IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Appeal Nos.591, 661 to 664, 1290 to 1304 of 2009

W.A.No.591 of 2009

Senthil College of Education
Established by M/s. Senthil Education Society
rep. by its Secretary
No.30, Thiagaraja Street
Puducherry 605 001. .. Appellant

Vs.

1. The Vice Chancellor
Pondicherry University
Kalapet
Pondicherry 605 014.

2. The Registrar
Pondicherry University
Kalapet
Pondicherry 605 014.

3. Deputy Registrar (ACA-I)
Pondicherry University
Kalapet
Pondicherry 605 014. .. Respondents

Appeal under Clause 15 of the Letters Patent against the order dated 06.9.2008 made in W.P.No.19382 of 2006.

For Appellant in W.A.Nos.591, 661, 662/09	:	Mr.PVS Giridhar
WA Nos.663, 664/09	:	Mr.V.R.Kamalanathan
WA Nos.1290 to 1304/09	:	Mrs.A.V.Bharathi
For Respondents in WA No.591/09	:	Mrs.A.V.Bharathi
For Respondents 1&2 in WA Nos.661 to 664/09	:	Mrs.A.V.Bharathi
For Respondent-3 in WA Nos.661 to 664/09	:	Mr.P.R.Gopinathan
For Respondent-1 in WA No.1290 & 1291/09	:	Mr.PVS Giridhar
For Respondent-2 in WA Nos.1290 to 1293, 1295, 1296/09	:	Mr.P.R.Gopinathan
For Respondents in WA No.1294/09	:	Mr.PVS Giridhar
For Respondent in WA Nos.1299 & 1303/09	:	Mr.Kandhan Duraisami
For Respondent-1 in WA Nos.1293,1295&1296/09	:	Not ready in notice

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J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

These appeals are directed against the order of the learned single Judge dated 06.9.2008 made in W.P.Nos.11870 of 2007 etc. batch.

2. The brief facts which led to the filing of the above writ appeals are as under:

Pondicherry University has issued an order enhancing the affiliation fee and endowment fee, prescribing 5% of the tuition fee to be paid as corpus fund, claiming legal fees to the extent of 50% or 100% as the case may be from the Management and levying penalty of Rs.10,000/- per student for admission before affiliation. Aggrieved by the said order, individual Managements as well as Association of Private unaided institutions have filed writ petitions.

3. After hearing the submissions of both the parties, the learned single Judge disposed of the writ petitions holding that (i) the respondent University is justified in enhancing the affiliation fee and endowment fund and also demanding Rs.10,000/- per student for admitting them before obtaining affiliation, and (ii) that the demand of 5% of the tuition fee towards corpus fund and the demand of 50% or 100% of the legal fee are invalid.

4. Assailing the order of the learned single Judge, all the writ petitioners and also the University have come up with the above appeals.

5. The University has filed some appeals challenging the findings of the learned single Judge with regard to the demand of 5% of the tuition fee towards corpus fund and legal fees to the extent of 50% or 100% depending upon the facts of the case. The Management and Association filed appeals

challenging the finding of the learned single Judge with regard to the enhancement of endowment fee, affiliation fee and imposition of penalty of Rs.10,000/- per student for admitting them without affiliation.

6. The enhancement of affiliation fee and endowment fee is not applicable to the Colleges already established. Therefore, they challenge only the corpus fund to be paid out of the amount collected towards tuition fee, namely 5% of the tuition fee. However, for the Colleges newly established, they have to pay affiliation fee, endowment fee, corpus fund, legal fees and penalty in cases where they admit students prior to affiliation.

7. The learned counsel appearing for the Colleges contended that the University has enhanced the endowment fund and affiliation fee arbitrarily and unreasonably, without any basis and that such enhancement is disproportionate to the services provided by the University. Further, no notice or hearing was given to them before enhancement of the affiliation fee and endowment fund.

8. It is also contended by the learned counsel for the Colleges that the University has delayed in granting affiliation to the Colleges, even though NCTE has granted recognition long before and therefore, for the delay on the part of the University in granting affiliation, the Colleges cannot be imposed with a penalty of Rs.10,000/- per student for admitting the student prior to affiliation and such levy of penalty is unreasonable;

9. Per contra, learned counsel for the University contended that the enhancement of endowment fund, which is for the benefit of the college and the students for meeting exigencies and affiliation fee, which is to commensurate with the expansive operation of the University and the increasing demand with an ever expanding educational horizon, is made only after due deliberations and discussions by the Apex Bodies of the University, Academic Council and Executive Council, as the same were not enhanced since 2004.

