(2008) 09 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No''s. 11870, 11871, 11872, 11873, 19382, 36025 of 2006, 11437, 12754, 28321, 30752, 31591, 31592, 31705, 32158, 36612 of 2007 and Connected Miscellaneous Petitions

Vivekanandha Educational Society APPELLANT

Vs

The Pondicherry University RESPONDENT

Date of Decision : 06-09-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 19(6), 30(1)
National Council for Teacher Education Act, 1993 — Section 14
Pondicherry Universities Act, 1985 — Section 32(1)(ii), 4(1), 5, 5(17), 5(20)

Citation : (2008) 09 MAD CK 0016

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Masilamani, for Mr. R. Sureshkumar in W.P. 11870 to 11873/2006 and W.P. 36025/2006, Mr. K. Doraisamy, for M/s. Muthumani Doraisamy in WP. 12754, 31705, 30752, 31591, 31592, 32158/2007, Mr. V. Raghavachari, in WP.11437/2007, Mr. S.P.B. Dhuraisamy, in WP.28321/2007, Ms. G. Thilagavathi for Mr. J. Saravanakumar, in WP.19382/2006, Mr. Manisundaragopal, in WP.36612/2007, for the Appellant; R. Viduthalai University Senior Counsel for Mr. A.V. Bharathi For Respondents 1 and 2/Pondicherry, Mr. P.R. Gopinathan, For 3rd Respondent/NCTE, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—In W.P. Nos. 11870 to 11873 and 36025 of 2006 the prayer is to quash the condition Nos. 2, 3 and 4 of the

proceedings dated 21.10.2005, 20.10.2005, 26.8.2005, 27.10.2005 and 29.11.2005 respectively under the head ""endowment"", ""affiliation fee

and ""Other fees"", except their requirement of the affiliation fee to the extent of Rs. 50,000/-alone under the heading ""affiliation fee"" and the

consequential demand dated 28.3.2006 of the Pondicherry University and quash the same. In W.P. No. 11437 of 2007, similar proceedings of the University dated 29.11.2005 and the consequential demand dated 15.3.2007 are sought to be quashed and to direct the University to refund

the endowment and affiliation fee collected from the petitioner institution.

2. In W.P. Nos. 12754, 28321, 30752, 31591, 31592, 31705, 32158, 36612 of 2007, the petitioner Institutions challenge the demand of 5% of

the tuition fee collected from the students as ''Corpus fund'' as well as sharing of legal fees, made by the Pondicherry University and for a direction

to the University to grant affiliation without insisting corpus fund.

3. In W.P. No. 19382 of 2006, petitioner institution seeks to quash the proceedings of the University dated 29.5.2006, particularly clauses relating

to remittance of Rs. 5,00,000/-as affiliation fund, 5% of tuition fee towards Corpus fund, and Rs. 10,000/- per student as penalty for having

admitted the students without the orders of affiliation from the University.

4. The issue involved in all these writ petitions being identical and almost similar, all these writ petitions are disposed of by this common order.

5. In all these cases, individual managements as well as Association of Private Unaided Institutions have challenged the order of the Pondicherry

University prescribing corpus fund to be paid by the unaided management, enhancement of endowment fund and affiliation fee as well as claiming

50% or 100%, as the case may be, of the legal fees from the management.

6. Most of these writ petitions are filed by B.Ed Colleges. W.P. No. 12754 of 2007 is filed by the Pondicherry Linquistic and Religious Minority

Medical and Dental Colleges Welfare Association, wherein three medical colleges are members viz., (1) Pondicherry Institute of Medical

Association, Kalapet, Pondicherry, (2) Mahathma Gandhi Medical College and Research Institution, Pillayarkuppam, Pondicherry, (3) Manakkula

Vinayagar Medical College, Kalitheerthankuppam, Pondicherry.

7. The B.Ed Colleges are to be granted recognition by the National Council for Teacher Education u/s 14 of the NCTE Act, 1993. Thereafter,

before the commencement of the course the said B.Ed colleges shall obtain affiliation from the jurisdictional University, in these cases the first

respondent/Pondicherry University. Insofar as the Medical and Dental Colleges are concerned, they have to get approval from the Central

Government after the permission granted by the Medicinal Council of India or Dental Council of India, as the case may be, and thereafter they must get affiliation from the respondent University.

