

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

+ WRIT PETITION NOS.21835 OF 2009 AND 22751 OF 2011

% DATED 12TH OCTOBER, 2015

Between:

Koneru Lakshmaiah Education Foundation,
Institution Deemed-to-be-University, Museum
Road, Governorpet, Vijayawada rep. by its
Registrar, N. Venkatram ... Petitioner .. Petitioner

and

\$ The Commissioner of Technical Education,
Government of Andhra Pradesh, BRKR
Bhavan, Hyderabad and others ... Respondents

<Gist:

>Head Note:

! Counsel for petitioner : Sri S. Ravi and
Sri M. Sudheer Kumar

^Counsel for respondent Nos.1 & 2 : Govt. Pleader for Technical Education

^Counsel for respondent No.3 : Govt. Pleader for Higher Education

^Counsel for respondent No.4 : Sri P.S. Rajasekhar

? CASES REFERRED:

1. (2005) 3 SCC 212
2. (2004) 11 SCC 755
3. (2013) 8 SCC 633

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION Nos.21835 OF 2009 AND 22751 OF 2011

Between:

Koneru Lakshmaiah Education Foundation,
Institution Deemed-to-be-University,

Museum Road, Governorpet, Vijayawada,
rep. by its Registrar, N. Venkatram .. Petitioner

and

The Commissioner of Technical Education,
Government of Andhra Pradesh, BRKR Bhavan,
Hyderabad, and others. . Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 12th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON’BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether copies of the judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION Nos.21835 OF 2009 AND 22751 OF 2011

COMMON ORDER

Koneru Lakshmaiah Education Foundation, Institution Deemed-to-be-University, Vijayawada, filed these two writ petitions. In W.P.No.21835 of 2009, the petitioner foundation challenged the proceedings dated 19.09.2009 of the Commissioner of Technical Education, Andhra Pradesh, Hyderabad (hereinafter referred to as 'the Commissioner'), appointing the Regional Joint Director of Technical Education, Tirupati, Chittoor District, as an Enquiry Officer to conduct an enquiry into the functioning of Koneru Lakshmaiah College of Engineering, the teaching unit of the petitioner foundation, while in W.P.No.22751 of 2011, it assailed the proceedings dated 18.06.2011 of the Commissioner appointing the Regional Joint Director of Technical Education, Kakinada, East Godavari District, as an Enquiry Officer to conduct an enquiry into the functioning of its teaching unit, Koneru Lakshmaiah College of Engineering. Consequential directions were sought to the authorities in both the writ petitions not to interfere with the activities of the petitioner foundation in any manner in the light of the status acquired by it under Section 3 of the University Grants Commission Act, 1956 (for brevity, 'the Act of 1956').

In W.P.No.21835 of 2009, an interim order was passed by this Court on 13.10.2009 suspending the operation of the impugned proceedings dated 19.09.2009. The said interim order was made absolute on 09.04.2010, when the vacate stay petition filed by the fourth respondent therein, the A.P. Affiliated Private Engineering Colleges Non-Teaching Staff Federation, Hyderabad, was dismissed. In the said order, this Court observed that the Commissioner ought to have put the petitioner foundation on notice, elicited its views and if not satisfied with its explanation, a reasoned order should have been passed for ordering an enquiry. This Court opined that mere

allegations made by the fourth respondent would not be enough to constitute an enquiry committee behind the back of the petitioner foundation. Holding so, the interim order was made absolute.

Against the said order dated 09.04.2010 passed in W.P.No.21835 of 2009, the fourth respondent filed Writ Appeal No.476 of 2010 but, by order dated 11.08.2010, a Division Bench of this Court dismissed the appeal, opining that a view contrary to that of the learned Single Judge could not be taken in the context of the action initiated against the petitioner foundation behind its back and without seeking an explanation.

