

Kerala High Court

The Commissioner And Secretary To ... vs Jaya Gokul Educational Trust And ... on 3 March, 1998

Equivalent citations: AIR 1998 Ker 167

Author: O Prakash

Bench: O Prakash, J Koshy

JUDGMENT Om Prakash, C.J.

1. This appeal is filed by the first respondent (appellant herein) challenging the impugned judgment dated January 14, 1997.

2. The petitioner Trust in O.P. sought quashing of Ext. P5 order of Government expressing its inability to accord sanction for the establishment of a self-financing engineering college.

3. The case of the petitioner (first respondent herein) is that it made an application for affiliation to the Mahatma Gandhi University, which deputed a team for inspection. The inspection team recommended to the University that the petitioner has sufficient infrastructure to start the course during the academic year 1995-96 itself. The petitioner also made an application dated 24-6-

1995 to the Government to accord sanction to start courses during the academic year 1995-96 itself. It is on this application, the Government passed impugned order (Ext. P. 5) dated 16-8-

1996 regretting its inability to accord sanction, sought for.

4. In the counter affidavit filed for respondent No. 1, it is stated that in Ernakulam district, there are two engineering colleges, whereas there is no engineering college either in Idukki or Wynad district; that the Director of Education took the view that preference must be given to those who want to establish an engineering college in such districts; that the Government was not in a position to take the decision to start new engineering colleges without properly assessing the necessity of more engineering graduates in the State and exploring the possibility of employment opportunity to the extent possible; that there are four Government Engineering colleges, three private aided engineering colleges, two unaided engineering colleges and one self-financing engineering college, established by the Kerala University; that in all, there are 14 engineering colleges in the district; that there were widespread complaints from students and the public against starting private (unaided) and self-financing engineering colleges; and that in order to limit the commercialisation of education to the possible extent and with a view to give more chances to meritorious students, Government took a decision not to allow any affiliated college either in private sector or public sector during the academic year the petitioner applied, for, that is, 1995-96.

5. On these facts, the learned single Judge quashed Ext. P5 order, passed by the Government refusing to accord sanction for the establishment of the Kerala Engineering College to the petitioner and directed the second respondent to consider the application of the petitioner for affiliation, untrammelled by Ext. P5 order or the views of the Government and to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the judgment.

6. The learned single Judge held as follows:

"8. After coming into force of the All India Council for Technical Education Act, 1987, in so far as the institution imparting technical education is concerned, it is neither the University nor the Government that have jurisdiction, but it is the Council created under the Central Act that will have the jurisdiction..... It is the AICTE that has to grant the approval and it is not open to the State Government or the University to give approval or disapproval, to any technical education. The Council has framed its own regulations and rules for the grant of permission. On the enactment of the Central Act, the provisions of the Kerala University Act and the Government orders, if any, in so far as the technical education matter is concerned, would stand impliedly repealed to the extent of repugnancy. The State Government is not entitled to encroach upon the Central Law by their subordinate legislation by a decision taken against the grant of affiliation. The State Government has no jurisdiction over the subject which is obviously covered by the Central Act.....

9. Section 10 of Chapter III of the Act states that in order to perform its duties and to take all such steps as it may think necessary to ensure the object of and perform the functions under the Act, the Council may, among others, grant approval for starting new technical institutions, provide guidelines for admission of technical students to institutions, impart or inspect any technical institutions, etc. Therefore, the complete jurisdiction in reference to the grant of approval for starting of new technical institutions is well within the competence of the AICTE.

10. In the light of the clear provision of the Central Act, neither the University nor the State Government have power to refuse the permission or affiliation to the petitioner's college".

7. The short question for consideration is, whether it is open for the State Government to take the policy decision not to accord sanction for the establishment of any new engineering college within the State for a particular academic year.