10. It is further contended by the learned counsel for the University that penalty of Rs.10,000/- per student was imposed for admitting the students prior to the grant of affiliation, as such admission is in violation of the statutory provision.

11. We have given careful consideration to the submissions made by the learned counsel appearing for both the parties and also perused the documents.

12. Now, the challenge before us by the Colleges is with regard to the enhancement of affiliation fee, endowment fee and imposition of penalty and the challenge by the respondent University is with regard to corpus fund and legal fees.

13. As regards affiliation fee, it is pertinent to note that B.Ed. Colleges have to be recognised by the NCTE and thereafter, they should obtain affiliation, before the commencement of the course, from the respective University. Similarly, Medical Colleges and Dental Colleges have to be recognised by the Central Government and should also obtain affiliation from the respective University. The grant of recognition and affiliation is only to regulate and to ensure merit, excellence of education and prevent maladministration.

14. Coming to the case on hand, the University is empowered, under Section 5(17) of the Act, to grant affiliation to the Colleges in order to get privileges in accordance with conditions prescribed by the Statutes. Under Section 5(20) the University is empowered to demand payment of fee and other charges. The procedure for granting affiliation to colleges and institutions has been prescribed under Chapter VII of the Academic Ordinances of the University. Under Clause 5(q) of Chapter VII, the Executive Council is empowered to to lay down new conditions of affiliation, general or specific, regarding staff, buildings, equipments, library, laboratories, finances or other relevant matters and specify the date by which the conditions so stipulated to be satisfied, failing which the college/institution may not be allowed to enjoy the privileges of the University.

15. It appears that the Academic Council, taking note of the fact that the affiliation fee, which was lastly fixed in the year 1999, found to be

inadequate and after due deliberation and discussion for 17 months by the apex bodies of the University, the affiliation fee was revised and enhanced in 2004 and the same was approved by the Executive Council. A Committee was constituted to examine the revised fee structure, which recommended to enhance the affiliation fee, endowment fund and also corpus fund. The said recommendation of the Committee was approved and the affiliation fee was fixed at Rs.5,00,000/-.

16. A perusal of the records would disclose that the affiliation fee was enhanced to Rs.5,00,000/-, only to commensurate with the expansive operation of the University, in view of the growth of number of colleges and introduction of more and more courses, resulting in the increase of the workload and in deploying additional personnel on temporary and contract basis in order to ensure the timely completion of affiliation procedures.

17. The affiliation fee is not being paid every year and it is paid only at the initial stage of the opening of the Colleges. Though it is stated that the affiliation granted is not a permanent one, re-affiliation is granted only to those Colleges which violated the conditions of affiliation, only after conducting local inspection of the Colleges and therefore, the Colleges cannot stake a claim that the affiliation is not a permanent one. However, it is stated that even for renewal every year, a sum of Rs.5.00 Lakhs has to be paid, which in our view, would cause hardship to the Colleges. Therefore, we are of the view that the University shall place the matter before the Academic

Council/Executive Council to re-consider the issue once again, in the light of the amount fixed/procedure adopted by other Universities in this regard.

18. Insofar as endowment fund is concerned, it appears that the University has enhanced the amount from Rs.10,00,000/- to Rs.25,00,000/-. According to the Colleges, such enhancement is very much on the higher side. However, it is stated by the learned counsel appearing for the University that the endowment fund is only for the benefit of the College and its students to meet the extraordinary contingencies and in no way, the University will be a beneficiary of the endowment fund. It appears that around 66 Colleges under the University have paid the enhanced endowment fund, except 4 Colleges.

19. It is to be taken note that the endowment fund was enhanced in the year 2004, after due discussions and deliberations by the apex bodies of the University. Now, more than a decade has passed. Taking note of the enormous development that took place since 2004, especially in the professional courses, we concur with the findings of the learned single Judge.

20. With regard to Penalty, it is needless to mention that as per the statutory rule, the Colleges have to get affiliation first and thereafter, should proceed with admission of the students. If any student is admitted before the grant of affiliation, such admission is wholly invalid and illegal and it would amount to violation of the rule of admission prior to grant of affiliation.