8. The petitioner institutions are aggrieved by the action of the Pondicherry University in demanding Corpus Fund at the rate of 5% of the tuition

fee collected from the students and the same is ordered to be remitted by the institutions without collecting the same from the students as well as

the demand of legal fees. For getting affiliation, as far as the B.Ed Colleges are concerned, the affiliation fee was raised from Rs. 50,000/- to Rs.

5,00,000/- and the endowment fund was increased from Rs. 10,00,000/- to Rs. 25,00,000/-, apart from 5% of the tuition fee as corpus fund.

9. The said action of the university is challenged on the ground that the endowment fund was already created by the respective management while

getting recognition for affiliation for B.Ed course and therefore the University was not justified in enhancing the amount of endowment fund already

fixed from Rs. 10,00,000/- to Rs. 25,00,000/-. The enhancement of affiliation fee as stated supra is also challenged on the ground of

unreasonableness. According to the petitioners, subsection (20) of Section 5 of the Pondicherry University Act, 1985, do not contemplate

collection of huge amount towards fees and other charges. It is also contended in the affidavit in some of these writ petitions that without the

recommendations of the Academic Council and the approval of the Executive Council, the revision/enhancement was made. Insofar as the

collection of 5% towards corpus fund, the respondent has no jurisdiction to collect the same as it is not coming under the term ''fee'' or ''charges''.

The direction to pay fine amount of Rs. 10,000/- per student for admitting students before the grant of affiliation is also challenged in W.P. No.

19382 of 2006 on the ground of want of jurisdiction to impose fine on the part of the university. The demand of 50% or 100% of legal fee, as the

case may be, is also challenged in some of the cases on the very same grounds.

10. The respondent University filed common counter affidavit in W.P. No. 19382 of 2006 wherein it is stated as follows:

(a) The respondent Pondicherry University is a Central University created under an Act of parliament viz., the Pondicherry University Act, 1985

and its jurisdiction extends to the whole of Union Territory of Pondicherry and Andaman & Nicobar Islands. The Executive Council is the Apex

body of the University, having vested with the powers of all administrative affairs and the Academic Council is the academic body of the

University, exercising general jurisdiction over the academic policy of the University. The general powers of the University are prescribed u/s 5 of

the Act. The first respondent University was established as teaching cum affiliating University.

(b) Section 5(17) of the Act empowers the University to admit colleges by granting affiliation to get the privileges in accordance with such

conditions as may be prescribed by the statutes. Section 5(20) empowers the University to demand payment of fee and other charges. Statute 32

provides the manner in which the colleges are to be admitted for getting privileges of the University. Statute 32(6) provides for ordinance to

prescribe such other conditions as may be considered necessary and also the procedure for admission of the colleges and institutions. Chapter VII

of the academic ordinance deals with the procedure for granting affiliation to colleges and institutions. Clause 5(q) of Chapter VII empowers the

Executive Council to lay down new conditions of affiliation general or specific, staff pattern, buildings, equipments, library, laboratories, finances or

other relevant matters and specify the date by which the conditions are to be specified, failing which the college/institution may not be allowed to

enjoy the privileges of the university.

(c) It is further stated in the counter affidavit that the colleges legally comes into existence as an affiliated institution of the University only after the

affiliation is granted and only after the grant of affiliation, the colleges can validly make admission of students to the course and admission made

prior to the grant of affiliation are wholly invalid and illegal.

(d) Petitioner Institution in W.P. No. 19382 of 2006 admitted students without obtaining orders of affiliation from the University, which was illegal.

Therefore the University imposed a fine of Rs. 10,000/-per students as penalty. The said resolution was passed by the Academic Council in its

49th meeting held on 16.3.2006. The Executive Council passed resolution on 22.3.2006 in its 86th meeting. Thus, the imposition of the penalty on

the said college for admitting students without affiliation was based on the resolutions of the Academic Council and Executive Council, which are

the administrative bodies of the University.