8. We have carefully gone through the Supreme Court decision in State of Tamil Nadu v. Adhiyaman Educational and Research Institute (1995) 4 SCC 104 : (1995 AIR SCW 2179), which the learned single Judge too relied on. Before the Supreme Court, the question for consideration was whether, after the coming into force of the All India Council for Technical Education Act, 1987 (Central Act), the State Government has power to grant or withdraw permission to start a technical institution, as defined in the Central Act. In that case, the State of Tamil Nadu permitted private managements to start new 'engineering colleges under the self-financing scheme without any financial commitment to the Government, but subject to the fulfilment of certain conditions. The first respondent -- Adhiyaman Educational and Research Institute applied to the Government of Tamil Nadu for permission to start a new self-financing private engineering college in terms of the said policy. The Government granted permission to the said Trust to start a private engineering college. The permission was subject to several conditions. The college started functioning from July 1987. On 17-9-1988, the University extended the affiliation for the first year of B .E. degree course for the academic year 1988-89 subject to the implementation of the recommendations of the Inspecting Commission made in its report of 5-11 -1987 and subject to the conditions of affiliation already intimated while granting initial temporary affiliation. On 24-11-1988, the Trust applied for

affiliation for the third year B.E degree course for the academic year 1989-90 and continuation of affiliation for first year and second year B.E. degree course. In March 1989, the Committee appointed by the Director of Technical Education inspected the college and submitted its report, which was forwarded to the Trust with a direction to take necessary steps to create requisite infrastructural facilities. In the meanwhile, on 27-3-1989, the State Government appointed a High Power Committee to visit the self-financing engineering colleges and make an assessment of their functioning. In its report, the High Court Power Committee stated that the Trust had not fulfilled the conditions imposed by the Government at the time of grant of permission and also the conditions imposed by the University while granting affiliation. On receipt of that report, the Director of Technical Education issued a show cause notice to the Trust on 16-7-1989 calling upon it to show cause why the permission should not be withdrawn. In the meanwhile, in May 1989, the University appointed a three-member Inspection Commission to inspect the functioning of the college for the purposes of considering the question of continuance of the affiliation of the college for the academic year 1989-90. Even before the receipt of the report of the Inspection Commission, the Syndicate of the University accepted the report of the High Power Committee appointed by the Government and resolved to reject the request for provisional affiliation for the academic year 1989-90 and also to issue a show cause notice to the Trust as to why the affiliation granted to it for the academic years 1997-88 and 1988-89 should not be cancelled. 9. The Supreme Court, considering the Scheme and the Preamble of the Central Act, observed with perspicacity in paragraph 32, that "in so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central Act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements, etc. will have to be uniform throughout the country".

10. In paragraph 30, the Supreme court observed as under:

"..... The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and. continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act". From the above reproduced observations of the Supreme Court, it is abundantly clear that after the enforcement of the Central Act, the University and the State Government are not rendered absolutely powerless. The All India Council for Technical Education (AICTE) was set up to lay down norms, standards and requirements for the approval of the technical institutions in the national perspective. The Council was set up to determine and coordinate the standards of technical education throughout the country to integrate its development and to maintain certain standard in such education. The rationale behind setting up the Council was to bring about uniformity in technical education all over the country. The Supreme Court has nowhere observed in *Adhiyaman Educational & Research Institute's case* (1995 AIR SCW 2179) (*supra*) that upon enforcement of the Central Act, the State Government or the University ceased to have power of recognition and

affiliation respectively of technical colleges. Rather, the Supreme Court clearly held that the provisions of the University Act regarding affiliation of technical colleges will continue to operate subject to the rider that such Act cannot lay down any norm or condition, inconsistent to those laid down by the Council. The power of the Council is to determine and coordinate the standards of technical education throughout the country and not to lay down the policy as to whether there should be a technical college in a State; how many such colleges should be there and whether there should be such college for a given academic year. Since the topic of 'Education' falls under Entry 25, List III, 7th Schedule, the State Legislature//Government do have a right to legislate or to take policy decision on that topic, but if any law or policy framed by the State Legislature or the Government respectively, is inconsistent to the Central Act, then that to the extent being repugnant, would be illegal and inoperative. It is for this reason, we find it difficult to agree with the learned single Judge, who took the view that "..... It is the AICTE that has to grant approval and it is not been to the State Government or the University to give approval to technical education..... The State Government has no jurisdiction over the subject which is obviously covered by the Central Act". The object of the Central Act is only to determine and coordinate the need of technical education throughout the country to ensure harmonisation of the standards of technical education and not to lay down the policy as to where and in which academic year, a college for technical education is to be set up.

