

(1998) 08 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 12694 of 1998-J

Book Centre and Another

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

Date of Decision : 14-08-1998

Acts Referred:

Mahatma Gandhi University Act, 1985 — Section 28, 3

Citation : (1998) 08 KL CK 0018

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : V.A. Mohammed, for the Appellant; K. Gopalakrishna Kurup, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The Petitioners are book publishers and sellers. Some of their books have been prescribed as text books for pre-degree classes in the colleges affiliated to the Mahatma Gandhi University, hereinafter referred to as "the University", for the year 1997-98. They have approached this Court seeking a direction to the University to select the text books for pre-degree course for the year 1998-99 only after issuing notifications calling for books from publishers and sellers as had been done in the previous years. They also seek a direction to continue the prescribed texts in the year 1997-98 for the year 1998-99 as well.

2. The Petitioners submit that as per Ext. P-1 schedule published by the University, first year pre-degree classes have already started on 20-7-98. They submit that Chapter XII of the Mahatma Gandhi University First Statutes 1991 provides that the Board of Studies constituted by the University shall have power to recommend for guidance to teachers and students books or prescribed texts for different classes. For the year 1998-99 also as seen from Ext. P-2, notification has been issued by the University requesting the publishers, authors and book sellers who desire to have their books prescribed as text books for different degree courses of the University to submit ten copies of the same to the Registrar. Exhibit P-2 is dated 11-11-1997. Thus, steps are taken in advance and

long before the commencement of the academic year 1998-99 to prescribe the necessary text books. Exhibit P-2 did not invite books for pre-degree classes. They submit, relying on Ext. P-4, that in such circumstance the books for the previous year have to be followed. In Ext. P-4, the Registrar informed all the Principals of the affiliated colleges to the effect that certain books prescribed for 1996 for various classes should be followed for 1997 admission also. So, as no books for the pre-degree classes are invited for the year 1998-99 in Ext. P-2, those prescribed for the previous year shall be followed.

3. A Statement has been filed by the University. It is contended by the University that the Petitioners have no locus standi to file this original petition. At present, no Board of Studies is constituted. In the absence of such a body, the University can exercise the powers of Board of Studies. As per Section 3 of the Mahatma Gandhi University Act, the Chancellor, Vice-Chancellor, Pro Vice-Chancellor, Members of Senate, Syndicate and Academic Council, shall for the time being, constitute a body corporate by the name Mahatma Gandhi University. Therefore, the University can take appropriate decision in regard to prescription of text books in the absence of Board of Studies. As there was no Board of Studies, the Vice-Chancellor constituted a Committee for making recommendations to the Academic Council to prescribe text books for pre-degree classes. So, no illegality is committed for prescribing text books. The University will consider the recommendations made by the Committee. Since the classes have already begun on 20-7-98, the books have to be prescribed without further delay. The Petitioners cannot insist that the books for the year 1997-98 shall be followed in the current year as well. The Committee has already submitted their recommendations. Those recommendations would be considered by the Academic Council. Books are considered on the basis of various considerations including the author the content of the book and other related aspects. But, in the statement, nothing is mentioned with regard to Ext. P-2 notification inviting books from the publishers; or Ext. P-4 to follow certain book in the subsequent year. Nothing is also stated in the statement of the Respondents why similar publications as in Ext. P-2 is not issued in respect of the books for pre-degree classes, for this year. Nothing is also stated why such a course of action adopted for pre-degree classes for the last year is not followed this year.

4. A reply affidavit has been filed by the Petitioners. It is submitted by the Petitioners that all the Universities in the State are publishing notifications inviting books from publishers, sellers and authors for prescription for various courses of the Universities. Exhibit P-8 produced along with the reply affidavit is a notification dated 28-10-1996 published by the another University namely Calicut University inviting authors and copyright holders to submit books for consideration for prescription to pre-degree and degree classes for the year 1997-98. Exhibit P-9 dated 26-10-93 is a notification by the Respondent University itself inviting books from publishers, book sellers and authors for prescription to various courses conducted by the University, for the year 1994-95. Exhibit P10 is yet another notification published by the Respondent

University itself, on 25-8-"94 again inviting books from publishers, authors and book sellers for prescription to various courses for the year 1995-96. Thus, Ext. P-9 for the year 1994-95 and Ext. P-10 for the year 1995-96 issued by the Respondent University show that books were invited from publishers authors and book sellers for being considered for prescription for various courses which include pre-degree as well. These notifications are not refuted by the Respondent University. Thus, University had since long following a definite criterion of inviting books from publishers, authors and book sellers for considering the books for prescribing for different courses, the Petitioners submit. Such a procedure cannot now be varied without any valid reasons and nothing is stated about that, in the statement, the Petitioners contend.

