

The President, Subbalakshmi Lakshmipathy College of Science, TVR Nagar, Aruppukottai Road, Madurai-625022 Vs The Union of India and Others

Court: Madras High Court

Date of Decision: Dec. 9, 2011

Acts Referred: University Grants Commission Act, 1956 " Section 12B, 2

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S. Xavier Rajini, for the Appellant; K.K. Senthilvelan Assistant Solicitor General of India for Respondents 1, 2 and 4 Mr. B. Vijay Karthikeyan for Respondent No. 3 Mr. M. Govindan Special Government Pleader for Respondents 5 and 6, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The petitioner is a Self-Financing Private College of Science situated at Madurai. In this Writ Petition, the attempt of the petitioner College is to

set aside a communication sent by the Joint Secretary, University Grants Commission (third respondent) dated 01.10.2009, inasmuch as it has

refused autonomy grant to the petitioner College, without considering its eligibility and after setting aside the same, seeks for a direction to release

forthwith the autonomy grant, for which, the college was legally eligible from the academic years 2006-2007 to 2009-2010.

2. When the Writ Petition came up for admission on 26.11.2009, this Court directed the learned Special Government Pleader to take notice for

respondents 5 and 6 and in respect of respondents 1 to 4, notice was ordered and the petitioner was also permitted to serve notice on the learned

Assistant Solicitor General of India.

3. On notice from this Court, Mr.B.Vijay Karthikeyan entered appearance for the third respondent and Mr.K.K.Senthilvelan, learned Assistant

Solicitor General of India entered appearance for respondents 1,2 and 4.

4. Before proceeding to do with the legal right of the petitioner College, it is necessary to set forth the concept of Self-Financing Autonomous

College and its right to receive grant from the University Grants Commission (for short ""UGC"") as a matter of course. Admittedly, the petitioner

College was started in the year 1994. It is affiliated to the Madurai Kamaraj University. It is also governed by the provisions of the Tamil Nadu

Private Colleges (Regulation) Act, 1976 [for short ""TNPCR Act""]. However, they were permitted to establish the college on the condition that

they will not be granted aid by the State Government. It is the claim of the petitioner College that they have secured permanent affiliation from the

University during the year 1998.

Subsequently, the petitioner wrote a letter to the UGC and it was recognized by them u/s 2(f) of the UGC Act. Section 2(f) of the UGC Act reads

as follows:

University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such

institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the Regulations made in this

behalf under this Act.

[Emphasis added]

5. The UGC, by its communication dated 03.12.1998, informed the petitioner College as follows:

Accordingly, Subbalakshmi Lakshmipathy College of Science, Madurai which already stands included in the list of colleges maintained u/s 2(f) of

the UGC Act, 1956 is declared fit to receive assistance from the UGC and other central sources in terms of Rules framed u/s 12-B of the UGC

Act, 1956.

6. Since the case of the petitioner College has rest its case, in the light of the various communications sent by the UGC, it is necessary to set out the

stand of the UGC, as reflected in their communications. On 27.07.2005, the UGC informed all the Self-Financing Colleges as follows:

The issue regarding funding of self-financing colleges is under active consideration of the Commission. All the Bureau Heads are requested to

ensure that no grant shall be sanctioned to self-financing colleges till a policy decision is taken in this regard.

7. In the meanwhile, the petitioner College applied for an autonomous status and the application of the petitioner College was considered by

Madurai Kamaraj University and by a communication dated 15.03.2006, they were informed that autonomous status was conferred on the

College for a period of six years i.e., for the academic years 2006-2007 to 2011-2012 subject to periodical reviews, as per the revised guidelines

of the UGC. By virtue of the grant of such rights by the UGC, in terms of 12-B of the UGC Act, the petitioner College is entitled to determine and

prescribe its own courses of study and syllabi and restructure and redesign the courses to suit local needs; prescribe rules for admission in

consonance with the reservation policy of the State Government; evolve methods of assessment of students' performance, the conduct of

examination and notification of results; and use modern tools of educational technology to achieve higher standards and greater creativity.