In W.P.No.22751 of 2011, by order dated 11.08.2011, this Court permitted the petitioner foundation to submit its objections to the impugned proceedings dated 18.06.2011, urging all grounds available to it, to the Commissioner who was directed to consider the same and pass appropriate orders in accordance with law before taking further steps in the matter. This Court further directed that until such a decision was taken, the impugned proceedings should be kept in abeyance. Upon the vacate stay petition filed by the fourth respondent therein, the A.P. Affiliated Private Engineering Colleges Non-Teaching Staff Federation, Hyderabad, this Court passed an order on 28.09.2012 permitting the enquiry to go on pursuant to the impugned proceedings dated 18.06.2011, but directed that no action should be taken pursuant to the enquiry report that may be submitted by the Enquiry Officer. The Enquiry Officer's report was directed to be placed before this Court. The earlier interim order dated 11.08.2011 was accordingly modified to that extent.

Perusal of the said order dated 28.09.2012 reflects that this Court took into account the fact that no adverse consequence would ensue by merely enquiring into the affairs of the petitioner foundation and opined that there was no reason to interdict the enquiry. It was further observed that the question as to whether the petitioner foundation fell within the jurisdiction of the Commissioner for institution of an enquiry into its affairs would have to be adjudicated in the writ petition.

Though this Court permitted the enquiry to go on pursuant to the proceedings dated 18.06.2011 under the order dated 28.09.2012 and directed the enquiry report to be placed before it, it appears that no steps were taken thereafter in the enquiry and it was only after this Court passed an order on 03.08.2015, asking for a detailed affidavit setting out the steps taken during the course of the enquiry, that the enquiry

was taken up on 10th and 11th August, 2015, and an enquiry report was prepared and sent by the Regional Joint Director of Technical Education, Kakinada, under letter dated 12.08.2015 to the Commissioner. This report was placed before the Court.

Sri S.Ravi, learned senior counsel appearing for Sri M.Sudheer Kumar, learned counsel on record for the petitioner foundation, contended that the Commissioner had no power or jurisdiction to entertain a complaint against the petitioner foundation and initiate an enquiry into its affairs. Learned senior counsel pointed out that the petitioner foundation had been conferred 'Deemed-to-be-University' status under Section 3 of the Act of 1956 and by virtue thereof, the jurisdiction of the State authorities stood ousted to the extent the Central legislation prevailed.

Koneru Lakshmaiah College of Engineering was established in the year 1980 as an unaided non-minority private engineering college. It was affiliated to Acharya Nagarjuna University. It was granted 'Deemed-to-be-University' status by the Government of India under Section 3 of the Act of 1956 vide Notification dated 20.02.2009, which was duly published in the Official Gazette. Koneru Lakshmaiah College of Engineering was accordingly disaffiliated from Acharya Nagarjuna University with effect from 25.05.2009 and became a constituent teaching unit of the petitioner foundation. Though, in the affidavits filed in support of the writ petitions, it was claimed that the provisions of the Andhra Pradesh Education Act, 1982 (for brevity, 'the Act of 1982'), altogether ceased to have application to the petitioner foundation and its constituent college after February, 2009, Sri S.Ravi, learned senior counsel, fairly conceded that the Act of 1982 would still continue to have application insofar as issues which were not covered by the Act of 1956 were concerned. This ground of attack, urged with vigour in the pleadings, therefore fails.

The petitioner foundation also attacked the locus and *bonafides* of the fourth respondent in making a complaint against it. Various allegations were leveled against the fourth respondent in this regard. However, the same are of no concern to this Court as whatever be the motives of the fourth respondent, if the State authorities conduct an enquiry into the functioning of the petitioner foundation and its constituent college within the ambit of the Act of 1982 to the extent it is applicable, the petitioner foundation can have no legal grievance. Therefore, the factum of the

fourth respondent having filed W.P.No.8363 of 2009 before this Court, assailing the proceedings dated 20.02.2009 of the Government of India conferring the 'Deemed-to-be-University' status upon the petitioner foundation and seeking an enquiry into the affairs of Koneru Lakshmaiah College of Engineering, and subsequently withdrawing the same on 04.11.2013 is of no consequence.

In the light of the concession made by Sri S.Ravi, learned senior counsel, that the Act of 1982 would continue to have application to the petitioner foundation and its constituent college to the extent permissible in law, notwithstanding the status conferred under Section 3 of the Act of 1956, it is unnecessary for this Court to delve into this issue. However, for the purpose of clarity, certain aspects need elaboration in this regard.

