
(2004) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 324 and 17505 of 2003

Yali Moula Educational Society and Another

APPELLANT

Vs

Jawaharlal Nehru Technological University and Another

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 23

Jawaharlal Nehru Technological University Act, 1972 — Section 28A

Citation : (2004) 3 ALD 668 : (2004) 4 ALT 260

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; C. Kodandaram, SC for Respondent No. 1 and S.S. Prasad, SC for AICTE and, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—As common questions of fact and law are involved in these two writ petitions, they are being disposed of by this common order.

2. Writ Petition No. 324 of 2003 is filed questioning the proceedings of the Jawaharlal Nehru Technological University dated 28.12.2002, whereas, Writ Petition No. 17505 of 2003 is filed questioning the order of the same University, dated 6.8.2003.

3. The first petitioner is an educational society registered under the provisions of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli, which has started the second petitioner-College, namely, Moula Ali College of Engineering and Technology, in Gonipeta Village of Penukonda Mandal of Anantapur District. The All India Council for Technical Education, a body constituted under the provisions of the All India Council for Technical Education Act, 1987 (for short "AICTE Act"), has approved the starting of second petitioner-college vide proceedings dated 19.7.2001, The second petitioner college started functioning from the academic year 2001-2002 and the same is affiliated to the first respondent-University i.e., Jawaharlal Nehru Technological University, which

is established u/s 3 of the Jawaharlal Nehru Technological University Act, 1972.

4. Pursuant to the inspection by the competent body during the academic year 2002-2003 and based on the Inspection Report dated 16.11.2002, the University has issued show-cause notice dated 9.12.2002 in proceedings No. A2/Affi/Moula Ali/2002 calling upon the explanation of the second petitioner-college as to why students of the said institution should not be shifted to other colleges affiliated to the same University, and, why further action should not be taken for de-affiliation from the University. The said notice was issued pointing out certain deficiencies in running of the second petitioner-institution viz., the college is running in temporary sheds, and, no permanent building is constructed, no Principal to the college from the beginning, and, no senior faculty was available in the college, faculty available was not sufficient etc. To the said show-cause notice, explanation was filed on 21.12.2002. Dissatisfied with the explanation filed by the petitioners, the University has passed orders dated 28.12.2002 in proceedings No. A2/Transfer of students/Moula Ali/2002, in which the University ordered for shifting of the students of second petitioner college studying in first and second year B.Tech. course to other colleges affiliated to the same University. Questioning the said order dated 28.12.2002, petitioners filed Writ Petition No. 324 of 2003 and, this Court has passed interim orders in WPMP No. 435 of 2003 to the effect that transfer of students from second petitioner-institution to other colleges should be confined only to students who opt to go to other colleges and transfer should not be forcible. It appears that pursuant to the said interim orders, only 58 students of second petitioner-college have opted to be transferred to other colleges affiliated to the first respondent-University.

5. Subsequently, the petitioner filed representation dated 7.3.2003 stating that the deficiencies noticed earlier were rectified, and, requested the University for withdrawal of the earlier order, and, on the ground that the said request was not considered, it has approached this Court and filed another writ petition in W.P. No. 13602 of 2003, and, this Court, by order dated 11.7.2003 directed the respondents to consider the said representation for retransfer of those 58 students who opted out from the second petitioner-college. Consequently, in view of the representation of the petitioner, and, taking into account further report of the Expert Committee dated 22.3.2003, orders were passed on 6.8.2003 in modification of the earlier order dated 28.12.2002. By the said order dated 6.8.2003, the first respondent-University while noticing some improvements in the infrastructure facilities and provision with regard to faculty to some extent allowed the second petitioner college to continue with the students who had not opted to join other colleges pursuant to the interim orders of this Court in WPMP No. 435 of 2003. The said order dated 6.8.2003 is questioned in Writ Petition No. 17505 of 2003.

