
(2007) 06 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No's. 10711 of 2005 and 7733 and 8120 of 2006 and
W.A. No. 394 of 2006

Centre for Entrepreneurship Development

APPELLANT

Vs

Madurai Kamaraj University

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Citation : (2008) 2 LW 788

Hon'ble Judges : P.P.S. Janarthana Raja, J;Dharma Rao Elipe, J

Bench : Division Bench

Advocate : AR. L. Sundaresean for G.R. Swaminathan, for the Appellant; Nalini Chidambaram for Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

Dharma Rao Elipe, J.—W.P. No. 10711 of 2005 has been filed by Centre for Entrepreneurship Development (Tamil Nadu) (in short

"CED"), represented by its Founder Chairman, Dr. M. Lakshmanan, seeking a Writ of Mandamus, forbearing Madurai Kamaraj University

(hereinafter referred to as ""the University"")) from interfering with the affairs of the CED in any form.

2. W.P. Nos. 7733 and 8120 of 2006 have been filed by Dr. R. Jayaraman, who has been suspended by the University from the posts of

Professor and Head of the Department of Entrepreneurship Studies, seeking Writs of Certiorari and Certiorarified Mandamus respectively to

quash the order passed by the University withdrawing the permission granted to him to function as the Member Secretary and removing him from

the Headship of Department of Entrepreneurship Studies and further to grant him one year sabbatical leave for research.

3. W.A. No. 394 of 2006 has been filed against the order dated 20.9.2006 passed by the learned Judge, dismissing the writ petition filed by Dr.

R. Jayaraman, petitioner in the present writ petitions.

4. Since the facts involved in all these writ petitions are common, the issues arising therefrom are also common and further common arguments were

addressed by the learned Counsel appearing for the respective parties, we heard the writ petitions and the writ appeal together and dispose of the

same by this common order.

5. The facts, in brief, as culled out from the pleadings placed before us, are as follows:

Petitioner Dr. R. Jayaraman joined the services of the University in the year 1980 as Lecturer in Management Studies and promoted as Professor.

In the year 1991, he was nominated as the Head of the Department of Entrepreneurship Development (DES). By virtue of his position as the Head

of the DES, he was the ex-officio member of the Senate as well as the Academic Council of the University. He also served as Syndicate Member

of the University during 1994 to 1997.

6. In the year 1990, the petitioner and three persons, viz. . Dr. M. Lakshmanan, the then Vice Chancellor of the University, Dr. G.P. Rao, the then

Head of the Department of the Management Studies and Mr. S. Rajagopal, an industrialist, started a non-charitable public trust by name ""Centre

for Entrepreneurship Development (Tamil Nadu)"" (hereinafter referred to as ""the CED"") with the object of propagating the Entrepreneurship and

Management education and to establish a Entrepreneur Training Institute and Scientific Research Institution and Social Forestry. The petitioner was

nominated as the Honorary Member Secretary by the Board of Trustees. It is claimed by the petitioner that there was no financial commitment by

the University in formation of the said Trust and the CED.

7. It appears from the materials placed on record that initially, the CED was located and functioning in the premises of the University within the

university campus. The formation of the Trust and the CED was approved by the Syndicate of the University in the meeting held on 18.9.1989.

The Syndicate of the University, by its resolution dated 29.6.1991, also accepted the proposal of the petitioner, who, at the relevant time, was a

Professor in the Department of Management Studies of the University, to form a

separate Department for Entrepreneurship Development in the University. By letter dated 22-8-1991, the University nominated the petitioner as the Head of the Department of the CED. The CED was recognised by the Government as a Training and Consultancy Agency for the Industries Department.

8. In the year 1993, the CED entered into a lease agreement with the Madurai City Municipal Corporation in respect of the premises owned by the Corporation at No.4, T.B. Road, Madurai. The office of the CED was shifted from the University Campus to the new premises called CED Training Campus wherefrom, the CED was operating from 1.1.1993. The lease agreement was renewed periodically in the years 1996 and 1999.

