

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.05.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7377 of 2021 and

W.M.P.Nos.7884 & 7885 of 2021

Annapoorana Engineering College

rep by its Principal Sankari Main Road

Periyaseeragapadi Salem District- 636 308.

...Petitioner

Vs

1 Anna University

rep by its Registrar Chennai- 600 025.

2 University Grants Commission

rep by its Secretary Bahadur Shah Zafar

Marg New Delhi- 110 002.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with its Letter No.450/ AU/ CAC/ Autonomous / 2021 dated 08.03.2021 and quash the same and consequently direct the University Grants Commission, the 2nd Respondent herein to consider the application of the Petitioner dated 11.02.2021 for conferment of autonomous status in the light of the judgement of the Division of this Honourable court in W.A. No.51 of 2020 and confirmed by the Honourable Apex Court in S.L.P. (C) Nos.8324-8325 of 2020.

For Petitioner :Mr.Kandhan Doraisami

For Respondents :Mr.Vijayakumar, Standing Counsel - for R1
Mr.Rabu Manohar, Standing Counsel - for R2

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with its Letter No.450/ AU/ CAC/ Autonomous / 2021 dated 08.03.2021 and quash the same and consequently direct the University Grants Commission the 2nd Respondent herein to consider the application of the Petitioner dated 11.02.2021 for conferment of autonomous status in the light of the judgement of the Division of this court in W.A. No.51 of 2020 and confirmed by the Honourable Apex Court in S.L.P. (C) Nos.8324- 8325 of 2020.

2. The case of the petitioner is that, the petitioner is an approved and affiliated Engineering College imparting education

in the field of engineering since 2010. It has been approved by the All India Council for Technical Education (hereinafter referred to as 'AICTE'), New Delhi and affiliated to the Anna University.

3. Since the institution has served for more than ten years and according to the institution, it has fulfilled the norms prescribed in this regard by the University Grants Commission (hereinafter referred to as 'UGC') under the UGC Act as well as the regulations made therein, it thought of making an application to the UGC to declare the autonomous status to the petitioner institution. Since the said status of autonomous institution is to be declared only by the UGC, such application has already been made on 11.02.2021.

4. In this regard, it is to be noted that, as per the UGC (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2018 (in short '2018 Regulations'), various procedures have been contemplated as to how an application has to be submitted by the institution seeking autonomous status and to be processed by the UGC.

5. In this context, Clause 7(3) of the Regulations is pertinent, which reads thus,

"7.3 The College shall submit the proposal to the Parent/Affiliating University which may forward the same to UGC within 30 days of the receipt of proposal. In case the proposal is rejected by the University, the decision shall be communicated to the college and University Grants Commission through a "Speaking Order"."

6. As per Regulation 7(3) of the 2018 Regulations, the petitioner institution submitted its application to the respondent Anna University to be forwarded to the respondent UGC. The said application having been considered by the respondent Anna University, was rejected by a speaking order dated 08.03.2021, wherein the said application of the petitioner was rejected on the ground that, the student enrollment for the last three years was 30% against the requirement of 60% and the examination results for the last three years was 39.5% as against the requirement of 70%. On these two reasons, the application which was submitted by the petitioner to the respondent Anna University to be forwarded to the UGC has been rejected through the order dated 08.03.2021.

7. Unmindful of the said rejection order made by the first

respondent Anna University, the petitioner has further made an independent application on 12.03.2021 to the respondent UGC to independently consider the request of the petitioner for grant of autonomous status to the petitioner institution in the light of the law having been declared by this Court in a related case in W.A.No.51 of 2020, which judgment of this Court has already been confirmed by a decision of the Honourable Supreme Court dated 24.07.2020 made in SLP (Civil) Nos.8324 and 8325 of 2020. Therefore, at this juncture the institution has filed the present writ petition to challenge the order of rejection made by the respondent University dated 08.03.2021 and consequently direct the second respondent UGC to consider the application dated 12.03.2021 submitted independently in the light of the judgment referred to above passed by this Court in W.A.No.51 of 2020 etc., That is how this writ petition has come before this Court with the aforesaid prayer.

8. Mr.Kandhan Doraisami, learned counsel appearing for the petitioner has submitted that, no doubt as per 2018 Regulations, the application to be submitted by any institution like the petitioner to the UGC seeking for autonomous status has to be routed through the affiliating university. Here in the case in hand, Anna University being the affiliating university therefore the said application was submitted to the petitioner on 15.02.2021 to the first respondent University and the same has been rejected through the impugned order 08.03.2021 on the alleged reason that, the required number of pass percentage and required number of enrollment is not met by the institution.

9. Learned counsel would further submit that, in this context it is the requirement of the UGC, as per the norms prescribed in this regard as to on what basis an institution has to be conferred the autonomous status. In this regard since the application has to be routed through the University, only for that purpose the petitioner has submitted the application to the first respondent University and an advanced copy already was sent to the UGC. Merely because the University has rejected it for the aforesaid reason, that will not ipso facto preclude the petitioner's application to be considered by the UGC for conferment of autonomous status.