(e) It is also stated in the counter affidavit that endowment fund and affiliation fee were fixed lastly in the year 1999 which were found inadequate

and the said amounts were revised after due consideration by the Academic Council and approved by the Executive Council. The Academic

Council in its 44th meeting held on 2nd and 3rd of April, 2004, passed a resolution 2004.44.75 and the said recommendation was placed before

the Executive Council in its 78th meeting held on 11.6.2004 which resolved to constitute a committee to examine the revised fee structure. The

said Committee recommended enhancement of affiliation fee, endowment funds and creation of corpus fund and based on the said

recommendation only the Academic Council in its 46th meeting held on 20th and 21st April, 2005, passed resolution No. 2005.46.73 which was

approved by the Executive Council in its 83rd meeting dated 20.8.2005. The Executive Council also changed the word ''fee'' to ''fund''.

Accordingly revised endowment amount for B.Ed colleges was fixed at Rs. 25,00,000/- and affiliation fee for B.Ed colleges was fixed at Rs.

5,00,000/-.

(f) It is further stated in the counter affidavit that the said affiliation fees were enhanced keeping in view of the enhanced expenditure in constitution

of inspection committee, conducting inspection, obtaining report, etc. Fine was imposed to one college to effectively discourage and punish such

kind of admission being made without affiliation. Insofar as the Corpus fund is concerned, the UGC gave direction to create corpus fund for the

betterment of the University. Relying on the said statement in the counter affidavit, the respondent prayed for dismissal of the writ petitions.

11. Heard Mr.G.Masilamani, Mr.K.Doraisamy, learned Senior Counsels, Mr.R.Sureshkumar, Mr.V.Raghavachari, Mr.S.P.B.Dhuraiswamy,

Mr.Mani Sundaragopal and Mrs.Thilagavathi, learned counsels for the petitioner institutions as well as Mr.R.Viduthalai, learned Senior Counsel

and Mrs.A.V.Bharathi for the Pondicherry University and Mr.P.R.Gopinathan for NCTE.

12. The learned Senior Counsels as well as learned counsels appearing for the petitioner institutions submitted that there is no provision to demand

corpus fund in the Pondicherry University Act. The enhancement of affiliation fee and endowment fund are unreasonable without any justifiable

reason. The managements were not given any opportunity before steeply increasing the affiliation fee as well as endowment fund. No other

university in India is collecting corpus fund and the said collection of corpus fund as well as unilateral increase of affiliation fee and endowment fund

cause great hardship to the petitioners in running educational institutions. Mrs.G.Thilagavathi, learned counsel appearing for the petitioner institution

in W.P. No. 19382 of 2006 submitted that imposing penalty at the rate of Rs. 10,000/- per student as against the petitioner institution is

unauthorised as there is no provision available to impose penalty in the Pondicherry University Act, 1985.

13. The learned Senior Counsel as well as the learned counsel appearing for the respondent University on the other hand submitted that the

endowment fund as well as affiliation fee were lastly fixed in the year 1999. The said amount having been found not sufficient, based on the

recommendations of the Committee the same were increased. It is further submitted that the UGC circular authorised the University to collect

corpus fund from the affiliating colleges and the same is collected and deposited in a separate account and only the interest accrued from the

Corpus fund alone are being utilised for development activities of the University by providing facilities such as library, sports, central

instrumentation etc., which can be utilised by the students of the affiliated institutions, provide lectures, organising special traning programme,

sponsoring deserving research training to the faculties to the affiliated institutions, for conducting seminars, symposia, competions, Science

exhibitions, cultural events, etc. It is further contended that out of 70 B.Ed colleges only 16 colleges have not paid the corpus fund and all other

colleges have already paid the corpus fund. Insofar as the contention that the penalty of Rs. 10,000/-per students was imposed against the

institution which is the petitioner in W.P. No. 19382 of 2006, admittedly students were admitted in the said institution without getting affiliation

from the University which is in violation of the Statutory provision not only under the Pondicherry University Act, but also the NCTE Act, 1993

and the said petitioner institution having violated the statutes can be proceeded by imposing fine to check such kind of unauthorised admissions in

future by any institution and the said institution was granted provisional affiliation on condition that a sum of Rs. 10,000/- per student should be paid as penalty and it is an inherent power given to the University to take action against the erring colleges, which are given affiliation to the

respondent University.