21. In one case on hand, the Management, before getting affiliation, had admitted students. Thus, the said action of the Management is in violation of the rule of admission. In order to ratify the said action of the Management, the University directed the Management to remit penalty of Rs.10,000/- per student and that the same should be paid by the Management and not by collecting it from the student and that the provisional affiliation would be granted only after remitting the penalty amount. The amount so remitted by the Management towards penalty was to treated as compounding fee given to the University.

22. As it is evident from the documents that the Management had admitted the students prior to the grant of affiliation, we do not see any error on the part of the University in directing the Management to remit penalty.

23. At this juncture, one important aspect has to be looked into, namely, cause for the delay in the grant of affiliation. Before imposing penalty for admitting the students prior to affiliation, the circumstances under which the violation has taken place have to be taken note of. The delay in granting affiliation sometimes may be on the part of the University concerned, namely in taking a decision or in communicating the decision for the grant of affiliation/renewal or even on the part of the Management in not complying with the condition.

24. We are, therefore, of the view that before imposing penalty for admitting the students prior to affiliation, the matter has to be re-looked as to whether the delay is on the part of the Management or on the part of the University and thereafter, reasonable fee may be fixed depending upon the inaction on the part of the University or violation of the condition by the College concerned, after giving an opportunity of hearing and in compliance of the principles of natural justice. If there is no negligence on the part of the University in granting affiliation and the College has admitted the students prior to the grant of affiliation, then the amount fixed as Rs.10,000/- as penalty is justified and thus, we concur with the finding of the learned single Judge with regard to the demand of Rs.10,000/- towards penalty.

25. Regarding corpus fund, the Colleges have been directed by the University to pay 5% of the tuition fee collected from the students. The University Grants Commission has directed the Universities to mobilise corpus fund for the betterment of the University. Though the learned single Judge holding that the UGC has not directed the Universities to collect it from the Colleges, the purpose for which such corpus fund is collected has to be taken note of.

26. The Universities will deposit the corpus fund collected from the Colleges in a separate account and utilise the interest accrued thereon for providing expert lectures periodically by the University faculty for the students, for organising training programs to faculty/research scholars/students, for sponsoring research projects, supporting conduct of seminar or workshop by the colleges, etc. and also for providing various facilities for the students, namely library, sports, central instrumentation facility, etc.

27. In view of the purpose for which the corpus fund is collected as stated in the preceding paragraph, we find it quite reasonable to part with 5% of the tuition fee collected for such extra curricular activities associated with academic excellence and related activities, especially when it is related to the growth of the students exposure to various intellectual activities and for enlightening students on various other aspects to make them far excellence.

28. It appears that except the colleges which are before this Court, other Colleges have paid the corpus fund. Therefore, we find that the demand of 5% of the tuition fee as corpus fund is justified and accordingly, we disagree with the findings of the learned single Judge in this regard. We make it clear that the demand of corpus fund shall be given effect

prospectively, namely, the corpus fund shall be collected from the ensuing academic year.

29. As regards the demand of 50% or 100% of the legal fees, it is to be seen that litigation will not crop up in each and every case. Such a contingency of filing a case would arise depending upon the factual situation. As rightly held by the learned single Judge, if the case filed is of frivolous or without any merit, the Court itself would order cost. The litigation may arise due to the fault of the University also, for which, the legal fee cannot be paid by the Colleges. If it is demanded to be paid by the Colleges, the Colleges would claim the same from the students. Therefore, we hold that the learned single Judge has rightly declared the demand of legal fees as invalid. However, we observe that it is for the University to request the Court to fix the amount of penalty in case the fault is on the part of the student/College.

30. In the result, the writ appeals are disposed of in the above terms, modifying the order of the learned single Judge. However, there shall be no order as to costs. Consequently, connected CMPs are closed.

(H.G.R.J.) (M.D.I.J.)

27.02.2018

Index : Yes/No

Internet: Yes/No

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To

1. The Vice Chancellor
   Pondicherry University
   Kalapet
   Pondicherry 605 014.

2. The Registrar
   Pondicherry University
   Kalapet
   Pondicherry 605 014.

3. Deputy Registrar (ACA-I)
   Pondicherry University
   Kalapet
   Pondicherry 605 014.

HULUVADI G.RAMESH,J,
and
M.DHANDAPANI,J

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