6. It is the case of the petitioners that though there was an indication for retransfer in the proceedings dated 28.12.2002 on rectifying the deficiencies noticed, but, in spite of compliance of the said conditions and rectifying the

deficiencies, no order is passed for retransfer of those 58 students who opted to go to other colleges pursuant to the impugned proceedings. It is further the case of the petitioners that the second petitioner is an approved institution under the provisions of AICTE Act, with the permitted intake capacity, and the first respondent-University in a proceeding relating to affiliation, has no jurisdiction to transfer students from one college to other colleges. Precisely, it is the case of the petitioner that if such transfer is allowed, it will alter the permitted intake capacity of the technical institutions, which is the power solely vested in the Council constituted under AICTE Act. On the other hand, the first respondent-University has filed counter-affidavits stating that the second petitioner has not fulfilled the conditions of affiliation, and, basing on the Inspection report of the Committee constituted by the University, proceedings were initiated for shifting of the students, and also for de-affiliating the institution from the University. It is stated that considering the explanation filed by the petitioner-college, orders were passed for transfer of the students to other institutions and the said steps were taken in the best interests of the students. It is further stated that pursuant to the interim orders in W.P.M.P. No. 435 of 2003, 58 students opted on their own to be transferred from the second petitioner-college, and, only such of those students were transferred to other colleges. Further, it is the case of the respondent-University that pursuant to the representation filed by the petitioner dated 7.3.2003, University has constituted a Three-Member Expert Committee by proceedings dated 22.3.2003, and, based on the report of the Committee dated 7.4.2003, the University, taking note of the improvement in the facilities in the second petitioner-college, rejected the request of the petitioner for retransfer of such 58 students, but, however, allowed the second petitioner-institution to continue with the students who remained with it.

7. It is the case of the University that the University is not completely satisfied with the improvements in the college to the full satisfaction, but, taking note of some improvements in the deficiencies notified, subsequent order dated 6.8.2003 is passed. With regard to power of the University, it is stated that the University is a statutory body constituted under the provisions of Jawaharlal Nehru Technological University Act, 1972, and, by virtue of powers u/s 4(2) and 28-A of the said Act, it is empowered to pass orders relating to affiliation/recognition of the colleges etc. Further, it is stated that the Executive Council of the University is empowered, as per the Rules relating to affiliation, for grant or withdrawal of affiliation, and, to take necessary steps which are ancillary and incidental to affiliation proceedings.

8. Heard Mr. S. Niranjan Reddy, learned Counsel for the petitioners, and, Sri C. Kodandaram, learned Counsel for respondent-University.

9. It is submitted by Mr. S.Niranjan Reddy, learned Counsel appearing for the petitioners that as the second petitioner-college is an approved institution with the intake capacity fixed by the All India Council for Technical Education, it is not open to the University to pass orders for transfer of students from second

petitioner-institution to any other institution in a proceeding relating to affiliation. However, it is always open to the University to impose any condition which will not run contrary to the conditions imposed by the All India Council for Technical Education, and, at any rate, no order could be passed contrary to the powers vested with the Council under the provisions of All India Council for Technical Education Act, 1987. It is further submitted that, initially, orders were passed indicating re-transfer of the students on rectifying defects, but, in spite of rectification of all the deficiencies pointed out, the respondent-University has not ordered for re-transfer of 58 students, who were transferred to other colleges. The learned Counsel has placed reliance on the judgments of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , and, *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, .

10. In *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* (supra), the Supreme Court considered the provisions of All India Council for Technical Education Act, 1987 vis-a-vis the provisions of T.N. Private Colleges (Regulation) Act and held that the provisions of State Act to the extent they are inconsistent with AICTE Act are void and that the State Act cannot lay down standards and requirements higher than those prescribed by the Central Act for technical institutions. In *Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department* (supra), the Supreme Court while considering the provisions of All India Council for Technical Education Act, 1987 has held that the affiliation aspect is not specifically covered in the said Act, but, it is held that University cannot impose any conditions inconsistent with the provisions of the Central Act and its Regulations and conditions framed by the Council under the Act. It is also held in the said judgment that if there is any default on the part of the college in compliance with the conditions of approval, the only remedy for the University is to bring those facts to the notice of AICTE for the latter to take appropriate action.

11. In the light of the above judgments of the Supreme Court, it is submitted by the learned Counsel for the petitioners that for various technical institutions, approval is accorded by the Council constituted under the All India Council for Technical Education Act, 1987 for establishing institutions by fixing intake capacity. In that view of the matter, it is not open to the University to transfer the students from the second petitioner-college to any other institution. He further submits that, in any event, there is no justification for not retransferring 58 students who were transferred on their options pursuant to the interim orders passed by this Court in WPMP No. 435 of 2003.