14. In reply to the said arguments the learned Counsels for the petitioner institutions submits that no corpus fund is directed to be collected by the

UGC from the affiliated colleges and the circular only permit the University to raise corpus fund on voluntary basis from Philanthropists or industrial

establishments and without doing so, the Unversity is creating corpus fund from the affiliated colleges at the rate of 5% of tuition fee collected from

the students, which are directed to be paid by the management. The learned Counsels further submitted that no corpus fund is collected by any

other central or state Universities in the country and therefore on any account collection of corpus fund by the respondent University cannot be

allowed to be continued. The learned Counsels also submitted that the demand of 50% or 100% of le-gal fee from the colleges are also

unreasonable.

15. I have considered the pleadings as well as submissions of the respective learned counsels for the petitioners as well as respondents.

16. From the pleadings narrated above, the questions emerge for consideration in these writ petitions are,

(1) Whether the University is empowered to increase the endowment fund as well as affiliation fee ?

(2) Whether the University is right in collecting corpus fund at the rate of 5% towards tuition fee from each students received by the affiliated

colleges and demanding 50% or 100% of the legal fee?

(3) Whether the University is justified in imposing penalty at the rate of Rs. 10,000/-per student of the petitioner institution in W.P. No. 19382 of

2006 for admitting students prior to the grant of affiliation ?

17. The professional educational institutions namely B.Ed Colleges are required to get recognition from NCTE and the Medical/Dental Colleges

from the Central Government as per the recommendations of the Medical Council of India/Dental Council of India for conducting respective

courses. The said institutions are also required to get affiliation from the respective University for conducting cources as well as for the students to

appear for the examinations and to get degrees. The said two requirements are mandatory failing which students undergoing courses are not

entitled to get degrees/admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Conditions

granting recognition or affiliation can broadly cover academic and educational matters including welfare of the students and teachers. The object of

establishing an institution is to provide technical or professional education to the deserving candidates and is not necessarily a commercial venture.

Affiliation or recognition by the State or the Board or the University brings in the concept of regulation by way of laying down conditions consistent

with the requirement of ensuring merit, excellence of education and preventing maladministration.

18. In the Judgment reported in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State

of Maharashtra and Others,) it is held that the educational institutions are to generate reasonable surplus funds to meet the cause of expansion and

augmentation of facilities, which would not amount to profiteering. Establishment and administration of the institutions are protected under Article

30(1) to minority institutions and Article 19(1)(g) insofar as non-minority institutions are concerned. Regulatory measures can be issued by the

recognising/affiliating agencies in the interest of general public under Article 19(6) and without affecting the administrative right of the minority

managements under Article 30(1) of the Constitution of India.

19. It is well settled proposition of law that merely because an institution got recognition/approval, it cannot admit students unless and until

affiliation of the concerned University is obtained. It is also now well settled that grant of affiliation by the University after the grant of recognition by

the Central Agency is not a matter of course or mere formality. A Full Bench of this Court in the decision reported in Rukmani College of

Education run by Rukmani Educational and Charitable Trust Vs. The State of Tamil Nadu, elaborately considered the said issue and held that after

the grant of recognition the concerned University has to consider the request for the grant of affiliation of the said course and only after getting the

affiliation, keeping in view the academic calendar for the respective year, the Colleges are entitled to get affiliation for a particular year and no

institution can admit students before the grant of affiliation. The said fact is also specifically made clear by the Division Bench judgment reported in

Loordhu Ammal Eduational Trust Vs. The University of Madras and The Director of Collegiate Education, Hence it is evident that merely because

an educational institution is granted recognision/approval by the Central Agency, admission of the students cannot be made and if any institution

admits students they are violating the laws of the University.

20. It is also an admitted fact that while granting affiliation, the conditions prescribed in the statute of the University are to be complied with. The

Pondicherry University Act, 1985, section 5(20) deals with demand and receipt of payment of fees and other charges. According to the

respondents, the University is entitled to prescribe a reasonable amount towards endowment fund and affiliation fee. There is no power vested with

the University to demand corpus fund and legal fee. The affiliation fee prescribed by the various universities for B.Ed/B.Ed (integrated) course are

as follows:

(a) Pondicherry Rs.5,00,000/(Upto

University 100 Students per

course)

(b) Bharathiyar Rs.2,50,000/&

University Application Fee Rs.