The Act of 1982 was promulgated to consolidate and amend the laws in relation to the educational system in the erstwhile State of Andhra Pradesh for reforming, organizing and developing the said educational system and to provide for matters connected therewith or incidental thereto. As per Section 1(3) of the Act of 1982, the Act applies to all educational institutions in the State, except, apart from others, colleges and institutions insofar as matters pertaining to them are dealt with in enactments, relating to establishment of universities, in force in the State.

Section 2(18) defines 'educational institution' as under:

"Educational institution" means a recognized school, colleges including Medical Colleges, special institution or other institution (including an orphanage or boarding home or hostel attached to it) by whatever name called, the management of which carries on (either exclusively or among other activities) the activity of imparting education therein, and includes every premises attached thereto; but does not include a tutorial institution.

Under Section 3(3)(b) of the Act of 1982, the Commissioner of Technical Education (earlier named as the Director of Technical Education) shall be the Chief Controlling Authority in all matters connected with the administration of technical education in the State. 'Technical Education' is defined under Section 2(44) of the Act of 1982 to mean any course of study in engineering, technology, architecture, ceramics, industrial training, mining, fine arts or in any other subject which may be

notified by the Government in that behalf. 'Private Institution' is defined under Section 2(35) of the Act of 1982, which reads as under:

"Private institution" means an institution imparting education or training, established and administered or maintained by any body of persons, and recognized as educational institution by the Government, and includes a college, a special institution and a minority educational institution, but does not include an educational institution-

- a. established and administered or maintained by the Central Government or the State Government or any local authority;
- b. established and administered by any University established by law; or
- c. giving, providing or imparting only religious instruction, but not any other instruction.

The Act of 1956, on the other hand, was promulgated to make provision for the co-ordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Para 2 of the 'Statement of Objects and Reasons' of the Act of 1956 published in the Gazette of India, 1954, states to the effect that the University Grants Commission was proposed to be established as a body corporate which would enquire into the financial needs of the universities and allocate and disburse grants for the universities for any general or specified purpose. The Commission was to have the power to recommend to any university the measures necessary for the reform and improvement of university education and to advise the university concerned about the action to be taken for the purpose of implementing such recommendation.

Section 2(f) of the Act of 1956 defines 'University' as under:

"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

Section 3 of the Act of 1956 deals with the application of the Act to institutions for higher studies other than universities. This provision reads as under:

“Application of Act to institutions for higher studies other than Universities:- The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.”

Section 23 of the Act of 1956 however prohibits the use of the word ‘University’ in certain cases and states to the effect that no institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act would be entitled to have the word ‘University’ associated with its name in any manner whatsoever. This provision therefore makes it clear that the institution which is conferred ‘Deemed-to-be-University’ status under Section 3 of the Act of 1956 would have no right to attach the word ‘University’ to its name. The petitioner foundation would therefore be well advised to take note of this embargo and act accordingly. It is thus clear that the Act of 1956, being a central legislation, owing its origin to Entry 66 in List I in the Seventh Schedule to the Constitution, relating to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions, operates in a limited sphere when compared to the Act of 1982, a legislation falling under Entry 25 of List III in the Seventh Schedule in the Constitution, which deals with the wider field of education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. It is therefore clear that the field covered by the legislation under Entry 66 of List I cannot be impinged upon by the legislation under Entry 25 of List III. However, to the extent the central legislation, the Act of 1956, does not deal with a particular issue, the provisions of the Act of 1982 would have application and the mere fact that a particular institution has been conferred ‘Deemed-to-be-University’ status under Section 3 of the Act of 1956 would not exclude the operation of the Act of 1982.

In this context, this Court had occasion to deal with the applicability of Sections 79 and 80 of the Act of 1982 to Koneru Lakshmaiah College of Engineering, the constituent college of the petitioner foundation, in W.P.No.15381 of 2008. By interim order dated 15.10.2008 passed therein, a Division Bench of this Court held that so long as the provisions of Sections 79 and 80 of the Act of 1982 were not declared

invalid by a Court of competent jurisdiction, they would be operative and cannot be interdicted. It is stated that this interim order is still holding the field.

