

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.Nos.30192, 34458 and 34836 of 2016 and
WMP.Nos.26170 and 26171/2016 in W.P.No.30192/2016,
WMP.Nos.29682 and 29683/206 in W.P.No.34458/2016 and
WMP.Nos.29990 and 29991/2016 in W.P.No.34836/2016

W.P.No.30192/2016

RVS College of Engineering & Technology
rep. by its Administrative Officer,
Kali Kuppam, Thiruvettakudi,
Karaikal, Puducherry-609 609. ... Petitioner

Vs.

The Dean,
Affiliation Wing,
College Development Council,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-14. Respondent

Writ Petition is filed under Article 226 of the
Constitution of India to India for the issuance of a Writ of
Certiorarified Mandamus, calling for the records relating to the
order in No.PU/AW-4/11/2016-17, dated 21.07.2016 and quash the
same and direct the respondent to grant extension of affiliation
for the academic year 2016-2017, to the petitioner's Institute
viz., RVS College of Engineering & Technology situated at
Karaikal.

For Petitioner : Mr.N.R.Chandran,
Senior Counsel
for M/s.R.Kannan

For Respondent : Mr.Vijay Narayan,
Senior Counsel
assisted by Mr.Stalin Abhimanyu

W.P.No.34458/2016

RVS Institute of Management Studies and Computer
Applications,
rep. by its Administrative Officer,
Kali Kuppam, Thiruvettakudi,
Karaikal, Puducherry-609 609. ... Petitioner

Vs.

The Dean (In charge),
Affiliation Wing,
College Development Council,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-14. Respondent

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order in No.PU/AW4/11/2016-17/46 dated 13.06.2016 and the consequential order vide Proceeding No.PU/AW4/11/2016-17/69, dated 18.07.2016 issued by the respondent and quash the same and direct the respondent to grant extension of affiliation for the academic year 2016-2017 to the petitioner's Institute viz. RVS College of Engineering & Technology situated at Karaikal.

For Petitioner : Mr.N.R.Chandran,
Senior Counsel
for M/s.R.Kannan

For Respondent : Mr.Vijay Narayan,
Senior Counsel
assisted by Mr.Stalin Abhimanyu

W.P.No.34836/2016

RVS College of Arts & Science,
rep. by its Administrative Officer,
Kali Kuppam, Thiruvettakudi,
Karaikal, Puducherry-609 609. Petitioner

Vs.

The Dean (In charge),
Affiliation Wing,
College Development Council,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-14. Respondent

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order in No.PU/AW-3/7/RVSCA&S/2016-17/106 dated 13.06.2016 and quash the same and direct the respondent to grant extension of affiliation for the academic year 2016-2017, to the petitioner's Institute viz. RVS College of Arts & Science situated at Karaikal.

For Petitioner : Mr.N.R.Chandran,
Senior Counsel
for M/s.R.Kannan

For Respondent : Mr.Vijay Narayan,
Senior Counsel
assisted by Mr.Stalin Abhimanyu

C O M M O N O R D E R

Since the issue involved in all the three Writ Petitions is one and the same, they are taken up together and are disposed of by means of a Common Order.

2. The facts of the case in W.P.No.30192 of 2016 are as follows:

(a) The petitioner's College is an existing Engineering College and running from 2008-2009. According to them, the extension of approval was granted by the AICTE and the affiliation was given by the Puducherry University. While so, for the academic year 2016-2017, on January, 2016, the AICTE had given approval. Thereafter, the respondent University visited the college for surprise inspection. The Inspection Committee pointed out certain deficiencies pursuant to the inspection and a report to that effect was submitted to the respondent. The grievance of the petitioner's college is that even giving an opportunity and without giving any show cause notice, the respondent passed the impugned order rejecting the petitioner's request for affiliation for the academic year 2016-2017. Further, it is also stated that the Inspection Committee Report was also not furnished by the respondent. Therefore, according to the petitioner, without calling for any explanation, the affiliation to the petitioner's college for the academic year 2016-2017 was rejected.

(b) It is pertinent to note that the Government of Puducherry allotted students under free seat quota by the CENTAC. Further, it is also stated that the petitioner's college has rectified the deficiencies and submitted a compliance report to the so called alleged deficiencies. But, without verifying the compliance report, the respondent passed the present impugned order. Therefore, the rejection order passed by the respondent is under challenge in this Writ Petition.

