

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.2487 of 2012 and M.P.Nos.1 to 3 of 2012
and
W.P. (MD)No.8084 of 2014 and M.P. (MD)No.1 of 2014

W.A.No.2487 of 2012:

National College,
A Unit of Academy of Higher Education,
represented by its Secretary Mr.K.Raghunathan,
National College Campus, Dindigul Road,
Karumandapam, Tiruchirappalli-620 001. .. Appellant/Petitioner

Vs.

1.The Director of Collegiate Education,
9th Floor, EVK Sampath Building,
College Road, Chennai-600 006.

2.The Additional Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.

3.P.Subbaiah
4.P.Poosamani
5.S.Jegadeeswaran
6.M.Senthil Kumar
7.S.Dinesh Kumar
8.P.Parameswari
9.Dr.T.Seshasayee

10.Dr.R.Prabhakar
11.S.Gunasekar

... Respondents

Appeal filed under Clause 15 of the Letters Patent, against
the order passed by this Court dated 19.10.2012 in W.P.No.22381
of 2012.

WP.No.22381/2012:Writ petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a writ of

Certiorarified Mandamus Calling for the records of the 2nd Respondent culminating in his impugned proceedings bearing Higher Education (E2) Department Letter (1D) No.225 dated 08.08.2012 confirming the 1st Respondent proceedings bearing Mu.Mu.No. 57983/F3/2011 dated 19.04.2012 quash the same and consequently direct the Respondents to permit the Petitioner to close the Philosophy Course in its College.

W.P.(MD)No.8084 of 2014:

Dr.P.Rengasamy

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Department of Higher Education,
Fort St.George, Chennai-600 009.

2.The Director of Collegiate Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai-600 006.

3.The Joint Director of Collegiate Education,
Trichy Region, Trichy.

4.The Registrar,
Bharathidasan University,
Trichy.

5.National College
rep.by its Secretary,
Dindigul Road, Karumandapam,
Trichy-620 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the fifth respondent to admit the students in Philosophy Courses for UG/PG/M.Phil.for the academic year 2014-2015.

W.A.No.2487 of 2012:

For Appellant : Mr.Sriram Panchu for
M/s.Arun Anbumani & Arya Raj

For Respondents: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader for R1 and R2

Mr.Vishnu Chellappa for
M/s.Ajmal Associates for R3 to R8

Mr.R.Subramanian for R9 to R11

W.P.(MD)No.8084 of 2014:

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader for R1 to R3

Mr.Gowardhan for
M/s.Row and Reddy for R4

Mr.Arun Anbumani for R5

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant in W.A.No.2487 of 2012 and the fifth respondent in W.P.(MD)No.8084 of 2014, viz. National College at Tiruchirappalli, a private College established in the year 1919, is aided by the State of Tamil Nadu. The University Grants Commission granted autonomous status to the College in the year 2010. The college offers 16 Under Graduate and 14 Post Graduate programmes. PG programmes offered by the College are research oriented, leading to M.Phil and Ph.D degrees. One of the courses offered in the College is UG and PG degrees in Philosophy. According to the appellant, UG and PG courses in Philosophy slowly lost its importance among the students and admission of students in Philosophy programme in UG and PG levels started dwindling in the past academic years and the combined strength admitted in both UG and PG programmes were below 10. At one point of time, no student was admitted in the UG programme. In PG programme, even though four students were admitted during the academic year 2011-2012, they discontinued their studies in the first semester itself. None of the four students admitted in the first year M.A.Philosophy course during the academic year 2011-2012 attended classes regularly and they have also not taken part in the examinations. Considering the non-admission/lack of interest on the part of students to join in the Philosophy subject in UG and PG courses, the College Committee of the appellant college met on 12.12.2011 and reviewed the viability of continuing UG and PG courses in the subject of Philosophy and took a decision to close down the programme as the Government is put to heavy expenditure by way of staff salary, amongst other things. The College Committee, thereafter authorised the Secretary to take necessary steps to

close down the Department of Philosophy from the academic year 2012-2013. For closing down any course, approval of the competent authority viz., the Director of Collegiate Education is required under Section 25 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred as 'the Act'). In terms of the said statutory provision, approval was sought for by submitting a representation to the Director of Collegiate Education, the first respondent herein, on 26.12.2011. The said representation was rejected stating that it is an unique course and the appellant should take necessary steps to ensure adequate admission in the course and improve the student strength. An appeal by the College to the Government against the order passed by the Director of Collegiate Education, also ended in rejection. Hence the appellant-College filed a writ petition before this Court in W.P.No.22381 of 2012 praying to quash the said orders and for a direction to the authorities to permit the College to close the Philosophy course in its College contending that the authorities have not given any opportunity before rejecting the request of the appellant to close down the Philosophy course.