12. On the other hand, it is submitted by Sri C. Kodandaram, learned Standing Counsel for the respondent-University that though proceedings were initiated by the University, but the petitioner-college did not comply with the required conditions for continuation of affiliation. As such, based on the report of the

Inspection Committee, proceedings were initiated for de-affiliation. He further submits that inasmuch as pursuant to grant of provisional affiliation, students have already been allowed to attend the first year and second year course, in their interests, the impugned orders were passed for transfer of students to other institutions. The learned Counsel submits that the said power is ancillary and incidental while considering the proceedings for affiliation/ de-affiliation. He further relies on the Rules framed for affiliation and recognition of the colleges framed under Jawaharlal Nehru Technological University Act, in exercise of powers conferred under Sections 4(2) and 28-A of the said Act. Based on the said Rules, he submits that the University is empowered to take up periodical review from time to time, and, take such action, as it considers necessary. The learned Counsel has relied on the judgments in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, *T.K.V.T.S.S. Medical, Educational and Charitable Trust v. State of T.N.*, AIR 1996 SC 2384, and, *Bharathidasan University v. AII India Council for Technical Education* AIR 2001 SC 2861.

13. In *St. Xaviers College v. State of Gujarat* (supra), the Supreme Court, while considering the scope of Articles 29 and 30 of the Constitution of India, has held that recognition or affiliation creates an interest in the University to ensure that educational institution is maintained for the purpose intended, and, any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. In *T.K.V.T.S.S. Medical Educational and Charitable Trust v. State of Tamil Nadu* (supra), the Supreme Court has considered the repugnancy with regard to provisions of Medical Council Act, 1956 and Dr. M.G.R. Medical University Act, and, held that in view of the permission granted by the Central Government, no further permission is necessary from the State Government, in exercise of powers under the State Act. In the said judgment, while dealing with the provisions of the Medical University Act, the Supreme Court held that though provision requiring permission from the State Government is inserted in the Medical University Act, which relates to affiliation of colleges, the said provision deals with the establishment of college, and, as such, it runs contrary to the provisions of the Central Act, and, therefore, no further permission is required from the State Government to a college, to which, permission is accorded by the Central Government. In *Bharathidasan University v. All India Council for Technical Education* (supra), the Supreme Court considered the requirement of prior approval for conducting technical courses and programmes by the University. In the said judgment, it is held that the definition of "technical institution" under the AICTE Act does not include University, and, further held that All India Council for Technical Education is not intended to be an authority either superior to or supervise and control the Universities.

14. In the light of the above contentions advanced by the learned Counsel on either side, the only question that arises for consideration is - in a proceeding

relating to affiliation/recognition of a technical institution by the University, can the University pass an order for transfer of students from one institution to other affiliated institutions of the same University?

15. For deciding the above question, a scan through the All India Technical Education Act, 1987 and the Jawaharlal Nehru Technological University Act, 1972 is necessary.

16. All India Council for Technical Education is a body constituted under the provisions of All India Council for Technical Education Act, 1987. The said Act is enacted to provide for the establishment of an All India Council for Technical Education with a view to have proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Under the above said Act, a Council was constituted u/s 3, and, powers and functions of the Council are enumerated in Section 10 of the said Act. Section 10(k) invests the All India Council for Technical Education with the powers of granting approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. In exercise of the powers under Sub-section (1) of Section 23 of All India Council for Technical Education Act, 1987 (Act No. 52 of 1987), regulations are framed which are titled as "All India Council for Technical Education (Grant of Approval for starting new technical institutions/introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994." The said Regulations are made applicable to the proposals relating to grant of approval of the Council for existing intake capacity of seats and for increase in the annual intake capacity of seats in the courses and programmes relating to technical institution.

17. So far as the powers of the University are concerned, the Jawaharlal Nehru Technological University is an established University u/s 3 of the Jawaharlal Nehru Technological University Act, 1972 in the State of Andhra Pradesh. As per Section 4 of the Jawaharlal Nehru Technological University Act, 1972, which lays down objects and powers and functions of the University, the University has the power to affiliate or recognize colleges/institutions throughout the State of Andhra Pradesh or withdraw such affiliation or recognition as specified u/s 28-A of the Act.