5. Thus, the issue arising in this case has thus to be considered in the light of the above contentions.

6. The main contention urged by the Respondent as already mentioned above is that the Petitioners do not have any locus standi to file this original petition. They have no right for their books being prescribed for the pre-degree course or any other course. So, they cannot maintain this original petition. This contentions cannot be countenanced as per the notifications mentioned above. This University and another University had been following the practice of inviting books, earlier. The Petitioners had on an earlier occasion submitted their books and their books have been prescribed on different occasions. So, they were expecting the established procedure being followed. When that is riot being followed, certainly, they cannot question the action of the University. So, the Respondent cannot contend that the Petitioners do not have locus standi. In J. Mohapatra and Co. and Another Vs. State of Orissa and Another, , the Supreme Court considered this aspect with respect to selection of books itself. Considering a similar contention the Supreme Court held in paragraph 8 of the judgment as follows at page 1574 (of AIR):

Merely by submitting books for selection of which some might have been selected, a person cannot be said to have waived the objection which he may have to the constitution of the committee which selects the books. Similarly, merely because a person does submit any book for selection, it cannot be said that he is not a person aggrieved. Today, the law with respect to locus standi has considerably advanced both in this country and in England and in the case of public interest litigation it is not necessary that a Petitioner should himself have a personal interest in the matter. It is unnecessary to refer to the decisions of this Court on the point or to dilate further upon it.

This case has the nature of a public interest litigation as well in so far as the University is violating the procedure hitherto followed in the matter of prescribing "books an issue of public importance. Not only that, the Petitioners."-books have been prescribed on an earlier occasion following that procedure. Therefore, the Petitioners have the locus standi in this case to maintain this original petition.

7. The Petitioners contend that the Board of Studies constituted u/s 28 of the Mahatma Gandhi University Act alone has the power to prescribe books for various courses under the University including pre-degree. As per the Statutes, the Board of Studies shall have such power. When such power is statutorily delegated to the Board of Studies, no other body can exercise the power to prescribe books, Therefore, the Committee constituted by the Vice-Chancellor, as contended in the statement, does not have the power to prescribe the books or recommend to the Academic Council. Academic Council also cannot exercise the power of the Board of Studies. In the absence of the Board of Studies, no other body of the University can exercise such function the Petitioners contend. In answer, it is contended by the Standing Counsel for the University that the Board of Studies is one constituted In the Syndicate u/s 28 of the Act. Therefore, it is subordinate to the Syndicate as well as Academic Council. Therefore, in the absence of the Board of Studies, Syndicate or Academic Council shall have the powers to prescribe the text books. As at present, there is no Board of Studies in existence in the Mahatma Gandhi University. Therefore," the action of the Vice-Chancellor, to constitute a Committee for making recommendations to the Academic Council to prescribe the text books is perfectly in order. Those recommendations would be placed before the Academic Council of the University. According to the Counsel, as per Section 3 of the Act, the Chancellor, the Vice-Chancellor, Pro Vice-Chancellor, the members of Senate and Syndicate and Academic Council would constitute the Mahatma Gandhi University and the power of the Board of Studies can be exercised by the University.

8. When a specific power is conferred on a body statutorily constituted, another body cannot exercise that power even in the absence of that body. To exercise that power, that body is essential and has to be constituted. Statutorily constituted bodies cannot be said to be superior to one another or inferior to each other. The Act had envisaged different authorities like Syndicate. Senate, Academic Council, Board of Studies, Faculty etc. enjoining each with specific powers in terms of the statute itself. Therefore, such powers shall be exercised exclusively by those authorities. Even if the Board of Studies, is constituted by the Syndicate, the power conferred by the statute on the Board of Studies cannot be exercised by the Syndicate or any Committee or by the Academic Council as contended. So, the action to prescribe text book by the said Committee or Academic Council is itself illegal being incompetent.

