

P.Kasilingam & Ors vs P.S.G. College Of Technology & Ors on 24 March, 1995

Equivalent citations: 1995 AIR 1395, 1995 SCC SUPL. (2) 348, AIR 1995 SUPREME COURT 1395, 1995 AIR SCW 2065, (1995) 2 MAD LW 521, (1995) 2 SCJ 155, 1995 SCC (SUPP) 2 348, (1995) 2 SCR 1061 (SC), (1995) 3 JT 193 (SC)

Author: S.C. Agrawal

Bench: S.C. Agrawal, P.B. Sawant

PETITIONER:

P.KASILINGAM & ORS

Vs.

RESPONDENT:

P.S.G. COLLEGE OF TECHNOLOGY & ORS

DATE OF JUDGMENT 24/03/1995

BENCH:

AGRAWAL, S.C. (J)

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AGRAWAL, S.C. (J)

SAWANT, P.B.

CITATION:

1995 AIR 1395

1995 SCC Supl. (2) 348

JT 1995 (3) 193

1995 SCALE (2) 387

ACT:

HEADNOTE:

JUDGMENT:

S.C..AGARWAL, J.:

1. These appeals raise the common question whether a private engineering college is governed by the provisions of the The Tamil Nadu Private Colleges (Regulation) Act,

1976 (hereinafter refereed to as 'the Rules) made under the Act.

Third question has arisen in the context of P S.G.College of Technology and Polytechnic, (hereinafter referred to as the 'College) in three writ petitions (Writ petitions Nos. 2604, 3130 and 3205 on 1981) before the Madras High Court. By its judgement dated December 23, 1982, the High Court, while dismissing Writ petitions Nos. 2604 and 3130 of 1981 and allowing Writ petitions No. 3205 of 1981. has held that the Act and the Rules do not apply to the College. These appeals are directed against the said judgment of the High Court.

2. On January 31, 1976 the President of India issued a Proclamation under Article 356 of the Constitution of India, in relation to the State of Tamil Nadu, declaring inter alia that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Parliament under Article 357 (1)-(a) of the Constitution enacted the Tamil Nadu State Legislature (Delegation of Powers) Act, 1976 whereby it conferred on the President of India the powers of the Legislature of the State of Tamil Nadu to make laws in relation to State of Tamil Nadu. In exercise of the said powers the President of India enacted the Act to provide for the regulation of private colleges in the State of Tamil Nadu. Chapter 11 (Sections 3 to 10) make provisions for establishment, permission to establishment and management of the private colleges. In Chapter III (Sections 11 to 14) provision is made for college committee and its constitution and functions. Chapter IV (Sections 15 to 24) deals with the terms and conditions of service of teachers and other persons employed in private colleges. Chapter V (Sections 25 to 32) relates to control of private colleges. Other provisions are contained in Chapter VI (Accounts, Audit, Inspection and Furniture), Chapter VII (General Provisions regarding Appeal and Revisional), Chapter VIII (Penalties and procedure) and Chapter IX (Miscellaneous)

3. In exercise of thee powers conferred by Section 53 of the Governor of Tamil Nadu has maid the Rules. Rule 3 makes provision for the application for permission to establish a college and prescribes the form (Form 2) for such an application. Rule 4 provides for grant of permission by State Government. Rule 7 makes provision for payment of grants to the college for the purpose of teaching, construction of buildings, purchase of building site, play ground, furniture, books and appliances. Rule 8 relates to Constitution of committee. Rule 11 to 15 deal with the conditions of service, etc. of teachers and other persons in college. Rule 16 appertains to closure of private colleges.

