

(2006) 09 MAD CK 0075

In the Madras High Court

Case No : Writ Petition (MD) No's. 730 and 2767 of 2006 and W.P.M.P. No. 806 of 2006

Dr. R. Jayaraman

APPELLANT

Vs

Madurai Kamaraj University
Dr. PR. Athappan Vs The
Registrar, Madurai Kamaraj University, The Vice Chancellor,
Madurai Kamaraj University and Dr. R. Jayaraman

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Madurai Kamaraj University Act, 1965 — Section 12, 12(10), 13, 14, 45

Citation : (2006) 09 MAD CK 0075

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : S. Nagamuthu, in W.P. 730/2006 and S. Kadarkarai, in W.P. 2767/2006, for the Appellant; S. Nagamuthu, for 3rd Respondent in W.P. 2767/2006, B.S. Gnanadesigan, for S. Chandrasekar in W.P. 730/2006 and for RR-1 and 2 in W.P. 2767/2006, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—In W.P. No. 730 of 2006, petitioner seeks to quash the proceedings of the respondent University dated

11.8.2005 and to forbear the respondent University from implementing the report of the Committee dated 20.9.2005.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit in support of the writ petition are as follows.

(a) Petitioner joined as Lecturer in Management Studies in the year 1980 in the respondent University. He was promoted as Reader and then as

Professor in the same department. In the year 1991, petitioner was nominated as Head of the Department of the Entrepreneurship Development,

which was subsequently renamed as Department of Entrepreneurship Studies. As

Professor and Head of the Department, the petitioner is serving as an Ex-Officio Member of the Senate as well as Academic Council of the respondent University.

(b) According to the petitioner, on 26.5.1990, petitioner with three other prominent members including the then Vice Chancellor founded a registered Trust under the name and style of ""Centre for Entrepreneur Development"" with a corpus fund of Rs. 1,000/- and the petitioner was nominated as the Honorary Member Secretary by the Board of Trustees.

(c) It is averred in the affidavit that the constitution of the Trust and its functioning have nothing to do with the respondent University as the Trustees are governed by the Trust Act. According to the petitioner, as per the service conditions of the University, there is no bar for the petitioner to involve in the charitable activities and hence the petitioner sought for formal no objection from the respondent University to act as one of the Trustees and the same was granted by the respondent by means of Syndicate resolution dated 30.11.1993. Therefore, the petitioner is acting as a Trustee and also Professor and Head of the Department of Entrepreneurship Studies.

(d) According to the petitioner, in the month of November, 2005, news items were issued in the dailies stating that in the Senate meeting held on 18.11.2005, decisions were taken to remove the trusteeship of the Centre for Entrepreneur Development, as if the Trust was controlled by the University. The same was also decided by the Syndicate in its meeting held on 26.11.2005. Petitioner filed W.P(MD) No. 10949 of 2005 and challenged the same, which was subsequently withdrawn on the ground that there was no consequential order passed by the Vice Chancellor implementing the resolution and till date no order is passed.

(e) The Vice Chancellor of the University by his proceedings dated 1.8.2005 issued an order and consequently on 11.8.2005 constituted a Committee consisting of four members to peruse the audit observation found in the audit report of the year 2003-2004 relating to the Centre for Entrepreneur Development and the Department of Entrepreneurship Studies. The said action of the respondent is challenged by the petitioner on the ground that the power to constitute the Committee is vested only with the University Authorities viz., the Syndicate, Senate, the Academic

Council, the Finance Committee and the Faculties u/s 14 of the Madurai Kamaraj University Act, 1965. The Vice Chancellor is only an Officer of

the University and not an authority of the University and therefore he has no powers to constitute any Committee.