3. In this Writ Petition, the respondent has filed a counter affidavit as follows:

(a) The writ petition is liable to be dismissed on the sole ground for non-joinder of necessary party, namely, the Registrar of the respondent University. Further according to the respondent, the respondent has granted provisional affiliation for the academic year 2008-2009 for starting four B.Tech. Courses in RVS College of Engineering & Technology, as a special case and also subject to appointment of senior level faculty and also subject to fulfilling other affiliation conditions vide Letter No.PU/AS-I/ACA-8/06/RVSCE&T/08-09/182, dated 21.04.2009. Further, the petitioner has also suppressed the earlier order dated 23.12.2008 passed in W.A.Nos.1272 to 1274/2008 regarding grant of affiliation. It is also stated that the AICTE in Letter No.07/05/PON/E&T/2008/35 dated 29.06.2008 has granted approval to RVS Educational Trust, Karaikal, to establish RVS College of Engineering for conducting four B.Tech Courses subject to the condition that affiliation should be obtained from the concerned Affiliating University within a period of two years and also the approval was further subject to 16 other conditions. Among the 16 other conditions, the AICTE has stipulated that the admissions to the courses shall be made only after the Affiliating University/State Board has given permission to start the course. Therefore, according

to the respondent, the grant of approval itself is subject to grant of affiliation and the admission itself can be done only after the affiliating University has granted permission to the course.

(b) The University has conducted surprise inspection to the Petitioner's college two days on 17.02.2016 and 18.02.2016 in which the Inspection Committee has made 19 observations and has strongly recommended not to grant affiliation for the academic year 2016-2017. However, the existing batch of students can be allowed to complete their courses for which the college has to rectify the deficiencies. Further, the observations and the recommendations of the Inspection Committee were communicated to the Principal, RVS College of Engineering & Technology with a request to rectify the deficiencies within 10 days by letter dated 01.04.2016 and in the said letter, they have specifically stated that no admission of students should be made for academic year 2016-2017 before rectifying the deficiencies failing which appropriate action would be taken. According to the respondent, since the college did not submit the compliance report within ten days and as per the communication dated 02.05.2016, the present impugned order came to be passed. Therefore, there was no violation of principles of natural justice as they have given fair opportunity by giving intimation and called for rectification report. But the Administrative Officer of the College submitted a compliance report dated 04.05.2016 without even rectifying the deficiencies and without furnishing reasonable justification for the deficiencies. The compliance report submitted by the college was referred to Inspection Committee Members for verification. After verification of the compliance report, the committee observed that the college has not rectified the deficiencies and also the contents of the compliance report cannot be accepted. Thus, recommended not to grant provisional affiliation for the academic year 2016-17. However, the college was instructed to rectify all the deficiencies in all aspects and submit a complete compliances report for consideration for the academic year 2017-18.

(c) Further, based on the recommendations of the Inspection Committee and approval of the Vice-Chancellor, the decision of the University not granting provisional affiliation for four B.Tech Courses for the academic year 2016-17 and not to admit students for the year 2016-17 was communicated in Letter No.PU/AW-4/11/2016-17/47 dated 13.06.2016 and the Compliance Report was signed by the Administrative Officer of the petitioner's college who is not a competent authority to sign on behalf of the college and hence the contents cannot be accepted. The respondent as early as on 01.04.2016 has communicated that admissions for the year 2016-17 should not be made without the approval of the University. The college alone should be responsible for admitting students for the academic year 2016-17, if any. Therefore, according to the respondent, the final order was passed only after the college has not rectified the already pointed out deficiencies and the order is well within the powers of the University as conferred by the relevant provisions under the Pondicherry University Act and Statutes and

also with reference to the AICTE Communication dated 29.06.2008 inasmuch as the admissions can be made only after affiliation by the affiliating University. Therefore, the final order of the University is maintainable in law.

(d) Further, the University has been pointing out the deficiencies in the college, more particularly, the non-availability of qualified faculty and other essential amenities. But, when the University after inspection found that the college is involved in serious irregularities such as irregular admission and attendance of students, was constrained not to grant provisional affiliation for the academic year 2016-17 which is well within the legitimate powers of the University. In fact, even according to the letter of the College dated 29.06.2016, they admitted that they are taking steps for rectifying the deficiencies, no proper reason has been taken for the absence of teachers and students on 17.02.2016 and 18.02.2016. In view of all the above, the respondent would pray to dismiss the writ petition.