4. On March 18, 1981 the Governing Body of the College passed a resolution whereby it was resolved that the Act and the Rules do not apply to the College. P. Kasilingam, as lecturer in the Electrical Electronics and Communication Engineering in the College, filed a Writ Petition (Writ petition No. 2604 of 1981) wherein he challenged the validity of the said resolution of the Governing Body of the College. In the said Writ Petition the said petitioner challenged the power of the College to advertise on All India Basis and call applications for filling up vacancies in faculty positions in various departments. The case of the said petitioner was that in view of Rule 11 (4) (i) and (ii) it is incumbent on 'the part of the College to consider the claims of all qualified teachers in the College while making promotions and making of direct recruitment to promotional posts could arise only when none of the qualified teachers in the College is found qualified for promotion. The said petitioner claimed that he is qualified for promotion from the post of Lecturer to the post of

Assistant Professor in the Department of Electrical, and Electronics Engineering or Electronics and Communication Engineering and' that without promoting him the causing of all India advertisement for filling up the vacancies was illegal. Another Writ Petition [Writ Petition No. 3130 of 1981] was filed by number of teachers in the College wherein they challenged the resolution of the Governing Body of the College dated March 18, 1981. As a counter to these writ petitions the College filed a Writ Petition [Writ Petition No. 3205 of 1981] wherein it was asserted that the professional and technical colleges, like the College, are not included within the purview of the Act and the Rules and that the Central Government as well as the State Government have both proceeded on the basis that the provisions of the Act and the Rules do not cover such professional colleges.

5. At this stage it would be relevant to mention that the All India Council for Technical Education [AICTE] was established by the Government of India by a Government resolution in 1945 as a national expert body to advise the Central and the State Governments for ensuring the coordinated development of technical education in accordance with approved standards. Till the enactment of the All India Council for Technical Education Act, 1987, whereby the AICTE was established as a statutory body, the AICTE was functioning as a non-statutory body. Keeping in view the scheme of financial assistance of the Government of India for the development of technical education and the recommendations made by the Government of India in that regard, the Government of Madras, by GO No. 1174 dated July 4, 1957, set up a State Board of Technical Education and Training for the State of Madras [Now State of Tamil Nadu] to advise the State Government on general programme as well as specific individual schemes necessary for bringing about coordinated development of Technical Edu-

cation and Training in the State at all levels. By the said order the Government of Madras also constituted the Directorate of Technical Education as a separate unit with the Chief Engineer, Public Works Department (General and Buildings) as the ex-officio Director of Technical Education. The Director of Technical Education has been entrusted with the duties that were being performed by the Director of Public Instruction in respect of all the Colleges of Engineering and Technology in Madras State including Government Institutions as well as Aided Private Institutions. In addition, he has been entrusted with the following duties: -

"(a) To supervise and direct the imple-

mentation of all schemes included in the Second Five Year Plan for expansion and improvement of the College of Engineering and Technology as well as Polytechnics;

(b) To verify the fulfillment by all Insti-

tutions of the Conditions attached to grant-in-aid received by them from the Government of India and/or from the State Government;

(c) To initiate proposals for expansion and improvement of Technical Education and Training at all levels for the consideration by the Board of Technical Education and Training and to supervise and direct the implementation of all recommendations by the Government; and

(d) To maintain liaison between the Board of Technical Education and Training of the State and the Southern Regional Committee of the All India Council of Technical Education."

6. In discharge of his duties the Director of Technical Education submits proposals for starting new Private Engineering Colleges in Tamil Nadu to the State Government for approval.

7. In 1967 the Director of Technical Education, under the Authority of the State Government, issued the Grant-in-Aid Code of the Madras Technical Education Department [hereinafter referred to as the Grant-in-Aid Code'] containing rules for sanctioning Grant-in-aid to all recognised technical educational institutional under private management. Article 3 of the Grant-in-Aid Code lays down that the said rules shall apply to all private technical educational institutions recognised or to be recognised hereafter by the Government or any authority authorised by the Government in this behalf from time to time. Article 5 specifies the grants may be (i) Technical grants, for teaching which are recurring, and (ii) Building and equipment grants, for the construction, enlargement, improvement and purchase of institutional buildings and for purchase of furniture, apparatus, chemicals and appliances or books for institutional libraries and of the plant, materials, equipment and tools requires for laboratories and workshops, which are nonrecurring. In Chapter II of the Grant-in-Aid Code the conditions of aid are laid down which include the constitution of the Governing Council, its functions, meetings, endowments, selection of staff and their conditions of service and admission of students, etc. Article 21 in the said Chapter provides that "no new course shall be started or intake to the approved courses increased without the prior approval of (1) the All-India Council for Technical Education and its Southern Regional Committee or (2) the Central Government in the Ministry of Education or (3) the Govern-