2,000/& Application

Registration Fee Rs.

10,000/

(c) University of Pune Rs.50,000/

(d) University of Rs. Fee Rs.

Mysore 2,75,000/Service

Charge Rs.

55,000/Total Rs.

3,30,000/(61 120

Students) &

Application Fee Rs.

4,000/

(e) Mizoram UniversityRs.15,000/

(f) Nagaland Rs.15,000/

University

(g) Assam University Application Fee for

Permission Rs.

6,000/+ Fee for

Affiliation Rs.

3,000/= Rs. 9,000/

(h) North Eastern Hill Rs.15,000/

University

The endowment fund is also prescribed by various Universities which reads as follows:

(a) Pondicherry Rs.25,00,000/

University

(b) University of Pune Reserve Fund Rs.

75,000/ Building Fund

Rs.2,00,000/Laboratory

Fund Rs. 1,00,000/

Library Fund Rs.

50,000/Deficit Fund Rs.

25,000/

(c) Mizoram UniversityGeneral Stream Rs.

4,00,000/Major Stream

Rs. 5,00,000/

(d) University of Delhi Rs.3,00,000/

(e) Assam University Rs.4,00,000/

(f) North Eastern General Stream Rs.

4,00,000/ Major

Stream Rs. 5,00,000/

Government College/institutions are exempted from depositing the reserve fund/

Endowment.

50% in Fixed Deposit and 50% in unencumbered property.

Insofar as Corpus Fund is concerned admittedly except the respondent University, no other University in India is collecting. Similarly, legal fee is

not collected by any other University from the affiliated colleges to meet the court cases.

21. The reason stated by the University to increase the affiliation fee is that the colleges are getting certain privileges due to the grant of affiliation.

There is increase of expenditure incurred in processing and granting affiliation of colleges and courses. The number of colleges and courses have

increased substantially since 1999. The growing number of colleges and introduction of more and more courses have caused heavy burden on the

University for handling affiliation matters with the existing staff and machinery. The University has to employ additional personnel on temporary and

on contract basis to attend to the increasing workload for ensuring timely completion of affiliation procedures. The works in the affiliation section,

the academic section and examination wing have grown manyfold, for which additional infrastructure and personnel to manage the higher quantum

of work due to affiliation of various courses and large number of enrollment of students is required.

22. The contention of the petitioner institutions are that the University is authorised to fix the endowment fund as well as affiliation fee and they are

not questioning the right of the University in fixing the amount. However by steep increase of the endowment fund as well as affiliation fee, the

colleges are facing financial difficulties. The said stand of the petitioner management cannot be countenanced in view of the increase of expenditure

in the administration of the University for the grant of affiliation, fixing of syllabus, conduct of examinations, making inspection, etc. and the

managements cannot dispute the increase of expenses towards the above heads. Hence the increase of affiliation fee cannot be treated as

unreasonable. It is also in consonance with the Wednesbury Principle of reasonableness. It is well settled in law that the Court can interfere only if

the decision taken by the authority was arbitrary, unreasonable or not taken in public interest. In the decision reported in Delhi Science Forum and

others Vs. Union of India and another, the Supreme Court held thus,

11. ...Central Government while exercising its statutory power under first proviso to Section 4(1) of the Act, of granting licences for establishment,

maintenance and working of telecommunications has a fiduciary duty as well. The new experiment has to fulfil the tests laid down by courts for

exercise of a statutory discretion. It cannot be exercised in a manner which can be held to be unlawful and which is now known in administrative

law as Wednesbury principle, stated in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. ((1947) 1 ALLER 680: (1948) 1 KB

223). The aforesaid principle is attracted where it is shown that an authority exercising the discretion has taken a decision which is devoid of any

plausible justification and any authority having reasonable persons could not have taken the said decision. In the case of Bromley LBC ((1982) 2

WLR 62: (1982) 1 All ER 129) it was said by Lord Diplock:

Powers to direct or approve the general level and structure of fares to be charged by the LTE for the carriage of passengers on its transport

system, although unqualified by any express words in the Act, may nonetheless be subject to implied limitations when expressed to be exercisable

by a local authority such as the GLC..."" As such Central Government is expected to put such conditions while granting licences, which shall

safeguard the public interest and the interest of the nation. Such conditions should be commensurate with the obligations that flow while parting with

the privilege which has been exclusively vested in the Central Government by the Act.