4. The W.P.No.34458 of 2016 has been filed by the very same Management challenging the impugned order dated 13.06.2016 and the consequential order dated 18.07.2016 by which, the respondent has denied the provisional affiliation for RVS Institute of Management Studies and Computer Applications, Kalikuppam, Thiruvettakudi, Karaikal, Pudhucherry, for the academic year 2016-17 and also directed them to rectify all the deficiencies as pointed out in their earlier letter dated 04.04.2016 and 13.06.2016 and apply for provisional affiliation for the academic year 2017-18 within the stipulated date for consideration and not to make any admissions for the academic year 2016-17 failing which pertinent consequences have to be faced by the college for which the college alone would be responsible.

5. According to the petitioner, the authority has passed the order without notice. Further, according to them, the college has been running successfully right from the year 2008. The All India Council for Technical Education granted approval for starting a new college after thorough verification and inspection and the respondent University accorded affiliation without any difficulty. Though AICTE after verifying all the documents and records, accorded approval on 07.04.2016, it made a surprise visit in their Institute on 17.02.2016 and 18.02.2016 and thereafter, issued the impugned order dated 13.06.2016 and the consequential order dated 18.07.2016 which are unsustainable in law. Even as per the communication dated 04.04.2016, they only directed to rectify the alleged deficiencies. They were all immediately rectified by the petitioner. Therefore, the impugned order is liable to be quashed.

6. The W.P.No.34836/2016 has been filed by the very same Management to quash the impugned order of the respondent dated 13.06.2016 and to grant extension of affiliation for the academic year 2016-17 to the petitioner's Institute viz. RVS

College of Arts & Science situated at Karaikal wherein also the deficiencies which have been pointed out by the Inspection Committee have not been rectified.

7. According to the petitioner, the petitioner's college has been running from the year 2006 and for the academic year 2016-2017, the respondent made a surprise visit to inspect their Institute on 17.02.2016 and 18.02.2016 for considering grant of affiliation to the academic year 2016-2017. Based on the observations, the committee on its own takes a decision not to recommend for grant of affiliation for the academic year 2016-17. Thereafter, by communication dated 06.04.2016, they were directed to rectify the alleged deficiencies. By their letter dated 04.05.2016, the petitioner informed the respondent about the fulfillment of the conditions as required by their letter dated 06.04.2016. But, without considering the same, the impugned order dated 13.06.2016 came to be passed. Therefore, challenging the same, the petitioner is before this Court with this Writ Petition.

8. Learned Senior Counsel appearing for the petitioner in all these 3 Writ Petitions would mainly contend that the impugned orders passed by the authority are without any basis, since no notice whatsoever has been granted before passing the same. The affiliation for the petitioners colleges have been summarily rejected without even any explanation and thus, there is violation of principles of natural justice. Even assuming for a moment that they found certain irregularities during the inspection of the petitioners colleges, they have been only asked to rectify the deficiencies which they have done already and communicated the same to the respondent. But without considering their rectification reports, the impugned orders came to be passed. Further, the pointed out deficiencies are only rectifiable deficiencies. Therefore, all these 3 Writ Petitions have to be allowed by quashing the impugned orders of the respondent.

9. Learned Senior Counsel appearing for the respondent would mainly contend that the question of violation of the principles of natural justice does not arise. In fact, in these Writ Petitions, they have suppressed the earlier notice and straight away referred only the final orders whereas the earlier orders would clearly state that they have given an opportunity to put forth their claim. But that has not been utilised.

10. In support of their respective contention, both sides would reply upon several judgments.

11. The learned Senior Counsel for the petitioner would rely on a decision of this Court in Trichy Engineering College rep. by Dr.M.Sekar, Public Relations Officer, Somu Nagar, Konali, Tiruchirappalli-621 132 and others vs. Anna University rep. by its Registrar, Chennai-25 and others reported in 2004 (5) CTC 572 in which this Court has held that for disaffiliation and conditions for affiliation, power can be exercised only in terms of statute, ordinances, regulations and absence of regulation disabled university to have resorted to take action

for disaffiliation. The learned Senior Counsel would further submit that once the affiliation for the year 2016-2017 has been given by AICTE, the respondent University has got only a limited role. The University can make a limited enquiry as to whether the institution is competent for affiliation and if it is found that the college does not have qualified teachers, adequate finance or premises, it is open to them to bring the same to the knowledge of the AICTE, but, straightaway, it cannot take any action for disaffiliation. Therefore, according to the learned Senior Counsel for the petitioner, the impugned orders have to be quashed.