ment/Director as the case may be." Chapter III of the Grant- in-Aid Code deals with non-recurring grant for Buildings, while Chapter IV deals with nonrecurring grants for books, furniture and equipments and Chapter V deals with recurring grants. The Director of Technical Education is the au- thority who has been entrusted with the enforcement of the provisions of the Code.

8. We may briefly refer to the relevant provisions of the Act and the Rules.

9. In sub-section (3) of Section 1 of the Act it is laid down that the Act applies to all private colleges. The expression "private college" is defined in sub-section (8) of Section 2 as follows: -

"Private college", means a college maintained by an educational agency and approved by, or affiliated to, a university but does not include a college-

(a) established or administered or maintained by the Central Government or the Government or any local authority or any university; or

(b) giving, providing or imparting religious instruction alone, but not any other instructions. "

Section 3 of the Act lays down: -

"New private college to obtain permission.- Save as otherwise expressly provided in this Act, no person shall, without the permission of the Government and except in accordance with the terms and conditions specified in such permission, establish, on or after the date of commencement of this Act, any private college:

Provided that it shall also be necessary to obtain affiliation of such college to a university."

10. Section 4 requires that the educational agency of every private college proposed to be established on or after the date of the commencement of this Act shall make an application to the Government for permission to establish such college and it provides the requirements for such application. Section 5 makes provision for grant of permission by the State Government and under Section 6 such permission is deemed to have been granted in respect of private college in existence immediately before commencement of the Act on receipt of a statement under sub-section (3) of Section 4.

11. In the Rules the expression "College" is defined in clause (b) of Rule 2 as under:-

"College " means and includes Arts and Science College, Teachers Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College maintained by the educational agency and approved by, or affiliated to the University. "

12. The expression "Director" defined in clause (d) of Rule 2 to mean the Director of Collegiate Education who has been assigned various functions in relation to private colleges under the Rules. 'Mere is no reference to Director of Technical Education in the Rules.

13. Before the High Court the State of Tamil Nadu as well as the Union of India, who had been impleaded as respondents in Writ Petition No. 3205 of 1981 filed by the College, had taken the stand that the College was not covered by the provisions of the Act and the Rules. The stand of the State in these appeals is, however, completely opposite inasmuch as it has been contended on behalf of the State that private professional colleges imparting technical education fall within the ambit of the Act and the Rules.

14. Before we proceed further we may briefly refer to an earlier Writ Petition No. 2756 of 1976 filed by Kasilingam in the High Court. An enquiry was pending against Kasilingam and during the pendency of the said enquiry Kasilingam is alleged to have given a letter of resignation on March 19, 1976 with a request that he be relieved of his duties from the College after six months from the date of that letter. This letter was accepted by the Principal of the College who agreed to relieve Kasilingam with effect from September 19, 1976 but an order was issued on April 5, 1976 relieving Kasilingam with immediate effect and enclosing a cheque for the salary payable to Kasilingam for the remaining portion of the six months period. Kasilingam submitted a memorandum to the Governor of Tamil Nadu complaining that the letter of resignation given by him was not voluntary but was a result of coercion and threat. This memorandum to the Governor was endorsed to the