8. It is necessary to refer to Section 12-B of the UGC Act, which reads as follows:

12-B. Prohibition regarding giving of any grant to a University not declared by the Commission fit to receive such grant.- No grant shall be given

by the Central Government, the Commission, or any other organisation receiving any funds from the Central Government, to a University which is

established after the commencement of the University Grants Commission (Amendment) Act, 1972, unless the Commission has, after satisfying

itself as to such matters as may be prescribed, declared such University to be fit for receiving such grant.

9. The UGC u/s 17 will have to prepare a budget for each year and submit it to the Government and funds so released by the Central Government

can alone be released to various institutions. Section 17 reads as follows:

Budget.- The Commission shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year

next ensuing showing the estimated receipts and expenditure, and copies thereof shall be forwarded to the Central Government.

10. Insofar as the question of financial assistance was concerned, it is useful to refer to X plan Scheme of Autonomous Colleges guidelines, which

makes it clear as follows:

Since self-financing colleges also want autonomous status, their cases may be considered after they have completed 10 years of existence. They

will have to follow the same procedure as applicable to other colleges. However, conferment of autonomy does not entitle them to an autonomy

grant.

11. Even in XI plan, the similar provision was incorporated, which is as follows:

Self-Financing colleges can also apply for autonomy after they have completed minimum 10 years of existence. However, conferment of autonomy

will not entitle them to receive autonomy grant. They will have to follow the same procedure as applicable to other colleges

12. Even X plan document was communicated to all the Colleges by letter dated 27.07.2005 as extracted above. Notwithstanding the same, the

petitioner college persisted in communicating the UGC and the UGC sent the following replies to the petitioner college on various dates and they

are as follows:

Letter dated 17.11.2008 :

I am directed to say that at present UGC does not give grants to Selffinancing/ Un-aided colleges comes u/s 12-B of the UGC Act (copy

enclosed). However, the matter is under active consideration of the Commission. A committee has been constituted by the Commission to look

into the matter. The final decision in this regard as and when decided by the UGC will be intimated to all the concerned colleges.

Communication dated 14.01.2009:

I am directed to say that the name of Subbalakshmi Lakshmapathy College of Science, TVR Nagar, Arupukottai Road, Madurai 625 022, Distt,

Madurai (Tamil Nadu), is included in the list of Colleges maintained u/s 2(f) & 12-B of the UGC Act, 1956 under the head Non-Government

Colleges teaching upto Bachelor's Degree. The College is also eligible to receive Central assistance u/s 12-B of the UGC Act.

13. The fourth respondent, Deputy Secretary, University Grants Commission sent a communication dated 18.02.2009 to the Dean, College

Development Council, Madurai Kamaraj University, in which, it was informed as follows:

The Subbalakshmi Lakshmapathy College of Science, Madurai has approached the UGC for release of grants to the colleges under various

schemes. The UGC has taken a decision not to provide financial assistance to the Self Financing/Un aided college even if the college is included in

the list of 12-B of UGC, till a policy decision is taken.

A copy of the said letter dated 18.02.2009 has been marked to the petitioner College also.

14. The college itself was addressed a communication dated 05.03.2009, which is as follows:

This has reference to the letter No.1-1/2004(CPP-I) dated 14.01.2009 conveying therein that the Subbulakshmi Lakshmapathy college of Science,

Madurai is eligible to receive Central Assistance u/s 12-B of the UGC Act. Based on this notification issued by the CPP Section, the college is

approaching the Regional Office as well as UGC, New Delhi for release of grant under different schemes of UGC. Since as per the records this

college is a self financing institution, this office sought clarification from the Dean, CDC of Madurai Kamaraj University to the affiliating University.

The Dean CDC has clarified that the college is a Self Financing College. Since the decision regarding release of grants to Self Financing Colleges

has not yet been taken, you are requested to kindly clarify regarding release of grants to the above College.

