

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 9247 of 2015 (E)

PETITIONER(S):

**MES-AIMAT
MES ADVANCED INSTITUTE OF MANAGEMENT AND
TECHNOLOGY, MARAMPALLY
ALUVA REPRESENTED BY ITS DIRECTOR.**

**BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. MAHATMA GANDHI UNIVERSITY
PRIYADARSHINI HILLS, KOTTAYAM
REPRESENTED BY ITS REGISTRAR - 686 560.**
- 3. THE REGISTRAR
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS
KOTTAYAM - 686 560.**
- 4. THE VICE CHANCELLOR
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS
KOTTAYAM - 686 560.**
- 5. THE DIRECTOR OF TECHNICAL EDUCATION
OFFICE OF THE DIRECTOR OF TECHNICAL EDUCATION
PADMAVILASAM ROAD, THIRUVANANTHAPURAM - 695 023.**

**R2 - R 4 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** A TRUE COPY OF THE APPLICATION DATED 30.1.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- EXT.P-2:** A TRUE COPY OF THE ORDER CONSTITUTING INSPECTION COMMISSION TO ASSESS THE FACILITIES OF THE COLLEGE.
- EXT.P-3:** A TRUE COPY OF THE INTIMATION DATED 16.6.2014 FROM THE UNIVERSITY INTIMATING THAT, THE NEW MCA-LATERAL ENTRY COURSE WITH AN INTAKE TO 50 SEATS HAS BEEN RECOMMENDED TO THE GOVERNMENT FOR VIEWS/NOC.
- EXT.P-4:** A TRUE COPY OF THE FORWARDING LETTER DATED 1.7.2014 SUBMITTED BY THE PETITIONER ALONG WITH THE ORDER OF APPROVAL OF AICTE DATED 4.6.2014 BEFORE THE 3RD RESPONDENT.
- EXT.P-5:** A TRUE COPY OF THE DD FOR AN AMOUNT OF RS.30,000/- DATED 24.5.2014 FORWARDED TO THE 5TH RESPONDENT TOWARDS THE PROCESSING FEE OF THE APPLICATION
- EXT.P-6:** A TRUE COPY OF THE REPRESENTATION DATED 31.7.2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT
- EXT.P-7:** A TRUE COPY OF THE REPRESENTATION DATED 15.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT
- EXT.P-8:** A TRUE COPY OF THE LETTER DATED 6.11.2014 RECEIVED BY THE PETITIONER FROM THE GOVERNMENT
- EXT.P-9:** A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 12.2.2015 ISSUED BY THE 1ST RESPONDENT IN FAVOUR OF THE PETITIONER COLLEGE FOR STARTING NEW MCA LATERAL ENTRY COURSE
- EXT.P-10:** A TRUE COPY OF THE FORWARDING LETTER DATED 12.3.2015 ALONG WITH DD FOR AN AMOUNT OF RS.1,00,000/- TOWARDS AFFILIATION FEE SENT TO THE 2ND RESPONDENT
- EXT.P-11:** A TRUE COPY OF THE REPRESENTATION DATED 6.3.2015 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS:

- EXT. R2(a)** COPY OF CIRCULAR NO.AC.A1/3/2114/2008 DTD.6.11.2008 BY THE MAHATMA GANDHI UNIVERSITY.

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.9247 of 2015 - E

=====

Dated this the 1st day of April, 2015

J U D G M E N T

The plight of 51 students, who were admitted to the M.C.A Lateral Entry course, allegedly pending affiliation proceedings, is the grievance ventilated in this writ petition. The management of the college, in which the students were admitted, is the petitioner. The petitioner is a college, which is affiliated to the 2nd respondent University and carrying on various courses for the academic year 2014-15. The petitioner submitted an application for affiliation for the M.C.A Lateral Entry course by Ext.P1 dated 30.01.2014.

2. The University by order dated 30.04.2014 (Ext.P2) ordered inspection, as against the application seeking affiliation to various courses by various colleges. The petitioner college was also included as item No.16 and an inspection was conducted on 20.05.2014. The University being satisfied of the requirements of, the affiliation norms,

issued Ext.P3 letter to the petitioner, in which it was specifically stated that, the University has recommended intake of 60 students for the M.C.A Lateral Entry course in the academic year 2014-15.

3. The Government was addressed, to get views of the Government and for the No Objection Certificate. By Ext.P3, the petitioner college was also directed to submit the approval of the All India Council for Technical Education (A.I.C.T.E); to the University. The A.I.C.T.E approval dated 04.06.2014 was sent to the University by covering letter dated 01.07.2014, both of which are produced as Ext.P4. The petitioner college then admitted 51 students on 24.08.2014. Subsequently, the Government of Kerala, by Ext.P8 dated 06.11.2014, directed the petitioner to furnish Letter of Undertaking and affidavits in non judicial stamp papers for further processing; which was complied with. Ext.P9 order was issued on 12.02.2015 sanctioning intake of 60 seats during the academic year 2014-15 alone.