10. In this context, the learned counsel appearing for the petitioner has relied upon the following observations made by the Division Bench of this Court in the above referred case (W.A.No.51 of 2020), which reads thus,

"14. In the said background, we are of the opinion that the 2018 Regulations framed by the University Grants Commission in exercise of the powers conferred under Section 12(f), (g), (j) read with Section 26(1) of the University Grants Commission

Act, 1956 govern the field, inasmuch as the same is clearly saved as being a Regulation duly authorized having its source in Entry 66 of List I of the Constitution of India. There is no law for the time being relating to the Regulation of grant of autonomous Colleges running contrary to the same either framed under Entry 66 of List I or Entry 25 of List II. In the absence of any such legislation to the contrary, we are of the clear opinion that the 2018 Regulations clearly hold the field exclusively in the matters of grant of autonomous status to affiliated colleges. The resolution of the Syndicate dated 27.05.2014 cannot in any way be said to have an overriding effect or even supplementary effect to the 2018 Regulations, inasmuch as the method of grant of an autonomous status is clearly defined under the 2018 Regulations and the eligibility to obtain such status is also governed by the same."

11. By relying upon this decision, the learned counsel appearing for the petitioner would contend that, since the law having been declared by the authoritative pronouncement of this Court, which has been confirmed by the orders passed by the Honourable Supreme Court as stated supra, it is for the UGC to consider the application to be submitted by institution like the petitioner with regard to the conferment of autonomous status unmindful of the rejection made in this regard by the affiliating University.

12. In other words, it is not mandated that, unless the affiliating University forwards the application with recommendation, the application submitted by the institution cannot be considered by the UGC independently for the purpose of conferment of autonomous status.

13. Therefore, the learned counsel appearing for the petitioner, by relying upon the said judgment as well as explaining the legal position, would seek the indulgence of this Court to pass suitable orders to give direction to the respondent UGC to consider the application of the petitioner independently on its own merits and to decide the same within a time frame that may be stipulated by this Court.

14. I have heard Mr.Vijayakumar, learned Standing Counsel for the first respondent University who would submit that, the UGC itself has passed the 2018 Regulations under its Regulation making power under the UGC Act, wherein Regulation 7(3) as quoted herein above, would state that, the college shall submit proposal to the affiliating university, which may forward the

same to the UGC within 30 days of the receipt of the proposal. It is further stated in the Regulation 7(3) that, in case the proposal is rejected by the University, the decision shall be communicated to the college and UGC through a speaking order.

15. By relying upon this Regulation, Mr.Vijayakumar, learned Standing Counsel appearing for the University would contend that, as per the said Regulation, the application of the petitioner having been considered, was rejected by the impugned order dated 08.03.2021 and as per the requirements under the Regulations, the said rejection order also had been communicated to the Secretary, UGC, that means, the requirement under Clause 7(3) of the Regulations has been complied with by the University. Therefore, with that, the application submitted by the institution has come to a close and that cannot be further considered by the UGC, he contended.

16. With regard to the Division Bench judgment, which was heavily relied upon by the learned counsel for the petitioner is concerned, the learned Standig Counsel appearing for the University would contend that, the said judgment cannot be taken as a judgment in rem, instead, the said judgment can be treated as a judgment in personam, as what has been stated in the judgment would apply only to the parties to the said case and not to any other institution like the petitioner.

17. Learned Standing Counsel appearing for the University would further submit that, if at all the UGC wants to consider the further application made directly by the petitioner as has been sought for in this writ petition, the UGC cannot independently decide the same on its own merits of the application, but before considering the same, the affiliating University ie., the first respondent shall be consulted by the second respondent UGC, which is mandatory. Without having such consultation, the UGC cannot consider the application of the petitioner for conferment of autonomous status.

18. By making all the above submissions, the learned Standing Counsel appearing for the University wants to sustain the order passed by the respondent University and also seeks the indulgence of this Court to reject the writ petition, as according to him, it does not have any deserving reason to be considered.

19. On the other hand, Mr.Rabu Manohar, learned Standing Counsel appearing for the second respondent ie., UGC, on instructions, would submit that, the University Grants Commission is the creature of the Central Legislation called University Grants Commision Act., 1956. The provisions of the said Act confers the power to the UGC to do various acts

including recognizing or declaring Deemed Universities and also to declare the autonomous status of various institutions.

20. In order to process such kind of applications being made by various Institutions from time to time, seeking conferment of autonomous status, the UGC has framed a Regulation called 2018 Regulations and as per the Regulations, the procedure has been contemplated as to how the application has to be filed by the institution to the UGC and in this regard, as has been pointed out by the learned counsel appearing for the University, the application has to be routed through the affiliating University as per Regulation 7(3).

21. Once the application filed by the institution is considered and rejected, the rejection order should be forwarded to the UGC for its consideration. That is also mandated in Regulation 7(3).