11. Affiliation by the University to a particular course conducted by the institutions shall be governed by the conditions prescribed by the University. Chapter 23, Statute 9 of the Mahatma Gandhi University First Statutes reads as follows :

"1. The University may appoint a Commission to inspect the proposed site of a new college or to make physical verification of the facilities that may exist for starting new college/course, if the application is considered favourably by the University. After considering the report of the Commission and the report of the local enquiry, if any, and after making such further enquiry as it may deem necessary, the Syndicate shall decide, after ascertaining the views of the Government also, whether the affiliation be granted or refused, either in whole or part."

12. Therefore, the Syndicate also referred the matter to the Government before taking final decision regarding the affiliation.

13. It will be seen that the appellant herein itself approached the Government requesting it to accord sanction for establishing the technical college, meaning thereby, that the appellant did not question the power of the State Government of recognition or granting permission for setting up the technical college, but the learned single Judge on his own held that after the enforcement of the Central Act, the Government ceased to have any power in the matter.

14. There is a clear averment in the counter-affidavit filed on behalf of the Government (respondent No. 1 in the O.P.) that there were widespread complaints from the students and the public against the setting up of private colleges for technical education, since only a class of students having sufficient means to pay high fees was benefited from such institutions. It is also averred that in order to limit the commercialisation of education to the possible extent and with a view to give more

chances to meritorious students, Government took the policy decision not to allow any affiliated colleges, either in private sector or in public sector, during the academic year 1995-96, for which the petitioner applied for sanction. These are the matters for consideration of the Government and it cannot be said that the policy decision taken by the State Government was either arbitrary or without application of mind. The Government did not take the policy decision not to accord sanction in future at all, but the policy decision restricted to the academic year, relevant herein.

15. We are not aware whether the policy decision taken for the academic year, relevant in this case, is still in force; nor has it been canvassed before us. The petitioner is, therefore, free to approach the State Government for according sanction for setting up the technical college.

16. It is noteworthy that the respondent in Adhiyaman Educational & Research Institute (1995 AIR SCW 2179) (supra) also approached the State of Tamil Nadu seeking permission to establish a 'new engineering college under the self-financing scheme. The case of the State of Tamil Nadu was not rejected by the Supreme Court on the ground that after the enforcement of the Central Act, the State Government and the University were denuded of the power of recognition and affiliation respectively regarding technical colleges, but the Supreme Court simply held that the Council was empowered to determine and coordinate the standards of technical education and, therefore, any norms, standards and requirements laid down by the University, contrary to those laid down by the Council, would be illegal and inoperative on the principle of repugnancy. If the contention of the appellant herein were correct, then the Supreme Court, in the case of Adhiyaman Educational & Research Institute, would have stopped short merely by observing that after the operation of the Central Act, no power, whatsoever, to grant permission to establish a technical college was vested with the State Government. It was not so held by the Supreme Court; rather the Supreme Court said that the University or the State Government was not competent to lay down norms, standard and requirements contrary to those laid down by the Council. So, the approach of the learned single Judge that after the enforcement of the Central Act, the State Government was completely denuded of the power to take the policy decision whether technical college is required to be set up within the State for a given academic year or for several years, cannot be countenanced.

17. In the result, the appeal succeeds and is allowed and the impugned judgment dated January 14, 1997 is quashed, with the observation that the petitioner will be at liberty either to make afresh application to respondent No. 1 in O.P. for according sanction for setting up the aforesaid college for technical education or to make a representation requesting respondent No. 1 in O.P. to consider its earlier application for according sanction for a future academic year. In the circumstances of the case, there will be no order for costs.