9. The Syndicate of the University passed a resolution dated 25.10.1993 delinking the CED from the University. Further, the University informed the petitioner that there would be no financial commitment on the part of the University and that the CED should not use the name of the University in running the CED and that his participation in the CED should be without detriment to his regular university works.

10. The University, by its letter dated 30.10.1996, informed the petitioner of the decision taken by the University to shift the Department of Entrepreneurship Studies to the new premises of the CED and requested the petitioner to shift the office and the Department to CED Training Campus on a temporary measure as a special case without any financial commitment on the part of the University. The petitioner was further requested to hand-over the rooms occupied by the Department of entrepreneurship Studies to the University.

11. While so, on 3.6.1999, the Department of Entrepreneurship Studies of the University had entered into a Memorandum of Understanding with M/s. Dynamic Software Solutions (DSS), Chennai for offering a Post Graduate course called M.S. (I.T. & M.) in Management Programme with focus on Information Technology for three academic years starting from 1999-2000. The agreement inter alia provided for the sharing of the income between the University and the DSS.

12. The CED entered into a Memorandum of Understanding with DSS in connection with the offering of the very same post-graduate course, viz. M.S. (I.T. & M) whereby the CED and DSS agreed, subject to the agreed terms

and conditions, to collaborate with each other for the conduct of the said post-graduate course. The agreement also provided for sharing of the income between the CED and DSS. On 12.3.2001, the original Trust Deed of the CED was amended and the amended Trust Deed provided that the petitioner shall be the Principal Officer of the Trust to look after the day to day administration of the CED.

13. It appears that S. Rajagopal, one of the Founder Trustees of the CED, addressed a letter dated 1.1.2002 to the petitioner complaining certain financial irregularities and improper maintenance of the accounts of the CED. He further alleged that the Trust Board Meetings of the CED were held to suit the own and personal interests of the petitioner and not at regular intervals and that the petitioner had been running the CED to his likes and dislikes as if he was running his private business. The letter also contained the allegations of misappropriation of trust funds, breach of trust, etc. against the petitioner.

14. The allegations were rebutted by the petitioner as well as the other Founder Trustee of the CED, by letter dated 3.1.2002. It is alleged in the said letter that the allegations were made only to side track the issue raised by the CED regarding handing over of four rooms occupied by SIPPO Limited and Rajagopal Finance and Leasing Limited, owned by S. Rajagopal.

15. Certain financial irregularities and illegalities were pointed out in the Local Fund audit report of the University for the year 2003-2004 with regard to the conduct of the post-graduate course M.S. (I.T. & M) by the DSS. It was pointed out in the audit report that by such financial irregularities and illegalities committed by the persons in charge of the DES and the CED Trust, the University has suffered a huge monetary loss and the persons in charge of the CED Trust had made illegal gains. A committee was constituted by the Vice Chancellor of the University to peruse the audit objections found in the Audit Report 2003-2004 relating to the CED and DSS.

16. The constitution of the Enquiry Committee by the Vice Chancellor was challenged by the petitioner in W.P.No.730 of 2006. The said writ petition was dismissed by order dated 20.9.2006. Challenging the same, the petitioner/Mr. Jayaraman has filed W.A. No. 394 of 2006.

17. The Enquiry Committee, by its minutes dated 20.9.2005, reported that there

is a prima facie criminal case to proceed against the petitioner and further suggested for filing of a criminal case against the petitioner for misappropriation of public funds and cheating, criminal breach of trust and also for initiation of departmental action. The Committee further suggested to address the Government for withdrawal of the G.O.Ms. No. 581 issued in favour of the CED; to inform the Government and other agencies about the malfunctioning the CED Trust by misusing the name and banner of CED and the University; to withdraw the permission granted to the petitioner to act as the Honourary Member of the National Entrepreneurship Development Board and to act as the Honorary Member Secretary of the CED. In the Syndicate Meeting held on 29.10.2005, it was resolved to authorise the Vice Chancellor to take necessary action against the petitioner.