2.After considering the facts and circumstances of the case, the learned single Judge of this Court disposed of the writ petition on 19.10.2012, with the following observation:

"18.The learned counsel for the petitioner submitted that if the respondents 3 to 8 are leaving the college during middle of the year, the Department will be left with no student. If such a contingency arises, it is open to the petitioner management to approach the first respondent by passing a fresh resolution and pray for permission under Section 25 of the Act. If any such application is made and if the first respondent is satisfied that no student is available in the Department of Philosophy in the petitioner College, the first respondent is bound to consider the said factual aspect and pass orders in terms of Section 25 of the Act. Respondents 9 to 11 also cannot say that they will not handle classes, other than Philosophy subject, if there is no student available in the said Department. If such contingency arises, the management is well within its power to allot classes in the inter-disciplinary subjects for respondents 9 to 11, and none of them can say that I will report to College and receive salary, without handling any class."

3.Challenging the said order passed in W.P.No.22381 of 2012 dated 19.10.2012, W.A.No.2487 of 2012 has been filed by the College.

4.W.P.(MD)No.8084 of 2014 has been filed by one Dr.P.Rengasamy, for a direction to the National College, Trichy, to admit students in Philosophy Courses for UG/PG/M.Phil for the academic year 2014-2015, contending that many former students and staff of Philosophy and other general public made representations to the College not to close down the Department of Philosophy; that the Tamil Nadu Philosophical Society made a fervent appeal to the College not to wind up the said course. It has also been contended that the Department of Philosophy of the College has a long history and it has produced several luminaries in the field of Philosophy who have international reputation. When this writ petition was taken up on 10.09.2014 before the Madurai Bench of Madras High Court, it was directed to be posted along with this appeal before the Principal Bench, as the issue involved in W.P.(MD)No.8084 of 2014 and W.A.No.2487 of 2012 are the same. Accordingly, W.P.(MD)No.8084 of 2014 has been transferred from the Madurai Bench of Madras High Court to the Principal Bench, and tagged along with W.A.No.2487 of 2012 for passing a common judgment.

5.When these matters were taken up on 05.02.2018, we directed the respondents 2 to 8 in the appeal / students, to appear before this Court on 07.02.2018 at 02.15 p.m., as they were said to be willing to join the Philosophy Course. Pursuant to the said order passed by this Court, today, some of the students appeared before this Court.

6.The learned counsel for the appellant-College has submitted that the learned single Judge failed to see that the decision to grant permission to close the Department is dependent on several issues and circumstances and the first and second respondents cannot reach a conclusion without hearing the appellant and without giving them an opportunity to make representations in support of the same. He also submitted that the mere fact that students are available for the Post Graduate Course in question, while admittedly no students are available for the Under Graduate Course, cannot by itself furnish a ground for denying permission to close the Department. It is also his submission that the learned single Judge failed to see that the minimum required student strength to conduct a Course is 20 and that the same must be a guideline which the authorities must take into account while exercising powers under Section 25(4) of the Act; that failure to give effect to this mandatory requirement is clearly erroneous and the failure of the learned single Judge to refer to the same, renders the impugned order unsustainable. He also submitted that the learned single Judge had failed to see that there was another college affiliated to the same University which offers courses in Under Graduate and Post Graduate disciplines in Philosophy and the students

(respondents 3 to 8) could have been directed to join the said course there. Stating so, he prayed for quashing the impugned order passed by the learned single Judge in W.P.No.22381 of 2012 dated 19.10.2012 with a direction to the authorities to close the Philosophy Course in respect of the appellant-College.

7.The learned Special Government Pleader appearing for the official respondents has submitted that before passing orders by the authorities rejecting to close down the course in question in the appellant-College, opportunity was given to the College. He also submitted that the learned single Judge, in his order, has given liberty to the college that in the event of any contingency arising resulting in the discontinuance of the students, the college can approach the competent authority for closure of the Philosophy Course by passing necessary resolution. Thus, he submitted that the order passed by the learned single Judge is lawful and enforceable one.

8.A counter affidavit has been filed on behalf of the first and second respondents in the writ appeal, in which it is stated that even though the proposal to close down the Philosophy Course was rejected, the college authorities wantonly omitted Philosophy Course in their prospectus for admission in the year 2011-2012, and in view of the same, the students who were willing to join the Philosophy Course were not able to apply for the said Course. It is also stated that even after such omission, six students have opted for admission to the said Course. It is further stated that the letter dated 29.08.2012 filed by the College before the authorities for closure of Philosophy Course for the year 2013-2014 under Section 25 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, after passing the necessary resolution, is under active consideration of the Director of Collegiate Education.