4. However, even now, no order of affiliation is passed by the Syndicate of the University. On that ground alone, the University has declined participation of the students admitted, in the examinations to be held from 17.04.2015 on the ground that, the statute specifically restricts admissions; when affiliation has not been granted. Specific reference is made to Chapter 23 (19)(3), which reads as under:-

“No student shall be admitted to any course of instruction in the college in anticipation of affiliation”.

5. Essentially, it is to be noticed that, the University does not have any objection, with respect to the satisfaction of the affiliation norms, by the petitioner college. The infrastructure in the petitioner college was verified by the University by physical inspection. The petitioner also had submitted before the University, the approval of the A.I.C.T.E, long before the admissions were made. The University had also recommended to the Government, the grant of affiliation as per Ext.P3, which recommendation was also communicated to the petitioner

college.

6. Obviously, the delay occurred since the Government took its own time to express its views. It is to be specifically noticed that clause VII of Statute IX in Chapter 23 of the M.G University Statute 1997 indicates that, the Syndicate is only required to get the views of the Government. The Syndicate has not granted affiliation, only for reason of the Government's views, having not been transmitted in time.

7. The learned Standing Counsel for the University would specifically contend that, the petitioner ought not to have admitted the students without an affiliation being granted by the Syndicate. Any direction issued by this Court, to go against the regulation for participating the students so admitted, in the examinations; could violate the specific prescription in the statute.

8. Apposite would be the reference made by the learned Counsel appearing for the petitioner college, to two decisions of the Hon'ble Supreme Court in **Jaya Gokul**

Educational Trust v. Commissioner & Secretary to Government [2000 (2) KLT 267 (SC)] and Mahatma Gandhi University v. St. Alberts College [2012 (4) KLT 404 (SC)], both of which are with respect to the very same University.

9. **Jaya Gokul Educational Trust** (supra) was a case in which the University declined final affiliation on merits, which situation has not occurred herein. Neither has the University raised any contention even now, with respect to such a rejection being warranted in the present case; in its counter affidavit. Even in the case of such final affiliation having been declined, the Hon'ble Supreme Court held so in paragraphs 28 and 30 are hereunder:-

28. Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31.05.1995 to the State Government. The only requirement as per the statute 9(7) was for the University to obtain the 'views' of the State Government. Obtaining the 'views' of the State Government, as already stated, did not amount to obtaining its 'approval'. Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular S.10(K) of the Regulation, and the University could not seek approval of Government. The University was also one of the

agencies consulted by the council of the AICTE under Regulation 8. Once that was over, and approval was granted by the AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of the AICTE so that the latter could take appropriate actions.

30. Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulation.

10. The very same view was reiterated in **St. Alberts College** (supra) wherein, it is unequivocally declared that, the Rule indicates only that the Syndicate satisfy itself as to whether the management of the college fulfilled all the conditions for the satisfactory establishment and maintenance of the proposed institutions/courses of studies and take into consideration the inspection reports submitted by the Commission or Commissions which the University may appoint for the purpose (paragraph 5). The Hon'ble Supreme Court had also directed grant of affiliation on the ground that, once approval was granted by the

AICTE for the course, then the petitioner College could not withhold such affiliation (paragraph 6).

11. The binding precedents would squarely apply in the aforesaid case. Herein, the inspection was carried out by the Commission, appointed by the University, as per Ext.P2. On a verification of such inspection report, the University had recommended intake of 60 students in the M.C.A Lateral Entry course in the academic year 2014-15. The Government too had expressed approval to such grant of affiliation, but, however belatedly by Ext.P9.

12. In such circumstance, the belated approval granted as per Ext.P9 necessarily has to be related to the time on which the recommendation had been made by the University as per Ext.P3. What remains is only for the Syndicate to grant affiliation and there are no facts consisting, which commend a denial of such affiliation. On the particular facts and circumstances arising in this case, as also considering the binding precedents of the Hon'ble Supreme Court, this Court is of the opinion that 51 students

admitted on 24.08.2014 has to be permitted to appear for the examinations, which commences on 17.04.2015. The petitioner college shall take immediate steps to register the students for the examinations and sent the application to the University and de hors any delay caused in such registration, the University shall accept the application, register the students for the examinations and permit them to participate in the examinations. The Syndicate also shall take into consideration the expediency of the situation and take a decision within two months from today regarding the affiliation and the same shall relate back to the date on which the recommendation has made by the University as per Ext.P3.

The writ petition would stand allowed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P.A to Judge