23. Insofar as the endowment fund is concerned, it is the specific case of the University that it is the statutory requirement and it is like a security

deposit to protect the interest of students in the event of closure of the college. The interest accruing from the said endowment fund is availed by

the college for their maintenance. The endowment fund of B.Ed colleges has been raised from Rs. 5,00,000/- to Rs. 25,00,000/-, which consists

of two components, (i) by way of fixed deposit, and the other (ii) by way of fixed assets. The value of the land has increased considerably and

therefore there will be no hardship to any of the institution due to the fixing of the said quantum of endowment fund and creation of endowment

fund with the University is a statutory requirement and it is the responsibility of the University to deal directly with the college by taking care of the interest of the students in the event of closure of the college. The object of asking for an endowment to be created is to ensure the financial stability

of the institution. The said fund can be utilised for emergency expenses and therefore the enhancement of the said fund is to be treated as ''for the

best interest of the institution and its students''. The said increase is also made taking into consideration the present day money value. The

concerned managements are getting the accrued interest from the endowment fund and the University is not in any way benefited due to the

increase in the endowment fund. Hence the said increase of endowment fund is also found valid.

24. The contention with regard to non approval of the Academic Council and Executive Council for the increase of endowment fund as well as

affiliation fee cannot be countenanced in view of the fact that the original minutes of the Academic Council and the Executive Council were

produced before me even though the same is disputed in some of the writ petitions. The Honourable Supreme Court in the decisions reported in

Municipal Corporation of Delhi Vs. Qimat Rai Gupta and Others, held that when high ranking authority passed an order, law presumes that it was

passed in regular course of business. The University being statutory authority, having vested with the power to fix the endowment fund as well as

affiliation fee and the same having been approved by the respective Council, the procedureal violation alleged against the University has no

substance.

25. As regards the question of demanding corpus fund, it is the case of the respondent that the UGC authorised the Universities to collect corpus

fund from the affiliated colleges. A circular of UGC with regard to the ''Revised Guidelines of Incentives for Resource Mobilisation for Xth Plan'',

dated 26.5.2003, which is relied on by the University for creation of the corpus fund is produced before me. In the said circular, it is observed as

follows:

With the rapid expansion of knowledge and the unprecedented scientific and technological progress, the universities are finding it difficult to keep

pace with the changing need of society due to the inadequacy of financial resources, especially since the Government of India considerably reduced

its funding followed by the State Government. The matter regarding financing of universities is a matter of great concern and is being discussed at

various platforms. It is increasingly being realised that the large system of higher education like ours cannot depend only on the resources made

available by the Government (Centre or State) it would have to continue to be supported by the public also.

India has a great heritage of patronage of education by philanthropists. A number of institutions of higher learning came into existence during the

pre-independence period on the initiative of private individuals and voluntary organisations. This culture, however, experienced a decline in post

independence era and financial support to educational institutions is considered in general a responsibility of the Government. In order to revive our

tradition to support higher education, and to encourage the participation of society in the development of universities, the Commission evolved a

scheme entitled ""Incentives for Resource Mobilization.

From the perusal of the above UGC Circular it is evident that no direction/ permission is given to collect corpus fund from the affiliated colleges. On

the contrary, Universities are directed to mobilise corpus fund through participation/contribution/consultancy from individual Indians or non-resident

Indians, Alumni Associations, public and family trusts, industrial/business houses, professional associations, co-operatives, etc. Thus it is a

voluntary contribution to be paid by philanthropic bodies or individual and there cannot be any compulsion to pay the contribution towards corpus

fund as it has been ordered to be collected at the rate of 5% of tuition fee from the students of the affiliated colleges.

26. The said demand also will not come within the provision contained in section 5(20) of the Pondicherry University Act. It cannot be treated as

neither ''fee'' nor ''other charges'' for the grant of affiliation. Corpus fund being reserve fund of University for its developmental activities and the

UGC clearly spelt out how the said fund should be mobilised, respondent University is not justified in demanding 5% of the tuition fee from the

students of the affiliated colleges, that too directed to be paid by the managements, which is compulsory in nature. Hence I am of the view that

there is no justification or legal sanctity to claim corpus fund from the affiliated colleges.