15. Not satisfied with the reply, the petitioner college approached this Court with W.P.(MD).No.7845 of 2009 seeking for a direction to the UGC

to dispose of several of their letters starting from 03.04.2006 to 16.02.2009, in spite of the fact that the college was informed in so many words

that until a policy decision was taken, it will not be entitled for any assistance, as it is a Self-Financing College. However, this Court, by order

dated 12.08.2009, disposed of the petitioner's Writ Petition with a direction to the UGC to consider their representations dated 03.04.2006 and

23.09.2006 within a time frame. This was in spite of the fact that the petitioner's query has been replied in many of the communications set out

above. However, the UGC, on being directed by this Court, sent a covering letter dated 01.10.2009 replying as follows:

I am directed to say that at present UGC does not give grants to Selffinancing/ Un-aided colleges comes u/s 12-B of the UGC Act. However, the

matter is under active consideration of the Commission. A copy of this office letter of even no. dated 17.11.2008 is enclosed.

16. In that letter, they have also referred to their previous communication dated 17.11.2008, which was already set out above. Not satisfied with

this reply, the petitioner college is, once again, before this Court.

17. The contention raised by the petitioner college was that the decision of the UGC in denying them assistance is arbitrary, unconstitutional and in

terms of Section 2(f) r/w Section 12-B of the UGC Act, which enable them to receive autonomy grant, UGC cannot reject it simply by stating that

it is under the consideration of the Commission. The stand of the UGC that at present, they do not allot grant for Self-Financing Colleges is

discriminatory.

18. In answer to the stand of the petitioner college, in the counter-affidavit filed by the UGC, they really stated that Section 2(f) is only for grant of

recognition to institutions in accordance with the Regulations made. The Regulations have been made for grant of autonomous status. The grant of

recognition u/s 2(f) and grant of autonomous status u/s 12-B do not automatically make the institutions eligible for financial assistance and it

depends upon the Rules framed in this regard. In fact, in the communication dated 03.12.1998, referred to above, it is merely stated that such a

recognition is only expected them to receive assistance in terms of the Rules framed u/s 12-B of the UGC Act. It has been noted that the

Government of India, when it allots the funds for the UGC, so as to enable it to allot it to the institutions under its recognition, had required that the

guidelines should be framed. The Scheme of Autonomous Colleges covered either by X plan or XI plan, as set out above, do not make them

eligible to get, as a matter of right, any financial assistance.

19. In the absence of any legal and enforceable provisions, the petitioner college cannot in a Writ Petition seek for a direction to release funds in

respect of the request made by them. In fact, the one thing to state is that a person has been made to come within the zone of consideration for

receiving financial assistance and the other thing to state is that as soon as the institution comes within the zone of consideration, it automatically

leads to the release of grant by the UGC. In every communication, as set out above, it has been made clear that at the moment, the Self-Financing

Colleges do not come for any financial assistance. Therefore, neither there is any promissory estoppel in which the petitioner can plead nor they

can invoke the legitimate expectation, when the matter is covered by statutory guidelines framed in this regard. If the UGC makes a policy decision

not to release any assistance to Self-Financing Colleges, no right accrues to the petitioner college in demanding such financial assistance from the

UGC, merely because it has been recognized as a college u/s 2(f) or eligible to get assistance u/s 12-B of the UGC Act.

20. In this regard, it is necessary to refer to a decision of the Supreme Court in State of Bihar v. Dilip Kumar Mishra reported in 2005 (12) SCC

133. In paragraph Nos.7 and 9, it was observed as follows:

7. The High Court, as we have noted, decided the issue solely on the basis of Article 14 of the Constitution. There is no material whatsoever

discussed by the High Court to show how the schools which had been granted aid and with which parity was claimed were similarly situated as the

two recognised schools in this case.....

9..... There is no right to aid the grant of which will depend upon economic and other relevant considerations. The High Court should not

have directed the grant-of-aid to the two schools in question.

21. In view of the above, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. However, there is no

order as to costs.