



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :16.02.2017

Pronounced on : 24.02.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition(MD)No.10807 of 2015

and

Miscellaneous Petition(MD)Nos.1 and 2 of 2015

Sri Krishna Educational Trust
rep. by its Managing Trustee,
K.Balaraman
Kullapuram Village,
Periyakulam Taluk,
Theni District.

... Petitioner

Vs.

1.The Secretary to Government,
Agricultural Department,
St. George Fort,
Chennai.

2.The Secretary to Government,
Finance Department,
St. George Fort,
Chennai.

3.The Vice Chancellor and Chairman Board
of Management,
Tamil Nadu Agricultural University,
Coimbatore.

4.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the information Brochure, under Graduate admission 2015, The Tamil Nadu Agricultural University dated Nil issued by the 4th respondent and quash the same insofar as collecting first year fee as prescribed by Tamil Nadu Government from the candidates admitted during counselling under TNAU Quota (50 %) in Private affiliated colleges and further direct



the respondents to permit the petitioner from collecting the first year fee prescribed by Tamil Nadu Govt. from the candidates admitted during counselling under TNAU quota (50%).

For Petitioner : Mr. Isaac Mohanlal
Senior Counsel for
Mr. D. Sadiq Raja

For Respondents : Mr. A. Muthukaruppan
A.G.P (for R1 and R2)

Mr. A. Thirumurthy (for R3 and R4)

ORDER

The petitioner Educational Trust is running a college, namely, College of Agricultural Technology at Theni, Theni District for offering B.Sc., (Agri) degree course. The present writ petition is filed challenging the Information Brochure, Under Graduate admission 2015, issued by the Tamil Nadu Agricultural University, namely, the 4th respondent, only insofar as the clause empowering the University to collect the first year fee from the candidates admitted during the counselling under Tamil Nadu Agricultural University quota (50%) is concerned. Consequently, the petitioner also prays for a direction to the respondents to permit them to collect first year fee from such of those candidates.

2. The case of the petitioner, in short, is as follows:-

The petitioner Educational Trust has established the said college and is administering the same. The 4th respondent-University granted affiliation on 07.07.2010. A Memorandum of Understanding was entered on 07.07.2010 between the petitioner and the 4th respondent. As per clause 5 of the said Memorandum, the college will function under overall supervision of the 4th respondent-university in respect of all academic matters without affecting the autonomy and authority of the institute in respect of administration, finance and other aspects. Neither under the Tamil Nadu Agricultural University Act, 1971 nor under the Memorandum of Understanding, any power is given to the 4th respondent-University to interfere with the autonomy and authority of the petitioner in respect of administration, finance and other aspects. While so, the 4th respondent University issued the impugned Information Brochure for Under Graduate admission 2015, and directed the candidates admitted during the counselling under Tamil Nadu Agricultural University quota (50%) in private affiliated colleges, to pay the first year tuition fee, as prescribed by Tamil Nadu Government, to the 4th respondent-University on the date stipulated in the admission allotment letter. It is further stated therein that the private affiliated colleges are not permitted to collect the first year fee or other fee from the newly admitted candidates. However, the private affiliated colleges were permitted to collect fees from



second year onwards. The above condition imposed in the Information Brochure is without any authority of law or power conferred on the University. It directly interferes with the financial administration and control of the institute viz., the private college run by the private trust.

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3. The fourth respondent filed a counter affidavit on his behalf and on behalf of the third respondent. The crux of the contention of the University, as projected in the counter affidavit, is as follows:-

The petitioner has no *locus standi* to file the present writ petition, when the impugned Information Brochure is made applicable to all the affiliated private colleges. In the Memorandum of Understanding entered between the respective colleges and the University, it was agreed for collection of the first year fee by the University and to pay salary to University Professor/Officers deputed to work as Deans/Special Officers in the affiliated colleges. The petitioner having entered into such Memorandum of Understanding with the 4th respondent-University and having allowed such practise to go on for the past two academic years, namely, 2013-14, 2014-15, they are not entitled to raise the objection now, in respect of the academic year 2015-2016. Thus, the writ petition is liable to be dismissed on the principles of estoppel. No other college, except the petitioner, has objected to the collection of 1st year fee by the 4th respondent University. As per clause 11 of the Memorandum of Understanding, the post of Dean for B.Sc., (Agri) degree programme of Agricultural College shall be filled up with an Officer of Tamil Nadu Agricultural University on deputation basis. Accordingly, one Dr.A.Balakrishnan, Professor and Head of a Research Station was deputed to work as the Special Officer (equivalent to the post of Dean) at the petitioner-College from 11.07.2010 on deputation basis. He worked at the petitioner-college from 11.07.2010 to 30.09.2011. He had gone on Medical Leave from 01.10.2011 to 02.11.2011 and thereafter, applied for reversion to the 4th respondent-University. Accordingly, he was reverted back and posted as Professor and Head at Vaigaidam. The petitioner failed to pay the leave salary to the said person in spite of specific request made by him. The University also requested the petitioner to pay the leave salary to the said person through various reminders. The petitioner did not comply with the request. In view of the above action of the petitioner, the 4th respondent University at its Top Level Meeting held on 09.10.2013, decided to collect the tuition fee directly from the students at the time of admission to the affiliated private colleges under Tamil Nadu Agricultural University Merit quota and open a separate account for this amount and disburse the salary to the Deans deputed to various affiliated colleges from such fund and to refund the balance amount to the concerned affiliated private colleges. Accordingly, the first year fee was collected from the students during the academic years 2013-14 and 2014-15 and credited into a separate account. The salary of the Deans/Special Officers on deputation with affiliated colleges have been paid from such account and balance amount has been