18. From the above said provisions, it is very clear that while the approval for starting new technical institutions/introduction of additional courses or programmes and approval of intake capacity of the seats for the courses or programmes is within the exclusive domain of the All Indian Council for Technical Education under the regulations framed under the All India Council for Technical Education Act, 1987, affiliation/ recognition to the University is within the powers and competence of the University, and, is governed by the Jawaharlal Nehru

Technological University Act, 1972, and, the Rules made thereunder. Therefore, if the petitioner-institution sought affiliation from the first respondent-University, it is always open to the University to impose any conditions to maintain the standards of the institution for grant of affiliation/recognition to the petitioner-institution, but the same cannot be contrary to the conditions prescribed by the All India Council for Technical Education. The said view is also fortified by the decisions of the Apex Court cited supra, wherein it was held by the Supreme Court that it was always open to the University to impose any condition, but, the same should not be contrary to the conditions imposed by the All India Council for Technical Education, and, also the powers conferred on it under the regulations framed under the AICTE Act.

19. Though it is argued by the learned Counsel for the University that the power of transfer is exercised in the interests of students and the same is incidental and ancillary to the power conferred under the Rules relating to grant of affiliation, but, it is to be seen that the said exercise of power directly runs contrary to the powers of the Council constituted under the AICTE Act.

20. In the instant case, approval was granted to the second petitioner-college to start with a particular intake capacity by the All India Council for Technical Education from the academic year 2001-2002, and, from the same year, a provisional affiliation was also granted by the University. But, subsequently, noticing some deficiencies, on inspection by the Inspection Team of the University, and, referring to report of the Expert Committee, proceedings were initiated for de-affiliation/transfer of the students. The deficiencies pointed out against the second petitioner-institution are evident from the impugned proceedings challenged in Writ Petition No. 324 of 2003. The deficiencies are serious in nature, and, definitely will have impact on the standard of education in an institution. Though it is always open to the University to secure the compliance of the conditions imposed by it for grant of affiliation/recognition, but, at the same time, the University cannot pass an order, which is in conflict with the powers of the All India Council for Technical Education under the AICTE Act. When specific powers are conferred on the Council for grant of approval to start technical institution and also for fixing of intake capacity in a particular college, and, when such intake capacity is fixed and approval is accorded by the Council, it is not open to the University to transfer the students from that institution to other institution. While it is open to the University to pass an order for de-affiliation in appropriate cases where the institution has not complied with the conditions as per the rules framed by the University relating to grant of affiliation, but, at the same time, while exercising that power relating to affiliation, the University cannot pass any order for transfer of students from such institution to any other institution in a proceeding relating to affiliation/de-affiliation.

21. But, insofar as this case is concerned, it is to be seen that initially, order dated 28.12.2002 was passed for transfer of students of the first year and

second year to other colleges, but, when it is questioned before this Court in W.P. No. 324 of 2003, this Court has passed orders in W.P.M.P. No. 435 of 2003 permitting the transfer of only those students who opted to be transferred on their own and the transfer should not be forcible. But, now, it transpired that only 58 students have opted on their own to be transferred to other institutions, and, based on the subsequent representation and further expert committee's report, dated 22.3.2003, further orders dated 6.8.2003 are passed which are impugned in Writ Petition No. 17505 of 2003. The University while observing that the improvements to the infrastructure facilities and provision of faculty, though were not to the complete satisfaction, but, considering the various factors, has decided to modify the proceedings dated 28.12.2002 by allowing the second petitioner-college to continue with the students, who had not opted to join other colleges pursuant to option given as per the directions of this Court in WPMP No. 435 of 2003. In view of the orders of this Court in WPMP No. 435 of 2003, this Court has not allowed the transfer of all the students of first and second year, as ordered in the impugned proceedings, and only permitted the transfer of those students who opted to be transferred to other colleges on their own volition. The number of students who opted to be transferred turned out to be only 58.

22. On the above conspectus, as I held that the transfer of students from one institution to other institutions in the proceedings for affiliation/recognition is not within the domain of the University, the writ petitions deserve to be allowed. But, inasmuch as 58 students were transferred from the second petitioner-college to other colleges on their options pursuant to the interim order of this Court, and, inasmuch as the transfer of students by the University in affiliation proceedings is held to be not permissible, the said students have to be re-transferred to the second petitioner-college. But, since the students were given option by virtue of the orders of this Court to go to other colleges, keeping the interests of the students as paramount consideration of this Court, I do not find it desirable to re-transfer them forcibly back to the second petitioner-college, as it might cause inconvenience to them and would affect their studies. However, if any of the students out of 58, who were transferred earlier pursuant to the direction of this Court, wish to come back to the second petitioner-institution, they be retransferred to the second petitioner-institution.

23. With the above observations and direction, the writ petitions are disposed of. No costs.