27. Insofar as the demand of 50% or 100% of legal fee, the same is also

unjustifiable since the University has already enhanced affiliation fee

substantially to meet the increased expenses. The expenses may include legal fee. The legal cases arise due to the inaction or illegal orders passed

by the University. If the case filed before the Court of law is frivolous or without any merit, the Court itself may order cost to the University. Hence

there is no justification in demanding legal fees from the colleges. The litigations may also arise due to the non-grant of affiliation or delay in

considering the affiliation requirement. It is part of the affiliation process and the affiliation fee is also enhanced substantially. In fact, in the decision

reported in Vinayaka Mission''s College of Nursing and Para-Medical Sciences Vs. The Tamil Nadu Nurses and Midwives Council, Pondicherry

University, The Government of Pondicherry, Chief Secretariat (Health) and The Indian Nursing Council, , the inaction on the part of the University

was noticed and a direction was issued to consider the grant of affiliation to nursing course, which was also taken note of by the Full Bench in the

decision reported in Rukmani College of Education run by Rukmani Educational and Charitable Trust Vs. The State of Tamil Nadu, wherein it is

observed that ''there was persistent blind refusal by the Pondicherry University to grant affiliation for years together''. This clearly establishes the

fact that litigation arose due to the fault of the University also. Therefore there is no justification on the part of the University in demanding 50% or

100% of Legal Fee from the individual colleges to meet the legal expenses.

28. With regard to the demand of Rs. 10,000/- per student for ratification of admission of students without affiliation in W.P. No. 19382 of 2006,

it is beyond doubt that the said institution admitted students without affiliation. Thus, the institution has violated the mandatory provisions contained

in statute 32(1)(ii) & (iii) of the Schedule to the Pondicherry University Act, 1985, which reads as under,

32(1) Colleges and other Institutions situated within the jurisdiction of the University may be admitted to such privileges of the University as the

Executive Council may decide, on the following conditions, namely:-

(i) ....

(ii) Every such College or Institution shall satisfy the Executive Council on the following matters, namely:-

(a) the suitability and adequacy of its accommodation and equipment for teaching;

(b) the qualifications and adequacy of its teaching staff and the conditions of their service;

(c) the arrangements for the residence, welfare, discipline and supervision of students;

(d) the adequacy of financial provision made for the continued maintenance of the College or Institution; and

(e) such other matters as are essential for the maintenance of the standards of University education.

(iii) No college or Institution shall be admitted to any provileges of the University except on the recommendation of the Academic Council made

after considering the report of a Committee of Inspection appointed for the purpose by the Academic Council.

and the judgments rendered by this Court cited supra viz. Loordhu Ammal Eduational Trust Vs. The University of Madras and The Director of

Collegiate Education, and the Full Bench Judgment reported in Rukmani College of Education run by Rukmani Educational and Charitable Trust

Vs. The State of Tamil Nadu,

29. A Division Bench of this Court in W.A. No. 448 of 2001 dated 4.8.2006 considered similar issue with regard to admission of excess students

than the sanctioned strength in a private unaided dental college. In paragraphs 5 to 8 the Division Bench held as follows:

5. The learned counsels appearing for the contesting respondents namely the University, the Union of India and Dental Council of India have

submitted that such types of transgression by managements have become quite common and therefore, the Management should be taken to task

for having transgressed and having admitted the students in excess of the sanctioned permission. So far as this aspect is concerned, it appears that

the management had admitted students in April, 1998, whereas the Government of India reduced the intake from six to four only on 22.07.1998.

Therefore, by that time, the students had already been admitted. Since the intake of the year 1998 had been reduced, the management should have

also tried to adjust excess students against the subsequent years. In other words, there was an excess admission of four students and the University

had issued a direction for adjustment of six students in the years 2002-2003 &

2003-2004 batch. Since the primary fault was that of the

management, it is obvious that it should not be allowed to reap the benefits of such irregular action. However, in view of the fact that since the

excess admission had taken place during the years 1998-1999, 1999-2000 and those students have already completed and left the institution, the

management can be justifiably asked to refund the fees paid by the students so that it cannot be ensured that management does not take any undue

advantage.