12. Per contra, the learned Senior Counsel for the respondent would rely on a decision of the Madurai Bench of Madras High Court in Chennai Medical College and Hospital and Research Centre, Trichy, rep. by its Dean, Irungalur, Manachanallur Taluk, Trichy-621 105 and another reported in (2012) 1 MLJ 593 in which the Court has held that any admission before affiliation is invalid or retrospective affiliation cannot cure initial wrongful admission. The learned Senior Counsel would also rely on a decision of the Hon'ble Supreme Court in Association of Management of Private Colleges vs. All India Council for Technical Education and others reported in (2013) 8 Supreme Court Cases 271 for the proposition that AICTE Act does not belittle and destroy authority or autonomy of other statutory bodies like UGC-AICTE Act does not intent AICTE to be an authority either superior or to supervise or control the Universities and thereby superimpose itself upon said universities merely for the reason that it is laying down certain teaching standards in technical education or programmes formulated in any of the department or units of universities. It was also held that as per Sections 10 to 12 of AICTE, Act, AICTE cannot by itself enforce or issue any sanction to or penalise universities or their constituent and affiliated colleges, including private aided and unaided colleges. The said power of AICTE is limited to the purpose of ensuring proper maintenance of norms and standards in technical education system and compliance therewith, but with no further or direct control over Universities and their constituent and affiliated colleges, including private aided and unaided colleges. AICTE does not have any power of direct action except bringing non-compliance to notice of UGC, which alone is competent to take action in regard thereto. Therefore, in Bharathidasan University case reported in (2001) 8 SCC 676, it was clarified that the role of AITCE is only advisory and recommendatory and one of providing guidance and AICTE has no authority empowering it to issue or enforce any sanctions by itself.

13. I have considered the submissions made on either side and I have also perused the records carefully.

14. In S.Venkatachalam Iyer vs. State of Madras rep. by the Secretary to Government, Home Department, Madras and others reported in AIR 1957 Madras 632, this Court has held that Bias

may be of three kinds, namely, pecuniary, personal and official. Once it is proved that a member of a tribunal has a pecuniary interest in the subject-matter of the decision, the order passed by the tribunal will be forthwith quashed. Personal bias may be proved in several way e.g. by the existence of close relationship between a member of the Tribunal and one of the parties. In case of official bias, there may be no personal ill-will, but there may be evidence of an abnormal desire to uphold a particular departmental policy, which would prevent an impartial adjudication of the dispute.

15. Here, in these matters, according to the learned Senior Counsel for the petitioners, the University has got a bias against the petitioner. Therefore, they have not granted affiliation for their institutions during the academic year 2016-2017.

16. On a careful consideration of the entire records produced by both parties and the relevant judgment passed by this Court as well as by the Hon'ble Supreme Court, it has to be seen as contended by the learned Senior Counsel for the petitioner as to whether no notice or opportunity has been afforded to the petitioner before passing the impugned order. In this connection, a perusal of the letter of AICTE dated 29.06.2008 would clearly go to show that it has granted approval to RVS Educational Trust, Karaikal, to establish RVS College of Engineering for conducting B.Tech Courses subject to the condition that affiliation should be obtained from the concerned Affiliating University within a period of two years and that the admissions to the courses shall be made only after the Affiliating University has given permission to start the course. Therefore, the condition for affiliation is mandatory for admission and mere approval by the AICTE alone is not enough for admission. This, I have specifically stated following the guidelines of the Supreme Court in my order reported in (2012) 1 MLJ 593 at paragraphs 59 and 60 as follows:

''59. The above extracted statute would only indicate that prior to affiliation, many formalities are required to be done. Only after fulfillment of required conditions a certificate will be issued to enable an institution to resort to admitting the students. Prior to issuance of a certificate, admission can never even be thought of. Here is a case where the petitioner college straightaway jumped to the conclusion that without affiliation, they can admit the students. Admittedly, the petitioner had submitted their application with form III of the concerned University only for consent for affiliation, but the actual affiliation was not granted. As stated earlier, when there is a definite embargo even in form III itself that the petitioner should not admit the students without affiliation, they cannot admit students. Therefore, it is clear that the act of the petitioner institution in admitting students without

affiliation is nothing but an illegality and not an irregularity. As the petitioner institution did not have an affiliation at that point of time, the admission before affiliation is invalid. Definitely, at the time of admission, there should be affiliation. The petitioner cannot now contend that there is no provision under the Medical Council of India and they cannot question the right regarding the affiliation and it is not the case of the Medical Council of India that the petitioner has no infrastructure for running the college. As far as the students were admitted at that point of time becomes illegal or irregular, the Medical Council of India will have the power to issue notice to cancel the admission especially at the earliest point of time, even as early as November 2009 itself they questioned the admission and issued the first impugned order dated 16.11.2009 to discharge the students. Therefore, I hold that the admission made by the petitioner for the first year i.e., for the year 2009-2010 without affiliation by the university is bad in law. Secondly, the Medical Council of India has got power under Section 10(A) to supervise and also interfere in admission level as held in the decision in Dr.B.R.Ambedkar Medical College, Bangalore and Another v. Union of India and Others (Supra) after reference to the third Judge. In fact, in this judgment it has been clearly pointed out that the power of Medical Council of India during the course of the permission upto the fourth year is very clearly extracted in this judgment. Only after regular permission is given, then the Medical Council of India cannot interfere other than there is excess students being admitted.