9.The learned counsel for respondents 9 to 11/Professors, in the appeal has filed a counter affidavit, in which it is stated that without calling for applications for admission to Philosophy course, the appellant has been stating that there is no demand for Philosophy course. The college is an aided one and the Philosophy course is an unique course which has been permitted by the Government for the purpose of Government grant and therefore, the college management cannot arbitrarily close the Philosophy course, according to the learned counsel for respondents 9 to 11/Professors.

10.A counter affidavit has been filed by the third respondent, on behalf of the respondents 3 to 8 / students, in the appeal, in which it is stated that the third respondent is a poor student hailing from a remote hamlet in Trichy District. The respondents 4 to 8 are also similarly placed as that of the

third respondent. Though they came up well in school education, due to poverty they could aspire to study only in aided institutions with the help of a philanthropist with great difficulty. It is also stated that with the said poor economic background, the third respondent completed his UG course in Philosophy in the appellant College and he intends to pursue post graduation from the same college, and the respondents 4 to 8 also intend to pursue their PG degree from the appellant college. They were eagerly waiting for the appellant college to call for applications for admission to M.A.degree in Philosophy. But, prospectus was issued by the college without calling for any applications in respect of the discipline of Philosophy. However, when they approached the college, they were informed that the College had sent a proposal to the authorities for closure of P.G.Course in Philosophy. Reiterating the averments made in the counter affidavit, the learned counsel for the respondents 3 to 8 submitted that the said act of the college not even calling for applications for the said subject, is unlawful, and denying admission to them for the academic year 2012-2013 is totally against the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976.

11.Heard the learned counsel on either side and perused the materials available on record.

12.The appellant College is a grant-in-aid institution, receiving grant from the Government of Tamil Nadu. It appears that the admission of students in Philosophy programme in UG and PG levels started dwindling in the past academic years and the combined strength admitted in both UG and PG programmes were below 10. At one point of time, no student was admitted in the UG programme, according to the appellant. In PG programme, even though four students were admitted during the academic year 2011-2012, they discontinued their studies in the first semester itself. In such circumstance, the appellant College approached the first and second respondents requesting permission to close the college. A submission has been made on behalf of the students that they have to pursue the PG course in Philosophy in Tiruchirappalli as they have joined the UG course in Tiruchirappalli in the appellant College. In this connection, it has to be borne in mind that certain courses will be available only in few colleges. If we take an example of Law Colleges, it will be available only in few places. A person in one place could not be able to pursue his studies in his place, as the course will not be available in that place. In that circumstance, he would have to go to some other place for studying that particular course. It may not be out of place to state that a person would have to go to some other District for acquiring his studies. It is true that Philosophy course is a noble subject, but ultimately the question of survival will come

into play. If the college is not getting enough admissions to a particular course, naturally it will lead to loss of money. The survival of a college depends on number of students admitted and various other aspects connected thereto. If the students herein are really interested to pursue the Philosophy course, they may be directed to pursue/continue their studies in the colleges where the said course is available, by the Government.

13.It is only a question of viability of the course for want of strength. The Government is granting aid only for three or four teachers / professors and not for all the teaching faculty in the college. Thus, this Court is of the view that the action of the appellant College to close down the Philosophy Course can be termed only as irregularity and not illegality, on account of the fall in the number of students. Thus, while quashing the impugned order passed by the learned single Judge in W.P.No.22381 of 2012 dated 19.10.2012, we hereby direct the first and second respondents in W.A.No.2487 of 2012 to consider the case of the respondents 3 to 8 herein to pursue /continue their studies in the Philosophy course by accommodating them in any other colleges in the State where the said course is available, instead of Tiruchirappalli, if they are really interested for it. With this direction, the writ appeal is allowed. No costs. Consequently the connected miscellaneous petitions are closed.

14.The prayer made in W.P.(MD)No.8084 of 2014 is for a direction to admit the students to the fifth respondent-College for the academic year 2014-2015. The prayer has become infructuous as it relates to the academic year 2014-2015. Hence, the writ petition is dismissed as infructuous. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai-600 009.

2.The Additional Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.

3.The Director of Collegiate Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai-600 006.

4.The Joint Director of Collegiate Education,
Trichy Region, Trichy.

5.The Registrar,
Bharathidasan University,
Trichy.

+1cc to M/s.Ajmal Associates, Sr.No.11584
+1cc to M/s.R.Subramanian, Advocate Sr.No.12123
+2cc to Mr.G.Anbumani, Adocate sR.no.11825
+1cc to Government Advocate Sr.No.12487

RR(CO)
sm:26.3.2018

W.A.No.2487 of 2012
and M.P.Nos.1 to 3 of 2012
and
W.P. (MD) No.8084 of 2014
and M.P. (MD) No.1 of 2014

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