returned to the private management colleges. In respect of the petitioner College, a sum of Rs.10,34,095/- has been refunded to the petitioner in April 2015.

4.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner submitted as follows:-

The 4th respondent-University is not having any statutory power to collect the fees from the students admitted in the private colleges. The Memorandum of Understanding also does not stipulate such right. Right to collect fee must be left with the institution, as it's exclusive right. The State, at the most, can only regulate the collection of fee and cannot collect the fees by itself. The petitioner is not collecting any capitation fee or running the institution with profit motive. The fee fixed by the college is the one regulated by the Government. As per clause 5 of the Memorandum of Understanding, the financial independence must be left with the college with which, the University cannot interfere. There is no estoppel against the fundamental right.

5.In support of his submission, the learned Senior Counsel relied on the **T.M.A Pai** case reported in **(2002) 8 SCC 481**.

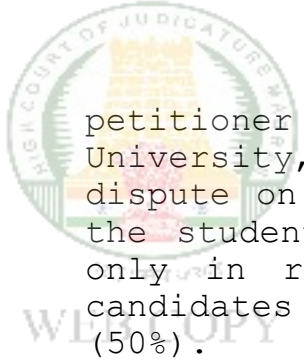
6.Per contra, Mr.A.Thirumurthy, learned counsel appearing for the 3rd and 4th respondents submitted as follows:-

Admittedly, the petitioner entered into the Memorandum of Understanding with the University and therefore, they are bound by such agreement. Clause 11 of the said Memorandum empowers the University to appoint Dean at the petitioner College by way of deputation and consequently, the respondent University is entitled to collect the first year fee, that too, only for the purpose of paying the salary to such of those persons appointed by the University at the petitioner college. It is not in dispute that after paying such salary, the balance amount is being paid to the petitioner and other private colleges. Therefore, the petitioner is not aggrieved in any way by such collection of fees, impugned in this writ petition.

7.Heard the learned Senior Counsel appearing for the petitioner, the learned counsel appearing for the respondents 3 and 4 and perused the materials placed before this Court.

8.The point for consideration in this writ petition is as to whether the respondent University is entitled to collect the first year fee from the students admitted in the petitioner college during counselling under the Tamil Nadu Agricultural University quota (50%) under the guise of paying salary to the Dean appointed at the petitioner college on deputation from the University.

9.There is no dispute to the fact that the petitioner trust is the private educational trust and the college, namely, College of Agricultural Technology at Theni, Theni District being run by the petitioner trust, is a private college. It is true that the



petitioner college was affiliated to the Tamil Nadu Agricultural University, namely, the contesting respondent herein. There is no dispute on the entitlement of the college to collect the fees from the students from second year onwards. What is under dispute is only in respect of the collection of first year fee from the candidates admitted under Tamil Nadu Agricultural University quota (50%).

10. It is the contention of the respondent-University that as per the Memorandum of Understanding, dated 07.07.2010, entered between the petitioner and the respondent university, such collection of fee by the University is agreed upon by the petitioner. Pointing out the fact that such practice of collecting the fees for the first year exercised during the last two academic years was not objected by the petitioner, the University wanted to invoke the principles of estoppel against the petitioner.

11. In order to answer the issue involved in this case, it is better to understand the position of law in respect of the right to financial administration of the private colleges. Section 28 of the Tamil Private Colleges (Regulation) Act, 1976 deals with fees and other charges leviable by the private college. It reads as follows:-

"28. Fees and other charges.- (1) Subject to the provisions of sub-section(2), no private college shall levy any fee or collect any other charge or receive any other payment except a fee, charge or payment specified by the competent authority:

Provided that the examination fees that are being prescribed by the University shall continue to be prescribed by such University.