(f) According to the petitioner, the said committee submitted a report on 20.9.2005 to the Vice Chancellor and made the following three recommendations,

a) To request the State Government of Tamilnadu to withdraw the G.O.Ms. No. 581 Industries Department dated 28.10.1992.

b) To inform the Government of India and the clients (i) TIIC (ii) TANSIDCO (iii) NABARD (iv) MINISTRY OF SMALL SCALE

INDUSTRY, GOVT. OF INDIA (v) CORPORATION OF MADURAI (vi) GOVT. OF TAMIL NADU (vii) SIDBI (viii) BRITISH

COUNCIL, CHENNAI (ix) WORLD BANK about the malfunctioning of the CED Trust created by misusing the banner of CED, MKU and

therefore MKU has withdrawn the permission granted to Dr.R.Jayaraman to function as Honorary Member Secretary and National

Entrepreneurship Development Board may be addressed to withdraw the membership/Nomination extended to Dr.R.Jayaraman.

c) To withdraw the permission granted to Dr.R.Jayaraman to function as Honorary Member Secretary in CED vide Syndicate Resolution dated

30.11.1993. Registrar's letter No. Plan/2/CED/SO/93 dated 10.12.1993.

The said constitution of Committee dated 11.8.2005 and the consequential report of the committee dated 20.9.2005 are challenged in this writ petition.

3. (i) The Registrar of the University filed counter affidavit, who is the competent authority as per Section 13 of the Madurai Kamaraj University

Act, 1965, wherein it is stated that the constitution of the Committee and the report of the Committee dated 20.9.2005 are the subject matter

published in Dhina Malar daily dated 19.11.2005 and 27.11.2005, which was challenged by the petitioner in W.P. No. 10949 of 2005 and the

same was dismissed as withdrawn on 6.12.2005 and till date no consequential order has been passed by the respondent. Therefore, according to

the respondent, the writ petition is premature and the same is liable to be dismissed in limine. In paragraphs 5 and 6 of the counter affidavit the

Registrar has stated as follows,

5... The petitioner and the then Vice-Chancellor Dr.M.Lakshmanan and another faculty member one Mr.G.P.Rao have conspired and colluded

together and registered an alleged public charitable trust executed on 22.05.1990 which was registered on 26.05.1990 at the official residence of

the then Vice-Chancellor itself is nothing but misuse of official capacity not only by the petitioner but also by the then Vice-Chancellor and another

faculty member. The creation of a unique centre (CED) formed by the respondent University was converted into a private charitable trust is against

law. A mere reading of the recitals of the trust deed dated 22.05.1990 and the consequent amendments dated 29.08.1994 and 12.10.2000 would

show the detrimental attitude of the alleged founders of the trust. If this type of illegal and malafide conversion of each and every department/centre

of the University is permitted, it will affect the very existence of the University.

6. I humbly submit that the respondent University has created a separate centre under the name ""Centre for Entrepreneurial Development"" under

the aegis of the ""Department of Management Studies"" vide Syndicate resolution dated 18.09.1989. During the above period, the petitioner served

as the Reader and Dr.G.P.Rao, as Professor & Head in the Department of Management Studies and the said Dr.M.Lakshmanan, served as the

Vice-Chancellor. Having known the potentiality of the new centre, the above said faculty members conspired with a criminal intention, have

created the alleged trust under the same nomenclature. In such a way, the petitioner and the then Vice-Chancellor and Ors. have segregated a

highly valuable and remunerable department called ""Centre for Entrepreneur Development"" without the knowledge of the respondent University.

Hence, the nomination of the petitioner as the Honorary Member Secretary by the alleged board of trustees was self designated with an intention

to escape from the clutches of law. Those acts were executed in a secret manner which is not known to the Senate, Academic Council of the

University including the Governor - Chancellor office.

(ii) It is also averred in the counter affidavit that as per the request of the University in its letter dated 13.7.1992, the Tamil Nadu Government

passed G.O.Ms. No. 581 dated 28.10.1992 recognising the Centre for Entrepreneur Development, Madurai Kamaraj University, Madurai, as a

Training and Consultancy Agency for Industries department. The petitioner and his associates, misusing the said Government Order, obtained

State and Central Government funds and also from University Grants Commission and collected crores of rupees and diverted those funds to the

Trust under the banner of the respondent University. The audit objection raised during the financial year 2003-2004 focused the said facts and

therefore the Syndicate in its meeting held on 4.5.2005 passed resolution No. 39 and requested the Vice Chancellor to constitute a Committee to

enquire into the audit objection for the year 2003-2004 consisting of four members. The said constitution of the Committee was duly informed to

the Head of the Department of Entrepreneurship Studies vide letter dated 19.9.2005 and the said committee is constituted in accordance with the

rules enumerated u/s 45 of the Madurai Kamaraj University Act, 1965.

