

Jawaharlal Nehru Technological ... vs Crescent Educational Society on 18 November, 2021

Author: D.Y. Chandrachud

Bench: A S Bopanna, Dhananjaya Y Chandrachud

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 6931 of 2021
(Arising out of SLP(C) No 18304 of 2021)

Jawaharlal Nehru Technological University

.... App

Versus

Crescent Educational Society & Ors

....Resp

Civil Appeal Nos 6932-6942 of 2021
(Arising out of SLP(C) Nos 18021-18031 of 2021)

Civil Appeal No 6948-6952 of 2021
(Arising out of SLP(C) No 18808-18812 of 2021)

ORDER

1 Leave granted.

2 The High Court of Telangana, by its interim orders dated 5 Octo

2021 and 26 October 2021, has held that the action of Jawaharlal Nehru Technological University¹ in seeking the approval of the State Government before granting affiliation to new courses in existing institutions, which have already been approved by All India Council for Technical Education², is contrary to the decision of this Court in *Jaya Gokul Education Trust v Commissioner & Secretary to Govt Higher Education Department, Thiruvananthapuram, Kerala State and Another*³. Date: 2021.11.23 Consequently, the High Court has, directed JNTU to notify the

institutions in the 1 “JNTU” 2 “AICTE” 3 (2000) 5 SCC 231 course of the second phase of counselling thereby allowing students to be admitted to the courses. Several institutions sought the permission of AICTE, inter alia, for enhancing the intake capacity in “emerging areas” of engineering or, as the case may be, for new courses. The approval of AICTE was granted. 3 JNTU addressed a communication on 8 September 2021 to the Commissioner for Technical Education seeking the approval of the State Government for granting affiliation to new courses/increase in intake in the Under Graduate⁴ courses for 2021-

22. The communication noted, however, that the final affiliation for the new seats/increase in seats would be subject to fulfillment of infrastructure and qualified faculty verified by the JNTU Fact Finding Committee.

4 On 11 September 2021, the Commissioner of Technical Education addressed a communication to the Secretary, Higher Education (TE) Department requesting the Government to examine the request of the institutions for the proposed introduction of new courses/variation in the intake of the existing engineering colleges which had offered UG level courses from 2021-22.

5 A batch of petitions was instituted before the High Court in which the principal ground of challenge was that once AICTE had granted its approval, it was not open to the affiliating University to predicate the grant of its affiliation on the issuance of an NOC by the State Government. This submission weighed with the High Court while passing the interim orders. The High Court was of the view that the decision of this Court in *Jaya Gokul Education Trust* (supra) would support the contention of the institutions. Hence, it issued the interim directions which have been noted earlier. The interim orders of the High Court have been called into question by JNTU. 4 “UG” 6 Mr C S Vaidyanathan, Senior Counsel has appeared on behalf of JNTU, while Mr S Niranjan Reddy, Senior Counsel, has appeared on behalf of the institutions. 7 The submission which has been urged on behalf of JNTU is that the regulations of JNTU expressly contemplate a role for the State Government and the purpose of seeking an NOC of the State is to ensure that it can duly consider the needs of the area concerned and whether the proposed course or, as the case may be, additional intake, would be consistent with the overall policy of the State. Moreover, it was urged that the decision of this Court in *Jaya Gokul Education Trust* (supra) has been subsequently considered in several decisions and has been distinguished. The importance of the role of the State, it has been emphasized, has been underscored in subsequent decisions of this Court, including in the case of JNTU itself. In this backdrop, it is urged that it was not appropriate for the High Court to issue an interim direction for counselling of students, particularly when neither the NOC of the State Government had been granted nor the process of affiliation was completed. The decisions on which reliance has been placed by Mr C S Vaidyanathan would be considered in the course of the discussion. 8 On the other hand, Mr S Niranjan Reddy, learned senior counsel urged that the challenge which was addressed before the High Court was predicated on the insistence of JNTU that it must receive the NOC of the State Government before it proceeds with the process of affiliation. The learned Senior Counsel submitted that the institutions do not dispute the statutory authority of JNTU to conduct the affiliation process, but once approval was granted by AICTE, JNTU’s further recourse to the State Government for its NOC would be contrary to the Central legislation by which AICTE is governed.

9 At the outset, it is necessary to advert to the provisions of the Regulations governing JNTU. Regulations 5.5, 5.6 and 6.1 have a crucial bearing on the controversy and are, hence, extracted below:

“5.5 The existing College / Institute after obtaining approval/awaiting approval from AICTE, has to obtain the requisite permission from the State Government. Later, the College / Institute can apply for affiliation to the University on or before the cut-off date prescribed by the University through online application for the academic year annually. No application for grant of affiliation will be considered after the cut-off date. However, the Grant of Affiliation by the University is subjected to approval from AICTE / PCI / State Government as the case may be.

5.6 The permission for establishing Colleges and starting of new programs in the existing Colleges shall be considered by the University as per the priority/ policy of the State Government if any. Hence, the College / Institute shall obtain prior permission from the State Government to start a new Program / College.

6.1 The applications for issue of NOC for Increase in Intake/ Closure of Course or College/Institution / Change of Name / Change of Site/Location or any other matter where University NOC is required shall be accompanied by the resolution from Society / Management. Further, for starting a new Course / Increase in intake / Change of Site/Location of the existing College/Institute, prior permission from the State Government is mandatory.”