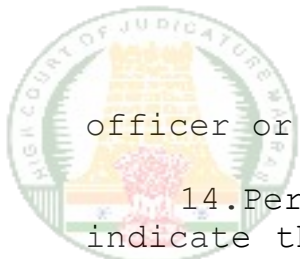
(2) Every private college in existence on the date of commencement of this Act and levying different rates of fees or other charges or receiving any other amount on such date, shall obtain the prior approval of the competent authority before continuing to levy such fees or charges or receive such payment."

12. Section 29 of the said Act deals with utilization of fund and property of private college. It reads as follows:-

"29. Utilisation of funds and property of private college.- (1) All the moneys collected, grants received and other property held by or on behalf of a private college shall be utilised for the purpose for which they are intended and shall be accounted for by the educational agency in such manner as may be prescribed."

13. Section 23 of the said Act deals with pay and allowance of teachers and other persons employed in private college. It reads as follows:-

"23. Pay and allowances of teachers and other persons employed in private colleges to be paid in the prescribed manner.- The pay and allowances of any teacher or other person employed in any private college shall be paid on or before such day of every month, at such rate and in such manner and by or through such authority,



officer or person, as may be prescribed."

14. Perusal of the above provisions of law would clearly indicate that the fees and other charges from the students admitted in private colleges shall be levied and collected by the college itself provided such levy and collection are in accordance with the fees prescribed by the Government and the University, if such fee is in respect of the examination. Section 29 of the said Act clearly stipulates that all the money collected, grants received shall be utilized for the purpose for which they are intended and shall be accounted for by the educational agency in such manner as may be prescribed. Likewise Section 23 takes care of the interest of the teachers and other persons employed in the private college for their payment of salary and allowances by the private college.

15. From the perusal of the above-said provision, it is made clear that there is no other body, either the Government or the University, is entitled or empowered to collect the fees from the students admitted into the private college directly.

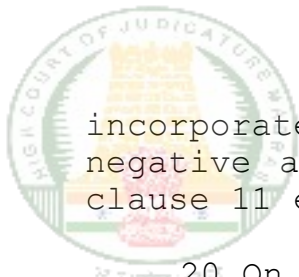
16. The learned counsel for the University is not in a position to point out any other provision of law empowering the University to collect the fees under any circumstances.

17. The respondent-University is heavily relying upon Clause 11 of the Memorandum of Understanding to contend that the University is entitled to collect the first year fee. Clause 11 of the Memorandum of Understanding reads as follows:-

"11. The post of Dean for B.Sc. (Agri) degree programme of Agricultural College shall be filled up with an officer of TNAU on deputation basis/by direct appointment duly following the norms of TNAU/ICAR. In case of deputation of staff, the Foreign Service terms and conditions prescribed by TNAU shall be made applicable."

18. A careful perusal of the above-said clause does not indicate anywhere about the entitlement of the University to collect the first year fee from the students directly. It only contemplates the filling up of the post of Dean for B.Sc. (Agri) degree programme with an officer of Tamil Nadu Agricultural University on deputation basis or by direct appointment by duly following the norms of Tamil Nadu Agricultural University/ICAR.

19. In my considered view, clause 11, in fact, only empowers the colleges to appoint a competent person to the post of Dean either by way of deputation from the Tamil Nadu Agricultural University or by direct recruitment. In other words, clause 11 does not specifically empower the University to make such appointment directly. Even assuming that a liberal interpretation can be given to clause 11 to mean that such appointment is to be made only by the University, still the question remains as to whether such clause further empowers the University to collect the first year fee, in the absence of any specific and express terms to that effect



incorporated therein. The answer to the said question would be in negative as there is no specific or express terms available under clause 11 empowering the University to collect the fee.

20. On the other hand, perusal of clauses 5, 10, 19 and 22 of the Memorandum of Understanding would clearly indicate that the respondent-University is not entitled to interfere with the petitioner's administration including its financial and other aspects. For better appreciation, the above clauses are extracted hereunder:

"5. The College of Agricultural Technology, Theni shall function under the overall supervision of the TNAU in respect of all academic matters without affecting the autonomy and authority of the Institute in respect of administration, finance and other aspects.

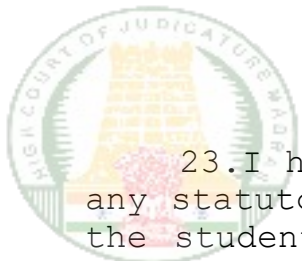
10. Sri Krishna Education Trust shall carry out the administration, finance management and other allied activities of the institute in accordance with the rules framed by the Institute.

19. Sri Krishna Education Trust agrees to collect the Tuition Fees and other fees at the rates prescribed by the Government of Tamil Nadu for the private Self-Financing Engineering Colleges.