University of Madras for consideration. It was dismissed by Syndicate of the Madras University on May 15, 1976 on the ground, among others, that no appeal would lie to the Syndicate. Thereupon Kasilingam filed Writ Petition No. 2756 of 1976 praying for the issue of a writ of certiorari to quash the order of the University. In the said Writ Petition it was contended that having regard to the definition of "College" occurring in the Rules the professional colleges are not included and, therefore, the provisions of the Act and the Rules would not apply to the College and the University was the competent authority to deal with the appeal of Kasilingam. The said contention was rejected by a learned single Judge on the view that the expanded definition of "private College" as laid down in sub-section (8) of Section 2 cannot be abridged or curtailed by the Rules and that the definition of "College" occurring in the Rules is an inclusive definition of colleges. Thereafter, Kasilingam filed an appeal to the Government which was forwarded to the Additional Director of Technical Education for conducting an enquiry and submitting a report and after receiving such report the Government allowed the appeal and directed reinstatement. The College filed a Writ Petition No. 16 of 1979 against the said order of the Government and the High Court by order dated October 1, 1979 allowed the said writ petition on merits and set aside the order of the State, Government. Kasilingam filed an appeal [Civil Appeal No. 493 of 1980] against the said decision of the High Court which was allowed by this Court and the order of the State Government to reinstate Kasilingam in service was restored and the matter was remitted to the Government to decide as to whether Kasilingam is entitled to all arrears of pay and allowances upon his reinstatement in service.

15. Before the High Court it was urged that the decision in Writ Petition No. 2756 of 1976 holding that professional colleges are included in the definition of "private college"

contained in sub-section (8) of Section 2 of the Act operates as res-judicata. The said contention was rejected by the High Court on the view that the judgment in Writ Petition No. 2756 of 1976 was one of dismissal of the writ pe-

tition and the College could not be said to be a person aggrieved by the judgment and that neither the Union of India nor the Government of Tamil Nadu were parties to the Writ Petition. According to the High Court the conduct of the College in not questioning the jurisdiction of the Government in entertaining the appeal on the ground that the Act and the Rules are not applicable and fighting the case on merits at the subsequent stages could not in any way be considered as a conduct which would preclude the College from agitating the question of the validity or applicability of the Act and the Rules.

16. On an examination of the provisions of the Act and the Rules as well as the Grant-in-Aid Code the High Court has held that professional private colleges are outside the ambit of the Act and the Rules. Referring to the definition of "private college" as contained in Section 2(8) of the Act and the definitions of "College" as contained in Rule 2(b) and "Director" in Rule 2(b) the High Court has observed "It is true that the Rules could not restrict the application of the Act. But we are not reading the Rules as restricting the operation of the Act, but as an instance of how the authorities who are to enforce the provisions of the Act have understood and applied the provisions, keeping in view the intentions of the Legislature. All along the Central Government and the State Government

were pro- ceeding on the basis that the Act is not are professional institutions."

"The understanding of the State Government and its officers, who are the competent persons to enforce the Act and the Rules, on the applicability of the Act and the Rules to professional and technical applicable to engineering ring colleges which institutions, though the Act had been in force for a few years. only, could, in our opinion, justifiably invoked in interpreting the provisions of the Act and the Rules on the principle of 'communis error facit jus'."

17.The High Court has also held that the Central Government had issued directions and instructions relating to technical educational institutions which are referable to matters covered by Entry 66 of List I in the Seventh Schedule to the Constitution in respect of which Parliament alone has the power to make laws and that the Union Government could exercise its executive powers in respect of those matters even in the absence of law made by the Parliament and that power of the State Legislature to make laws in respect of matters falling under Entry 25 of List III of the Seventh Schedule being subject to the power conferred on Parliament under Entry 66 of List I, the State Legislature had no power to enact a law governing professional and technical educational institutions and, therefore, the Act and the Rules could not apply to professional and technical educational institutions.