22. Thereafter, if the institution still insists the UGC to consider the application independently as per the law having been declared by this Court in a recent judgment, since the UGC is the centralized authority to control all these institutions under the provisions of the UGC Act and the Regulations made therein from time to time, it would independently consider the application of the institution by taking into account the inputs supplied by the affiliating University by way of a speaking order / rejection order made in this regard.

23. Therefore, the learned Standing Counsel appearing for the UGC would contend that, even though a speaking order / rejection order has been made by the University dated 08.03.2021, and the same having been forwarded to the UGC, certainly that input also would be taken into account as per the law having been declared by this Court in the said judgment cited by the learned counsel for the petitioner, as has been confirmed by the Honourable Supreme Court, consequently, the application submitted by the petitioner dated 12.03.2021 to the UGC would be considered independently, of course on its own merits and while considering the same, the inputs supplied by the affiliating University ie., the first respondent through the impugned order dated 08.03.2021 also would be taken into account.

24. I have considered the rival submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

25. Insofar as the legal position as to the powers and functions of the second respondent UGC is concerned, absolutely there can be no quarrel, as the law has been well settled by

number of pronouncements by the Honourable Supreme Court as well various High Courts, including this Court.

26. In this context, the recent judgement of the Division Bench of this Court as has been quoted by the learned counsel appearing for the petitioner, made in W.A.No.51 of 2020 has thrown a light, where, the legal position has been explicitly stated as to the status of the UGC for considering the application submitted by the institution concerned independently for the purpose of declaring it as an autonomous institution. In this context, Para 14 of the judgment, where, the legal position has been declared by the Division Bench, has already been quoted herein above and the said judgment since has been confirmed by the orders of the Supreme Court, the judgment has become final. Therefore, the legal position as laid down in the said judgment, especially in Para 14 quoted herein above, will govern the field.

27. When that being the position, there can be no impediment for the UGC to independently consider the application submitted by the institution like the petitioner for the purpose of conferment of autonomous status.

28. In this regard, in order to reconcile the Regulation 7 (3) of the Regulation, which has been quoted herein above, where, the application initially has to be routed through the affiliating University, then the University can either forward the same to the UGC with its recommendation or the University can reject the same with reasons.

29. Even if it is rejected, according to the Regulation 7 (3), it has to be forwarded only to the UGC for further action at the end of the UGC. That is what intended by the Regulation making authority, who made the Regulations 2018.

30. In other words, if any pedantic view is taken, as projected by the learned Standing Counsel for the University, that once the application is rejected by the affiliating University, it cannot be decided subsequently either independently or otherwise by the UGC, then the power conferred on the UGC under the UGC Act and the Regulations made thereunder would become otiose and that kind of interpretation cannot be expected to be given by any Court of Law.

31. Further, insofar as the merits of the application is concerned, certainly it has to be decided by the UGC on its own merits. Unless the institution, who files the application seeking autonomous status, fulfills the conditions imposed in this regard by the UGC such institution is not entitled to get such a declaration from the UGC.

32. Here in the case in hand, two reasons have been stated by the Anna University for rejecting the application of the petitioner. One is that, enrollment of students in the last three years and another is pass percentage in the last three years.

33. These two reasons whether would stand in the way of the UGC to independently consider the application based on the other inputs supplied by the institution, is the question to be decided only by the UGC and not by the affiliating university ie., the first respondent.

34. Therefore, this Court has no hesitation to hold that, unmindful of the impugned order dated 08.03.2021 issued by the first respondent University, certainly the second respondent UGC can independently decide the application dated 12.03.2021 submitted by the petitioner on its own merits and in accordance with law and in that case, it is for the UGC to take the inputs supplied by the University by way of a speaking order dated 08.03.2021, which includes the two reasons cited therein for the purpose of rejecting the application of the petitioner.

35. In that view of the matter, this Court has no hesitation to hold that, even without quashing the order dated 08.03.2021 of the first respondent University, it may be directed that, it can only be treated as an input supplied by the affiliating University to the UGC within the meaning of the second limb of Clause 7(3) of the 2018 Regulations and accordingly, the application submitted by the petitioner dated 12.03.2021 can very well be considered by the UGC on its own merits.

36. In view of the aforesaid discussions, this Court is inclined to dispose of this writ petition with the following orders.

(a) That there shall be a direction to the second respondent UGC to consider the application submitted by the petitioner dated 12.03.2021 seeking autonomous status for the said institution. While considering the said application independently on its own merits, the input supplied by the first respondent through the speaking order dated 08.03.2021, which is impugned herein, also can be taken into account.

(b) That apart, the law declared by this Court in the Division Bench judgment in W.A.No.51 of 2020 in the matter of "The Anna University -Vs-

Mahendra Institute of Technology and another" as confirmed by the Honourable Supreme Court in S.L.P (Civil) Nos.8324 and 8325 of 2020 shall be borne in mind and accordingly the UGC can decide the application of the petitioner dated 12.03.2021 and pass final orders thereon within a period of two months from the date of receipt of a copy of this order.

37. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Registrar
Anna University,
Chennai- 600 025.

2 The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi- 110 002.

W.P.No.7377 of 2021

CP(CO)
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