18. It also appears that the matter was seriously discussed in the various meetings of the Senate and Syndicate of the University and more particularly in the ordinary meeting of the Senate held on 18-11-2005. In the Special Meeting of the Syndicate held on 26-11-2005, resolutions were passed for initiating follow up action against the petitioner, for constituting a Departmental Committee to conduct an enquiry against the petitioner. It was further resolved not to comply with the petitioner's request to go on voluntary retirement.

19. It also appears that representations were sent by some of the Founder Trustees/Trustees of the CED to the Chancellor of the University (Governor of Tamil Nadu) alleging victimisation of the petitioner by the present Vice Chancellor and sought Chancellor's intervention in the matter.

On such representation, a letter dated 26-11-2005 was addressed by the Secretary to Governor, requesting the Vice Chancellor to desist from taking any further action against the petitioner until clearance is obtained from the Chancellor.

20. Aggrieved by the resolutions passed in the Senate Meeting held on 18.11.2005 and in the Syndicate Meeting held on 26.11.2005, the petitioner had filed a writ petition (W.P. No. 10949 of 2005) before this Court, seeking a Writ of Mandamus forbearing the University from giving effect to the resolutions passed in the meetings held on 18.11.2005 and 26.11.2005. The said writ petition was, however, withdrawn by the

petitioner with liberty to approach this Court in the event any order adversely affecting him is communicated pursuant to the said resolutions.

Aggrieved by the initiation of the action by the Vice Chancellor of the University, the CED has also filed W.P. No. 10711 of 2005 seeking the

relief of Writ of Mandamus, forbearing the University from interfering with the affairs of the CED.

21. The University, by its letter dated 26.8.2006, informed the petitioner about the decision taken by the Syndicate to remove him from the

Headship of the DES and accordingly, he was informed to handover the charge as Head of the Department of DES to Head of the School of

Business Studies.

22. Further, the petitioner had applied to the University on 1.8.2005 for grant of Sabbatical Leave for one year with effect from 3.8.2005. Since

no order was passed on his application, the petitioner has filed a writ petition (W.P. No. 2543 of 2006) seeking a Writ of Mandamus, directing the

University to grant Sabbatical leave to him. The said writ petition was disposed of by order dated 26.7.2006, directing the University to consider

the petitioner's applications dated 2.5.2006 and 1.8.2005 in accordance with the Laws of the University. The University, however, by order dated

26.8.2006, rejected the petitioner's request for Sabbatical leave, citing the reason of pendency of enquiry against him by the Directorate of

Vigilance and Anti-corruption. Aggrieved by the decisions taken by the University withdrawing the permission granted to the petitioner to act as

the Member Secretary of the CED, removing him from the Headship of DES and rejecting the application for grant of Sabbatical leave, the

petitioner has filed W.P. Nos. 7733 and 8120 of 2006.

23. Detailed counter-affidavits have been filed by the respondents, denying all the allegations of the affidavit of the petitioner and further giving

details as to how the petitioner misused his official position to cheat the University for achieving their illegal objective, causing revenue loss to the

University by using the University as an instrument for establishing the CED, as if the CED is attached with the University. It is also stated that the

petitioner Trust misusing the banner of the University raised State and Central Government funds thereby diverting the funds to a trust created for

their own benefits, betraying the trust reposed on them, which amounts to

criminal breach of trust committed by the petitioner and his associates with a result of executing a colourable trust deed in a collusive manner with improper motive.

24. Heard the learned senior counsel for the petitioner and the learned senior counsel for the University. We have carefully gone through the voluminous material placed before us.