The learned Government Pleader for Higher Education asserted that the Act of 1982 and the Act of 1956 operate in separate fields, that there was no conflict between the two and to the extent, the field was occupied by the Act of 1956, the Act of 1982 would not apply but on issues where the Act of 1956 was silent, the Act of 1982 would be applicable. This, according to the learned Government Pleader, would be the proper and correct way of applying these two laws. He therefore contended that the action of the Commissioner in instituting an enquiry into the affairs of the petitioner foundation and its constituent college under the proceedings impugned in the two writ petitions could not be found fault with and that it would be open to the State authorities to enquire into all such matters which fall within the ambit of the Act of 1982, not being covered by the Act of 1956. Learned Government Pleader placed reliance on ***GOVERNMENT OF ANDHRA PRADESH V/s. J.B.EDUCATIONAL SOCIETY*** to support his contention that when two provisions of law were not repugnant to each other and operated in different fields, both could be applied. He also pointed out that this decision advocated the duty of the Court to interpret enactments so as to avoid conflict between the two as far as possible.

It is no doubt true that insofar as the issue of admissions into deemed universities, falling within the ambit of the Act of 1956, is concerned, the law laid down by the Supreme Court in ***BHARATI VIDYAPEETH V/s. STATE OF MAHARASHTRA*** holds to the effect that the State cannot enact any legislation with regard to such admissions as all aspects relating to admissions are specifically entrusted to the University Grants Commission and such admissions could be made only through a common entrance test on an 'All India basis'. The Supreme Court observed that admissions play a crucial role in maintaining the high quality of education and for proper maintenance of academic excellence, as intended by the Act of 1956, and therefore admissions to deemed universities have to be made only under the control of the University Grants Commission. The State was therefore held denuded of any power over the admission procedure. It was in this context that the Supreme Court rejected the contention advanced by the State that the Act of 1956 was only for the purpose of making grants and observed that this argument ignored the provisions of the Act of 1956 which were intended for maintenance of standards in institutions and for coordinating teaching in universities, a higher purpose than

merely giving grants.

The observations of the Supreme Court in ***JAGDISH PRASAD SHARMA V/s. STATE OF BIHAR*** in this regard are also of relevance. These observations are as under:

“70. The authority of the Commission to frame regulations with regard to the service conditions of teachers in the Centrally-funded educational institutions is equally well-established. As has been very rightly done in the instant case, the acceptance of the Scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any Central legislation.”

It is not in dispute that the subject matter of the complaints of the fourth respondent, which were to be enquired into pursuant to the proceedings impugned in these two writ petitions, relate to incidents and events which were prior in point of time to the petitioner foundation being conferred ‘Deemed-to-be-University’ status under the Act of 1956. That apart, notwithstanding such status, it is always open to the State authorities to look into all issues which are not directly covered by the Act of 1956 or the regulations framed thereunder. The University Grants Commission formulated the UGC (Institutions Deemed-to-be-Universities) Regulations, 2010, in exercise of power conferred by Section 26(1)(f)&(g) of the Act of 1956. However, these Regulations would also have to be construed and interpreted harmoniously with the Act of 1982 and to the extent there is no repugnance, both would have to be given effect to. This Court deems it inappropriate to elaborate further on this aspect and any conflict or repugnance perceived between the two enactments and/or the regulations framed thereunder must necessarily be dealt with specifically as and when the occasion arises.

In summation, as the enquiry initiated pursuant to the proceedings dated 18.06.2011 has already culminated in a report which has been forwarded to the Commissioner

by the Enquiry Officer, under letter dated 12.08.2015, this Court does not deem it necessary to pass any order in W.P.No.22751 of 2011. It is for the State authorities concerned to take necessary action pursuant to the said report, in accordance with law.

As regards the enquiry proposed under the proceedings dated 19.09.2009, the petitioner foundation can have no real grievance with the State authorities merely looking into the functioning of its constituent teaching unit to ensure that its operations are lawful, in so far as the Act of 1982 is concerned. It shall be open to the State authorities to continue with the said enquiry keeping in mind the extent to which the Act of 1982 would have application and proceed accordingly. The enquiry report in this regard shall be forwarded to the State authorities concerned who shall thereupon take action as deemed necessary and as per law.

The writ petitions are disposed of accordingly. Pending miscellaneous petitions in both the writ petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

12TH OCTOBER, 2015

Note: L.R. copy to be marked

B/o PGS