18.The said view of the High Court has been assailed before us by the appellants in these appeals, viz., the members of the teaching staff of the College as well as by the State of Tamil Nadu. Shri P.P. Rao, the learned senior counsel appearing on behalf of the State of Tamil Nadu, has urged that private colleges are covered by the Act and the Rules and the wide amplitude of the Act cannot be, curtailed by the provisions contained in the Rules. Shri Rao has also urged that the matters dealt with in the Act do not relate to co-ordination and determination of standards in institutions for higher education for research and scientific and technical institutions and, therefore, the Act cannot be said to be law in respect of matters failing under Entry 66 of List I and that it relates to matters failing under Entry 25 of List III.

19.We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is nodoubt true that in view of clause (3) of Section 1 the Act applies to all private colleges. The expression "college" is, however, not defined in the Act. The expression "private college" is defined in Clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is, however, given in Rules wherein the expression "college" has been defined in Rule 2(b) to mean and include Arts and Science College, Teachers Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the Rule making authority has deliberately reframed from including professional and technical colleges in the said definition. It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the

word' ' indicate that "definition is a hard- and-fast definition. and no other meaning can be assigned to the expression that is put down in definition." [See Gough v. Gough, (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court,(1990 (3) SCC 682, at p. 717]. The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions." [See : Dilworth v Commissioner of Stamps, (1899 AC 99 at pp. 105-106 (Lord Watson);1 Mahalakshmi Oil Mills v. State of Andhra Pradesh, (1989) 1 SCC 164, at p. 169]. The use of words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of "college" is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. In so far as engineering colleges are concerned their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time. As noticed earlier the Grant-in-Aid Code contains provisions which, in many respects, cover the same field as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was not working satisfactorily so as to be replaced by the system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that Rule the expression 'Director' is defined to mean the Director of Collegiate Education. The Director of Technical Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered.

20. The Rules have been made in exercise of the power conferred by Section 53 of the Act. Under Section 54(2) of the Act every rule made under the Act is required to be placed on the table of both Houses of the Legislature as soon as possible after it is made. It is accepted principle of statutory construction that "rules made under a statute are a legitimate aid to construction of the statute as *Contemporanea Expositio* " [See : Craies on Statute Law, 7th Edition pp. 157-158; *Tata Engineering and Locomotive Company Ltd. v. Gram Panchayat Pimpri Waghere*. 1977 (1) SCR 306, at p. 317]. Rule 2(b) and Rule 2(d) defining the expression "College" and "Director" can, therefore, be taken into consideration as *contemporanea expositio* for construing the expression "private college" in Section 2(8) of the Act. Moreover, the Act and the Rules form part of a composite scheme. Many of the provisions of the Act can be put into operation only after the relevant provisions or form is prescribed in the Rules. In the absence of the Rules the Act cannot be enforced. If it is held that Rules do not apply to technical educational institutions the provisions of the Act cannot be enforced in respect of such institutions. There is, therefore, no escape from the conclusion that professional and technical educational institutions are excluded from the ambit of the Act and the High Court has rightly taken the said view. Since we agree with the view of the High Court that professional and technical educational institutions are not covered by the Act and the Rules, we do

not consider it necessary to to into the question whether the provisions of the Act fall within the ambit of Entry 25 of List III and do not relate to Entry 66 of List I.

21. Shri Sitaramaiah, the learned senior counsel appearing for the appellant in Civil Appeal No. 10002 of 1983, has urged that ,Rule 11 which relates to conditions of service, etc., of teachers and other persons in college is referable to Section 17 of the Act and there is nothing in Section 17 and Rule 11 to indicate that they are confined in their application to colleges other than technical educational institutions and that there is no reason why the conditions of service of teachers in technical education institutions should not be governed by Rule 11. We find no substance in this contention. Once it is found that on a proper construction the Act and the Rules do no apply to professional and technical educational institutions then none of the provisions of the Rules, including Rule 11, can be said to apply to professional and technical educational institutions and it is not Possible to say that some of the provisions of the Rules we applicable while others do not apply to such institutions.

22.For the reasons aforementioned we do not find any merit in these appeals and the same are accordingly dismissed. No order as to costs.