(iii) It is further stated in the counter affidavit that the Vice Chancellor being the academic head, is entitled to issue orders and he is exercising the

general control over the University as per Chapter II, Section 12 and Chapter V Section 12, Sub-section 10 of the Madurai Kamaraj University

Act, 1965. Hence the constitution of the Committee and the consequential report are valid and sustainable.

(iv) It is also denied in the counter affidavit that the Trust has nothing to do with the respondent University and the petitioner being a full time paid

employee of the University, the respondent University is competent to question the illegal activities of the petitioner and his associates, who have to

follow the rules and regulations of the respondent University in the interest of the integrity of the University and also in the interest of safeguarding

the permanent and public grant.

(v) It is contended in the counter affidavit that the petitioner with the connivance of his associates, is continuously serving as Member-Secretary of

the Trust while working as Professor and Head of the Department of Entrepreneurship Studies. Petitioner, who is receiving salary from the

University is indulging in high remunerative activities under the guise of Honorary and Charity by misusing his official capacity, which is in violation

of Chapter VIII of the Calendar of the Madurai Kamaraj University. Petitioner anticipating the departmental action has chosen to prefer this writ

petition and it is prayed to dismiss the writ petition.

4. The learned Counsel for the petitioner argued that the Centre is a separate entity governed by the Trust, over which the University has no

control and therefore the Vice Chancellor has no power to constitute the Committee. Learned Counsel also submitted that the petitioner is only an

Honorary Trustee of the Charitable Trust and the audit report did not provide any basis and that the same is illegal.

5. The learned Counsel appearing for the University submits that the Syndicate, by its resolution No. 39 dated 4.5.2005 empowered the Vice

Chancellor to constitute a committee to peruse the audit objections for the year 2003-2004 and thereafter four member committee was constituted,

two of them being Syndicate members along with the Director of Legal Studies as Convenor and one member is the Deputy Finance Officer

(Local Fund Audit). The Vice Chancellor being the academic head, is entitled to give effect to the orders of the Syndicate to exercise general

control of the affairs of the University. Hence the appointment of the Committee to peruse the audit objections and the recommendations made by

the Committee, which is impugned in this writ petition is perfectly legal and if any action is taken then only the petitioner will get cause of action

since the earlier writ petition filed by the petitioner was dismissed on the said ground. The learned Counsel also submitted that the Trust Deed was

executed on 22.5.1990 and permission was granted by the University only on 30.11.1993 based on the request made by the petitioner which is

extracted hereunder,

172. Considered the letter received from Dr.R.Jayaraman, Professor & Head, Department of Entrepreneurship Studies to continue as Honorary

Member Secretary of Centre for Entrepreneur Development.

RESOLVED that the request of R.Jayaraman, Professor & Head, Department of Entrepreneurship Studies to continue as Honorary Member

secretary of Centre for Entrepreneur Development be complied with provided that

1. There is no financial commitment on the part of the University.

2. No University banner be used by the Professor concerned.

3. His participation should be without detriment to his normal University works.

The same was communicated to the petitioner by the Registrar on 10.12.1993. According to the learned Counsel since the petitioner is repeatedly

using the word HOD of Entrepreneurship Development Programme and is collecting funds and the audit report 2003-2004 found that there are

several irregularities, the Syndicate resolved to authorise the Vice Chancellor to appoint a committee, which is only a fact finding committee and it

has submitted its report and the report is to be considered by the Syndicate and appropriate action is to be taken. The learned Counsel also

argued that the permission granted by the University in the year 1993 to the petitioner can be withdrawn by the University and once it is withdrawn

the petitioner cannot continue as Trustee and therefore the University is well within its powers to recall the permission granted.

6. I have considered the rival submissions of the learned Counsel for the petitioner as well as the respondent University.

7. The point in issue is whether the respondent University has got jurisdiction to appoint a Committee to find out any misuse of funds by the Trust

and whether it can submit its recommendations.