60. We then come to the crucial factor. The admission has become illegal. The admission is without powers. The person or the authority who is to question is the university but the university which has formulated various regulations for affiliation, which are given in the university's regulation. Clause 3 of the Regulation reads as follows:

"3. It shall be necessary for the proposed Medical College seeking affiliation to the Tamil Nadu Dr.MGR Medical University, Madras, for starting first year MBBS degree course to apply for Certificate of Registration of its application with the Tamil Nadu Dr.MGR Medical University, Madras.""

With this background, we have to now analyse the present cases.

17. In W.P.No.30192 of 2016, in the counter, the respondent have very clearly pointed out that before issuing the impugned order dated 21.07.2016, on 01.04.2016 itself, the petitioner was informed by letter that no admission of students should be made for academic year 2016-17 before rectifying the

deficiencies failing which appropriate action would be taken. There was a surprise inspection as early as on 17.02.2016 and 18.02.2016 and the Inspection Committee has given 19 observations and strongly recommended not to grant affiliation for the academic year 2016-2017. But the contention of the petitioner is that the said inspection report was not given to them. But the fact remains that the inspection was made in their presence. The defects were marked and by a letter dated 02.05.2016, the respondent directed the petitioner to rectify the deficiencies and submit a Compliance Report. Therefore, without knowing the deficiencies, they could not for the first time by their letter dated 04.05.2016, have also admitted that the students admission was poor during the previous year. But, it cannot be a reason for its disaffiliation. In fact, once again in the letter dated 29.06.2016, the petitioner sought permission to admit the students for the academic year 2016-17. Only in respect of that letter, the present impugned order has been passed. If really the petitioner is aggrieved, they should have come as against the order passed on 01.04.2016. In the present affidavit, nothing has been mentioned about that order nor they have challenged anything against the order dated 01.04.2016. Therefore, the non-challenge of the order dated 01.04.2016 in the present writ petition, definitely, will go against them. However, they have challenged the order dated 13.06.2016 in W.P.No.34458 of 2016.

18. The letter dated 13.06.2016 clearly states that it is applicable only for the present academic year 2016-17 and they can also continue for the next academic year after compliance of all the deficiencies. Therefore, even in the admission, this Court also specifically pointed out while granting interim stay that any admission made will be subject to the result of the writ petition and the institution is directed to make the students aware that their admission is provisional. They will not get any equity by their admission. Further, they cannot seek any permission at later point of time, in the event, they are losing the writ petition.

19. In so far as W.P.No.34458 of 2016 is concerned, the petitioner themselves have sent a letter dated 20.05.2016 that they could not conduct the MBA Course for the academic year 2015-16 because the admission of students was very poor. Even this academic year so far they have not received any enquiry for this course. Hence, they requested to keep the MBA Course in abeyance for the academic year 2016-17. Therefore, the learned Senior Counsel for the petitioner would contend that when there is no admission for MBA Course in the petitioner Institution for the previous academic year 2015-16, there is no question of admission of students in this academic year 2016-17 would arise.

20. Lastly, so far as the Arts College in W.P.No.34836/2016 is concerned, by letter dated 24.08.2016, the petitioner have informed to the respondent that the deficiencies mentioned have already been rectified and there are large number of admission enquiries and requested for extension of provisional affiliation of Arts and Science College, Karaikal

for the academic year 2016-17. As discussed earlier, the petitioner have not made out any case in this Writ Petition also. Therefore, this Writ Petition is also liable to be dismissed.

21. In the result, all the Writ Petitions are dismissed. It is made clear to the petitioner that this order will not prohibit or apply for affiliation and seeking for approval for the academic year 2017-18 and as pointed out earlier, the students who were admitted during the academic year 2016-17, will not be entitled to seek any equity. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

tsi

To

The Dean,
Affiliation Wing,
College Development Council,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-14.

3 ccs to M/s.R. Kannan, Advocate, Sr. 61647
1 cc to Mr. Stalin Abhimanyu, Advocate, Sr. 61386

W.P.Nos.30192, 34458
and 34836 of 2016

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