22. Sri Krishna Education Trust shall have the option to appoint the teaching staff and other technical staff and supporting staff either by direct recruitment or on deputation on Foreign Service terms and conditions as may be necessary from time to time and the qualifications of Teaching and Technical staff should be as per the guidelines of norms prescribed by TNAU for the affiliation of institutions for conducting Degree programme and the age of teaching staff should not exceed 60 years. In the interest of maintaining the academic standard and efficient administration of the Institute, the TNAU shall have the privilege to depute the teaching staff on Foreign Service terms and conditions at the request of the Institute subject to availability of teachers."

21. Clause 19 more precisely stipulates that the petitioner-college is to collect the tuition fees. Likewise clause 22 contemplates the appointment of teacher and other staff at the petitioner-college by the college itself and the respondent-University shall have the privilege to depute the teaching staff on Foreign Service terms and conditions, that too, at the request of the institute subject to availability of teacher. When such being the clear and categorical terms and conditions of the Memorandum of Understanding entered between the parties, the respondent-University is not justified in introducing a new condition unilaterally contra to the above terms, that too in the Information Brochure, directing the first year students to pay first year fees to the University directly.

22. It is true that the University has collected such fees during the previous two academic years and the petitioner has not objected to the same. Therefore, the University contends that the present writ petition is barred by the principles of estoppel. I do not propose to accept such contention for the following reasons.



23. I have already pointed out that the University is not having any statutory power for collecting the first year fee directly from the students. I have also pointed out that the University is not entitled to interfere with the financial administration of the petitioner-college. I have also pointed out the relevant clauses in the Memorandum of Understanding, wherein the right to collect fee by the college and its financial independence has been reiterated at more than one place. I have also pointed out that clause 11 does not empower the University to collect the first year fee. Under such circumstances, the act of the University in attempting to collect such fee, though continuously for the third academic year, cannot become legal, merely because such collection was not opposed by the petitioner on the last two occasions. What is illegal, cannot become legal even by way of concession. Therefore, such collection being an illegal action of the University, cannot be perpetuated by taking shelter under the principles of estoppel. Needless to say that a person is not entitled to take shelter under the principles of estoppel in support of his action, when such action itself is found to be an illegal one. Therefore, I reject the above contention of the learned counsel for the University and hold that the claim of the petitioner in this writ petition is not hit by the principles of estoppel.

24. No doubt, it is true that the State can regulate the fees structure. But at the same time, it is to be noted that the regulation does not mean taking away the right of the private colleges itself to collect the fee. If the colleges collect exorbitant fees more than the one prescribed by the Government, certainly the Government is empowered to act against such erring institution and pass appropriate orders against those institutions. But the facts of the present case is not to that effect. Even according to the respondent-University, the present impugned condition is imposed only because the petitioner-college failed to pay leave salary to the Dean appointed at the petitioner-college. Such an isolated act of the petitioner, if true, has to be dealt with only in accordance with law and not outside its bounds. If the petitioner college fails to pay the leave salary to the person concerned, there are ways and means to collect such fees from the college by taking appropriate proceedings known to and sustainable under law. In any event, the present course of action is not the one permissible under law. The Honourable Supreme Court in **TMA. Pai 's** case, while considering the rights of the minority and private colleges, has observed at paragraphs 53 and 54 as follows:-

"53. With regard to the core components of the rights under Article 19 and 26(a), it must be held that while the state has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted



by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the state or the concerned university. It will, however, be objectionable if the state retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restrictions on the attorney of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

25. Considering the above-stated facts and circumstances, I am of the view that the petitioner is entitled to succeed in this writ petition. At the same time if the university or the concerned person has any claim against the petitioner-college in respect of leave salary payable to such person as discussed supra, it is open to the University to resort to the other remedy available under law for recovery of such amount from the petitioner college.

26. Accordingly, this Writ Petition is allowed and the impugned Information Brochure dealing with the collection of first year fee by the University alone is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Agricultural Department,
St. George Fort,
Chennai.



2.The Secretary to Government,
Finance Department,
St. George Fort,
Chennai.

3.The Vice Chancellor and Chairman Board
of Management,
Tamil Nadu Agricultural University,
Coimbatore.

4.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore.

+1 cc to Mr. D.SADIQ RAJA, Advocate, Sr.No:10711

+1cc to M/S Special Government Pleader, Sr No. 10538

+1 cc to Mr. A.THIRU MURHTY, Advocate, Sr.No: 10396

skn

MAS/CM-MSA/SAR1:02.03.2017:10P/8C

Pre-Delivery Order made in

Writ Petition(MD)No.10807 of 2015
and
Miscellaneous Petition(MD)Nos.1 and 2 of 2015
24.02.2017