8. As contended in the counter affidavit, the Syndicate in resolution No. 39 dated 4.5.2005 authorised the Vice Chancellor to constitute a

Committee to peruse the audit objections for the year 2003-2004. Therefore the Syndicate which constituted the Committee and not the Vice

Chancellor, as contended by the petitioner. The power of the Syndicate to authorise the Vice Chancellor to Constitute a Committee viz., the fact

finding Committee, cannot be treated as illegal in view of the fact that the report of the Committee will be placed before the Syndicate and it is for

the Syndicate to take action based on the report of the Committee.

9. (a) A similar issue arose before this Court in the decision reported in *The University of Madras Vs. Dr. Maa. Selvaraasan and Professors*"

Forum of Madras University, wherein the delegation of powers of the Syndicate to the Vice Chancellor, who in turn appointed an independent

Enquiry Officer to submit a report is found correct by the Division Bench in paragraph 12, which reads thus,

12. In the light of the established legal position, it is not possible to agree with the view taken by the learned single Judge that the Vice-Chancellor

had delegated his power to the Enquiry Officer. We have already pointed out that the Syndicate delegated its power to the Vice-Chancellor to

take disciplinary action, and the Vice-Chancellor appointed an independent

Enquiry Officer to hold an enquiry into the charges levelled against the respondent and submit a report. On the basis of the report of the Enquiry Officer, the Syndicate imposed punishment of compulsory retirement on the respondent. Under the circumstances, it cannot be said that the Vice Chancellor has delegated his function merely by deputing an independent officer to enquiry and submit a report. That is an ordinary mode of exercise of any administrative power. When the Enquiry Officer is appointed, the disciplinary authority does not lose its power, and therefore the question of delegation of power would not arise in this case.

(b) Similar power of delegation by the Statutory College Committee by appointing Sub-Committee to conduct enquiry was also held legal by the

Division Bench of this Court in the decision reported in *Saradha Balakrishnan Vs. The Director of Collegiate Education and Another*, wherein the

Division Bench held that the power to conduct enquiry can be delegated to the Special Committee by the College Committee.

(c) The said judgment of the Division Bench is approved by a Full Bench of this Court in the decision in W.P. No. 8335 of 2003 dated 4-9-2006

K.M. Valliappan v. Joint Director of School Education, Chennai- 6, wherein in para 18 the Full Bench held thus,

18. In our opinion, the ratio of the decision of the Division Bench in *Saradha Balakrishnan Vs. The Director of Collegiate Education and Another*,

can be said to be reflecting the correct position, subject to certain clarifications.

10. Petitioner being the Head of the Department of Entrepreneurship Studies and who claims to be the Honorary Member Secretary of the Trust,

is estopped from contending that the respondent has no jurisdiction to go into the allegations made in the audit report. As already stated, by

resolution dated 30.11.1993, pursuant to the request made by the petitioner, the University granted permission to the petitioner to continue as

Honorary Member Secretary on three conditions. The said permission having been granted, any irregularity alleged in the functioning of the Trust

while the petitioner is working as Head of the Department, can certainly be enquired into by the University and it can take any action, if any

irregularity is found. The petitioner having obtained permission to act as Honorary Member Secretary of the Trust and he being continuously

working as Head of the Department, is estopped from now contending that the

respondent has no jurisdiction to enquire into the allegations made in the audit report.

11. For the reasons stated above, I find no merit in the writ petition and the same is dismissed.

12. W.P. No. 2767 of 2006 is filed by one of the Senate member of the Madurai Kamaraj University seeking direction to the respondents therein

to give effect to the resolution passed by the Senate and the Syndicate on 18.11.2005 as published in Dhina Malar dated 27.11.2005.

13. In view of the pendency of W.P. No. 730 of 2006 only no further action was taken by the University. Now that order has been passed in

W.P. No. 730 of 2006 dismissing the writ petition, it is for the respondent University to take appropriate action. In the counter affidavit filed in the

above writ petition by the Registrar of the University, it is stated that the Vice chancellor shall give effect to the recommendations, orders adopting

the procedure and formalities as contemplated in the Madurai Kamaraj University Act, 1965. The Syndicate also approved the action to be taken

against the third respondent in this writ petition in its meeting held on 26.11.2005. In view of the said statement contained in the counter affidavit,

no further order is necessary in this writ petition. Consequently, the writ petition is liable to be dismissed and accordingly the same is also

dismissed.

14. In the result both the writ petitions are dismissed. No costs. Connected miscellaneous petition is also dismissed.