9. Take it for a moment that Academic Council or the Syndicate or the University as such can exercise that power in the absence of Board of Studies, as contended by the counsel for the University. In such circumstances, any or all such bodies will be acting as a substitute for the Board of Studies. So, all the procedures or formalities hitherto followed by the Board of Studies for prescribing text books have to be strictly conformed to by those bodies as well, As is evident from Exts. P-2, P-9 and P-10, notifications were being published inviting books from publishers, authors and book sellers to prescribe text books for various courses including pre-degree. Such Committee or Academic Council

or the Syndicate or the University itself cannot thus vary that mode prescribed by the Board of Studies without specific orders in that regard. No orders have been pointed out in the statement varying that mode of selection. So, even if the contention of the Standing Counsel is accepted, it will not save the situation so long as all or any of the bodies have not taken a decision to vary the decision hitherto followed by the Board of Studies in the matter of prescription of text books. Admittedly, this time no notification has been published either by the Sub-Committee or any of the bodies mentioned above inviting books from publishers, authors or book sellers for the pre-degree classes as was done during the last years.... So, on that basis also, without such notification, the Sub-Committee, Academic Council, Syndicate or the University itself cannot prescribe text books.

10. It is true that the Petitioners cannot have any say in the matter of selection of prescribed books. But they can insist for the procedure hitherto accepted being followed. University has hitherto been as mentioned above, publishing notification inviting books from publishers, authors and book sellers for selecting text books. Such method has been adopted not only by the Mahatma Gandhi University but by other Universities as well, as is revealed by Ext. P-8 notification of the Calicut University. That method was adopted to make the entire selection transparent and to enable the willing book sellers, authors and publishers to present their books also for being considered. That is a fair and reasonable method. That was why it was adopted by this University and other Universities. There is not even a whisper in the statement of the University that such procedure had been varied by any competent authority or about any reason for such variation. Therefore, that procedure has to be followed until competently and validly varied. No selection of books can therefore be made without such notification, as it was the procedure hitherto followed by the University as revealed by Exts. P-2, P-9 and P-10. For this year also, Ext. P-2 notification was issued inviting books for Degree courses. Why pre-degree classes alone is excluded, is not explained in the statement of the University.

11. It is admitted by the University itself that classes have begun on 20-7-98. Text books have to be prescribed sufficiently in advance. As revealed by Ext. P-2, for the year 1998-99, notification had been issued as early as on 11-11-1997 inviting books for being prescribed for degree courses. As is revealed from Ext. P-4 dated 2-7-1997, books of 1996 admission have been directed to be followed for 1997 admission also. Exhibit P-9 notification dated 26-10-1993 shows that books were invited for the year 1994-95 sufficiently in advance. Same is the case with reference to Ext. P-10 notification dated 25-8-1994 concerning the year 1995-96. Therefore, steps have been taken to prescribe the books sufficiently in advance. The Calicut University, as revealed by Ext. P-8 dated 28-10-1996, had taken steps to prescribe books for the year 1997-98 sufficiently in advance. Thus, that is the practice in several Universities. Now one month has elapsed since the commencement of the current academic year. There arises no question of fresh books being prescribed at present. That will cause difficulties to students and teachers. University shall take steps to prescribe books for every year

sufficiently in advance and before the close to the previous academic year so as to avoid inconvenience to the students. That is necessary in the public interest.

12. In the aforesaid circumstances, so long as there is no case for the University that the procedure of issuing notification inviting books from authors, publishers and book sellers for prescribing text books is not changed, the University has to follow that procedure of issuing notification calling for books from such publishers, authors; and the University cannot prescribe books without such notification unless such procedure is changed by appropriate orders of the competent authority. But, this Court cannot direct the University to follow text books prescribed earlier for the current year also. There had been occasion of making such prescription as is revealed by Ext. P-4 dated 2-7-1997. It is up to the University to consider whether similar orders have to be passed so as to avoid inconvenience to be caused to the students and teachers because of prescription of fresh books during the midst of an academic year.

O.P. is allowed to the above extent. There will be no order as to costs.