6. In fact, the learned counsel appearing for management has submitted that adopting such a course would be just and proper. The learned counsel

appearing for the University, however, submitted that at least for the coming years, that is to say 2007-2008 and 2008-2009, such excess seats

should be adjusted by reducing the seats.

7. After careful consideration of the various submissions made by the learned counsel, we feel that it may not be appropriate to reduce the seats

during the future years. The course offered by the institution is M.D.S (Orthodontics) Course and the seats are limited. There cannot be any

denying of the fact that for such specialised course, there is always a great demand among the students'' community and if the seats in future are

reduced inspite of the fact that necessary infrastructure is available, the wider interest of the society would be affected. Taking note of this aspect,

we feel that instead of directing reduction of seats for the future two years, the management should not be allowed to reap the benefit and should

be directed to pay for the mistakes committed by the management.

8. It is not disputed at the bar that the admission fee during relevant year was Rs. 1,50,000/-. The public authority such as Union of India and the

Dental Council of India had to face litigation, due to the mistake of the management for which they will have to be reimbursed. Having regard to all

the aspects, we feel that the management should be required to pay at the rate of Rs. 3/- Lakhs for each excess student, that is to say Rs. 12/-

Lakhs in all. Such amount is to be paid to the University, the Union of India and the Dental Council in equal proportions. This amount is payable

towards refund of fees, penalty as well as cost of the litigations. This amount should be paid within a period of eight weeks from the date of receipt

of a copy of this order.

In the said judgment the Division Bench imposed Rs. 3.00 lakhs for each excess students admitted and directed the management to pay the same

to the University, Union of India and Dental Council of India, in equal proportions.

30. In the decision reported in Tvl. Aruna Malai College of Education and Kalaimahal College of Education Vs. The Secretary to Government,

Higher Education Department, The Bharathidasan University and The Regional Director, Southern Regional Committee, National Council of

Teacher Education, the question as to whether a B.Ed College without getting affiliation from the University, can admit students on the hope of

getting affiliation was considered. The affiliation was not granted for that academic year by the concerned University and the same was granted for

the subsequent year only. Therefore, the students admitted during the year for which no affiliation was granted, were directed to be admitted in the

subsequent academic year. For the sufferings of the students for undergoing one more year of course, this Court ordered to pay compensation of

Rs. 10,000/- each to the 100 students admitted in the respective institutions as costs. The said order was passed taking note of the non-adherence

of the statutory provisions by the concerned institutions.

31. Here in W.P. No. 19382 of 2006, admittedly the management admitted students for B.Ed Course prior to getting affiliation and for ratifying

the said admission, the University passed an order on 29.5.2006 and directed the management to remit penalty of Rs. 10,000/- per student

without collecting the same from the students and on such condition, provisional affiliation for the year 2005-2006 was granted by the University at

the fag end of the academic year i.e.., just two days prior to the end of the academic year. The said action of the University is just and reasonable

since the petitioner Institution in the said writ petition had violated the rule of admission prior to the grant of affiliation. The same can be treated as

compounding fee given to the University by the petitioner management for its violation of the rule, even though the term used by the University is

''penalty''. The petitioner having availed provisional affiliation for 2005-2006, is not entitled to challenge the condition imposed to remit the sum of

Rs. 10,000/- per student. The petitioner at the time of filing the said writ petition, prayed for stay of the demand of Rs. 10,000/- per student in

M.P. No. 1 of 2006 and by order dated 6.7.2006, this Court refused to grant stay.

The said order was challenged in W.A. No. 864 of 2006 and

a Division Bench of this Court dismissed the writ appeal on 13.7.2006, pursuant to which the petitioner management paid the said amount. Hence

there is no illegality in demanding the said sum from the said B.Ed College. In view of the above findings, all the writ petitions are disposed of

holding as follows:

(a) Respondent-Pondicherry University is justified in enhancing the affiliation fee, endowment fund and the demand of Rs. 10,000/-per student for

admitting students by the management in W.P. No. 19382 of 2006, without affiliation.

(b) The demand of 5% of tuition fee as Corpus Fund from the petitioner Institutions as well as the provision for demanding 50% or 100% of the

legal fee for meeting legal expenses against the University are declared as invalid.

All the above writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