10 Regulation 5.5 expressly embodies the requirement of the permission of the State Government after an existing college or institution has obtained the approval or, as the case may be, is awaiting the approval of the AICTE. Later, the institution can apply for affiliation by JNTU on or before the cut-off date. Regulation 5.6 stipulates that the permission for establishing colleges and starting of new programmes in existing colleges would be considered by JNTU in accordance with the priority/policy of the State Government and, hence, the prior permission of the State Government is required. Likewise, Regulation 6.1 makes it mandatory to obtain the prior permission of the State Government either to start a new course or, for that matter, to increase the intake capacity of an existing course. 11 The role of the State Government has been reiterated in several decisions of this Court. At the present stage, it is material to cite two of those decisions. Significantly, as we shall note, the earlier decision in *Jaya Gokul Education Trust (supra)*, upon which reliance was placed by the High Court has also been considered in that context.

12 In *Jawaharlal Nehru Technological University Registrar v Sangam Laxmi Bai Vidyapeet and Others*⁵, a two-Judge Bench of this Court considered the provisions of Section 20 of the Telangana Education Act 1982 under which permission is required, inter alia, for opening new courses. In that context, the Court observed:

“14. A bare reading of the aforesaid provisions of section 20(1) makes it clear that the survey is conducted so as to identify the educational needs of the locality would

definitely include within its ken how many institutions are operating in the area and whether there is any further requirement of opening educational institutions/new courses in existing colleges, and it is also imperative under section 20(3)(a)(i) that educational agency has to satisfy the authority that there is a need for providing educational facilities to the people in the locality. In case there are already a large number of institutions imparting education in the area the competent authority may be justified not to grant the NOC, for permitting an institution to come up in the area.

15. The provisions contained in section 20 are wholesome and intend not only to cater to the educational needs of the area but also prevent the mushroom growth of the institutions/courses. In case institutions are permitted to run each and every course that may affect the very standard of education and may ultimately result in substandard education. There is already a paucity of well qualified teachers in a large number of institutions and the available seats in Pharmacy course in the Hyderabad city are remaining vacant every year in spite of the reduction in a number of seats. It had not been 10 possible to fill up the available vacancies due to nonavailability of students. Thus, it is apparent that when 30 institutions in Hyderabad city are 5 (2019) 17 SCC 729 already running Pharmacy course, the refusal to grant NOC by the University was wholly justified.

16. Apart from the provisions contained in section 20, when we consider Regulations 5.2 and 5.3 which clearly provide that a new college proposing to offer technical education with the University affiliation shall first seek a NOC from the University before applying to AICTE/PCI/any other statutory body. Regulation 5.3 provides that the permission for starting of new programmes in the existing colleges shall be considered by the University as per the priority/policy of the State Government if any.” On the basis of the above analysis, the Court held that it was erroneous for the High Court to hold that it was not permissible for the State Government to frame a policy and that JNTU was bound to issue its NOC.

13 A more recent decision is a judgment of a three-Judge Bench of this Court in A P J Abdul Kalam Technological University and Another v Jai Bharath College of Management and Engineering Technology and Others⁶. In that decision, the importance of the role which is played by the State and by the affiliating University has again been emphasized and it has been noted that it would be open to the State Government to even prescribe standards higher than those recognized by AICTE. Adverting to the decision in Jaya Gokul Education Trust (supra), it has been noted that it has been distinguished subsequently. The Court noted that after the advent of the AICTE Regulations, applications for extension of approval are processed online on the basis of self-disclosure. Hence, it is all the more necessary for the Universities to conduct the process of affiliation with scrupulous care in order to ensure that the interest of students is not imperilled. 14 In this backdrop, at the point of time when the High Court passed its interim orders, neither had the State granted its NOC nor had JNTU granted affiliation. During the pendency of the proceedings, the Higher Education (TE) Department of the 6 (2021) 2 SCC 564 Government of Telangana has granted its NOC on 1 November 2021. The process of affiliation is yet to be completed by JNTU. In this backdrop, the

High Court ought not to have issued an interim direction so as to allow the institutions concerned to participate in the second round of counselling. Issuing such a judicial fiat even before the process contemplated by the Regulations is complete is likely to prejudice the students, often, in an irretrievable manner, in the event that the affiliation is eventually denied. Experience indicates that the creation of equities in favour of students leads to serious issues subsequently, when the interim orders of the High Court lead to the admission of the students to an institution which may eventually be denied affiliation. The interim direction cannot be sustained. 15 Since the State Government has granted its NOC, JNTU has indicated in its submissions, a willingness to conduct the process of affiliation. Mr C S Vaidynathan stated that JNTU will conduct the process of affiliation within a period of ten days. 16 Once the process of affiliation is complete, the High Court can be duly apprised of the result, in relation to each institution which has applied for permission. Meantime, the interim order would remain stayed, to abide by the final result of the affiliation process.

17 We accordingly dispose of the appeals in terms of the following directions:

- (i) Since the State of Telangana has granted its NOC on 1 November 2021, JNTU shall complete the process of affiliation strictly in accordance with its Regulations within a period of ten days;
- (ii) After JNTU completes the process of affiliation, after due verification and inspection of the infrastructure and other facilities available at the institutions concerned, an affidavit shall be filed before the High Court of Telangana indicating the outcome of the process;
- (iii) Until the steps indicated in (ii) above are complete, the interim direction of the High Court shall continue to remain stayed; and
- (iv) Depending upon the outcome of the process of affiliation, the High Court would be at liberty to take up the matter and issue such further directions as may be deemed necessary.

18 We clarify that this court has not issued any mandate or direction for breaching the time lines which have been prescribed by AICTE for completion of the process of approval, affiliation and admissions. All the requirements of AICTE in regard to the last date for the completion of admissions shall be duly complied with. 19 We leave it open to the High Court to pass appropriate orders in the case of each institution based on the decision of the affiliating University. After the decision of the University is communicated, the High Court may take an appropriate decision in regard to the compliant institutions.

20 Pending application, if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [A S Bopanna] New Delhi;

November 18, 2021

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