25. A scrutiny of the entire materials placed before us in the light of the strenuous arguments advanced on the part of the petitioners and the

respondents, would bring to fore the open scandal made by the petitioners, creating a Trust under the name and style of Centre for Entrepreneur

Development Trust, admittedly, while Dr. M. Lakshmanan was in office as the Vice-Chancellor of the respondent University, posing and

appointing himself as the Chairman of the Trust besides naming three other persons as the Vice-Chairman, Honorary Director and Member-

Secretary, including Dr. R. Jayaraman. The attempt on the part of the petitioners joining hands with others, to create the Trust appears to be to

pursue their personal benefits, virtually using their official position. As has been rightly pointed out by the respondents, a perusal of the Trust Deed

dated 26.5.1990 was executed at the official residence of the Vice Chancellor, offering the address of the Trust as Department of Management

Studies, Madurai Kamaraj University, without the knowledge of the Syndicate. One more interesting aspect to be pointed out is that on the ground

of financial crisis and lack of performance of the Centre for Entrepreneur Development, the de-linking process was mooted out and approved by

the Syndicate and from the date of de-linking of CED from the University, the performance and the income of the Trust. When the wind started

blowing against them, Jayaraman offered his leave application for one year sabbatical leave, which, in our view, was rightly rejected, pending

enquiry.

26. The number of litigations initiated by the petitioner and Jayaraman also would reveal the fact that they are always trying to put some stumbling

blocks in the process of initiation of action against them by the University, going upto the extent of denying the right and jurisdiction of the

University to launch any action against them, which was rejected by this Court.

27. A bare perusal of the audit report, which is the root cause for initiation of

action against the petitioner and Jayaraman, would reveal the fact of embezzlement of funds of the University. When the very creation of the Trust, while the petitioners were occupying high positions in the University, appears to be for their self-enrichment and when such serious allegations of misuse of power, misappropriation, embezzlement and diversion of public funds by the petitioners are made against them, it is but appropriate for the University to probe into the matter to unearth the true facts of the case.

28. Prima facie, there are materials to show that petitioners Lakshmanan and Jayaraman have misused their official positions for creating the Trust and acting much against the interest of the University, betraying the trust reposed on them. In the light of the above discussion, we are unable to either appreciate or accept the contention of the petitioners that they are victimised.

29. The learned single Judge, has considered all the aspects of the case regarding constitution of the Enquiry Committee by the Vice Chancellor in proper perspective and dismissed W.P. No. 730 of 2006, by the order dated 20.9.2006. We do not find any illegality or perversity in approach by the learned single Judge. Therefore, the interference sought for by the appellant in W.A. No. 394 of 2006 is uncalled for and accordingly, W.A.

No. 394 of 2006 is dismissed.

30. Though it is contended on behalf of the petitioner in W.P. No. 10711 of 2005 that CED is an autonomous body, there is no scrap of material on record to show that the University has accorded the status of autonomous body to the CED. On the contrary, there is voluminous material on record to prove that even after de-linking, CED is making use of the name, fame and banner of the University and when the reputation of the University is at stake at the hands of its own employees, either working or retired, under the garb of CED, it cannot be said that the University cannot interfere with the affairs of the CED being run by Dr. M. lakshmanan with the help of his stooges like Mr. Jayaraman. Therefore, the relief sought for in W.P. No. 10711 of 2005 cannot at all be granted and it deserves outright rejection.

31. Since the properly constituted Enquiry Committee has found that there are prima facie materials to proceed against the petitioner Jayaraman

and further, on perusal of the entire materials placed on record, as has already been adverted to supra, this Court is also able to find some prima

facie material as against the petitioner to initiate action against him to unearth the true facts, it is unsafe to allow him to continue as Head of

Department and hence, the 1st respondent has rightly removed the petitioner from the position of the Head of Department on account of the

continuing investigation into the grave charges levelled against him in connection with public funds, in which, this Court is unable to find any motives

to be attributed to the University and hence the reliefs sought for by the petitioner in W.P. Nos. 10711 of 2005, 7733 of 2006 and 8120 of 2006

cannot be granted thereby giving a deep burial to the fact finding process and nipping the investigation process at the budding stage itself without

allowing it to reach its logical ends, and hence these writ petitions also deserve to be dismissed.

In the result, W.A. No. 394 of 2006, W.P. Nos. 10711 of 2005, 7733 of 2006 and 8120 of 2006 are dismissed. No costs.