for affiliation taking into consideration the legal position stated above, within a period of one month from the date of this order. The writ petition is allowed to the extent indicated above. The connected W.M.Ps. are dismissed.