

(1984) 03 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 29468 of 1982, 125 of 1983 and 1721 of 1984

K. Venkatagirigowda and Another

APPELLANT

Vs

Bangalore University, Bangalore and Another

RESPONDENT

Date of Decision : 28-03-1984

Acts Referred:

Constitution of India, 1950 — Article 213, 226

Karnataka State Universities Act, 1976 — Section 25, 25 (1), 37 (j)

Citation : AIR 1985 Kar 195

Hon'ble Judges : Narayana Rai Kudoor, J; K.S. Puttaswamy, J

Bench : Division Bench

Advocate : Mohandas N. Hegde, for the Appellant; G.V. Shantharaju, H. Subramanya Jois and V.A. Mohanrangam, for the Respondent

Judgement

1. On a reference made by one of us (Puttaswamy. J). these cases were posted before us for disposal.
2. As the questions that arise for determination in these cases are either common or interconnected, they can conveniently be disposed of by a common order. We therefore propose to dispose of them by a common order.
3. Prior to 25-9-1975 the then existing three Universities in the State called "the Bangalore University", "the Karnataka University" and "the Mysore University" were governed by three separate enactments. On 25-9- 1975 the Governor of Karnataka in exercise of the powers conferred on him by Art. 213 of the Constitution promulgated the Karnataka State Universities Ordinance of 1975 (Karnataka Ordinance No. 12 of 1975) in order to have a uniform law relating to the Universities in the State. The Ordinance was replaced by the Karnataka State Universities Act of 1976 (Karnataka Act 28 of 1976) (hereinafter referred to as the Act), giving it retrospective effect from 25-9-1975.
4. The Act has created for every University authorities like (i) the Senate, (ii) the Syndicate, and (iii) the Academic Council (Vide S. 20 of the Act) on the pattern

of other Universities in the country and has conferred on them, the powers to make Statutes. Ordinances, Regulations and Rules subject to the provisions of the Act (Vide Chapter V of the Act).

5. On 9-6-1980 the Syndicate of the Bangalore University (hereinafter referred to as the Syndicate) has framed an Ordinance later numbered as Ordinance No. 11-1, 11-2 and 11-3 regulating the appointment of the Head of Departmental of studies and the constitution of a departmental Council for each department of study which has been published by the Registrar of the University in his Notification No. SYN 2 ORD 80 dated 4-7-1980(Annexure-A in Writ Petitions No.29408 of 1982 and 125 of 1983).

The said Notification that is material reads thus: -

BANGALORE LINIVERSITY

"Sub: - Ordinance regarding constitution and functions of the Departmental council under S. 37(j) of the Karnataka State Universities Act, 1976.

Refd: Resolution of the Syndicate passed at its meeting held on 9-6-1980.

NOTIFICATION NO. SYN 2 ORD 80

BANGALORE

DATED 4th JULY 1980

In exercise of the powers conferred on it under S. 38 of the Karnataka State Universities Act, 1976 the Syndicate of the Bangalore University at its meeting held on 9-6-1980 has been pleased to make the following Ordinance regarding the constitution and functions of the Departmental Council, as required under S. 37(j) of the Act. 1976.

ORDINANCES

11-1 The senior most professor or Reader of the University Department shall ordinarily be appointed as the Head of the Department by the Syndicate. However, the Syndicate shall have the power to review the appointment and change the Head of the Department at any time.

11-2. There shall be a departmental council consisting of Professors. Readers and Lecturers, who have put in at least 5 years of teaching at the Post-Graduate level. The head of the Department shall be the Chairman of the Council. The Departmental Council shall have the following functions: -

1. The Distribution of teaching work.

2. Utilisation of plan and non-plan funds earmarked for the Department and purchase of equipment for this purpose. The powers of the Head of the Department shall be exercised by the Head only on the resolution of the departmental Council. This however, will not apply to the contingent expenditure.

3. Organisation of Research work.
 4. Distribution of Accommodation.
 5. Recommending books and journals to the Department.
 6. Any other matter which can be delegated by the Syndicate from time to time.
 7. The quorum for the meeting shall be 50 per cent of total number of members of the Departmental Council.
 8. If on any issue the decision of the Departmental Council is based on the majority of votes of less than 2/3 of the members present and voting, the matter shall be referred to the Vice-Chancellor who shall pass orders as deemed fit in consultation with the Head of the Department.
- 11-3. These ordinances shall come into force from 3rd July, 1980.

By Order,

Sd/- REGISTRAR".

One Dr. K. Venkatagirigowda who was then the Professor of Economics and the Head of the Department of Economics of the University has challenged this Notification in Writ Petition No. 29468 of 1982 under Art. 226 of the Constitution.

6. At the University Visveswarayya College of Engineering, Bangalore (hereinafter referred to as the College), a University College, there is a department called the Department of Mechanical Engineering which unfortunately instead of being a center for higher learning in the discipline has become a center for cankerous litigation and agitations.

7. Prior to 27-1-1982 Dr. K Lingaiah, petitioner in Writ Petitions Nos. 125 of 1983 and 1721 of 1984, a senior professor of the Department of Mechanical Engineering was the Head of that Department. On 27-1-1982 the Syndicate by its resolution of that date decided to appoint one Dr. T. G. Nagaraj respondent-3, in Writ Petition No. 125 of 1983 as the Head of that Department in the place of the petitioner. In conformity with that resolution, an order No. EST.VCE 67/PER-82 dated 27-7-1982 (Annexure-C in Writ Petition No. 125 of 1983) was issued by the Registrar. Without any loss of time, the petitioner challenged the said order of the Registrar in Writ Petition No, 26892/1983 before this Court with a prayer of stay. On 4-3-1983 our learned brother Chandrakantharaj Urs, J. while issuing rule Nisi in that case has made an interim order safeguarding the personal interests of the petitioner but declining to stay the appointment of Sri. Nagaraj as the Head of the Department and that writ petition is still pending disposal before this Court. On 3-1-1983 the petitioner has presented Writ Petition No. 125 of 1983 challenging the validity of the Notification dated 4-7-1980.

8. While Writ Petition No. 125 of 1983 filed by the petitioner was pending before this Court, the Syndicate on 19-5-1983 resolved to restore the headship of the Department to the petitioner from 1-7-1983. The resolution made by the

Syndicate on the day reads thus: -

"Item No. 51: Appointment of the head of the Department of Mechanical Engineering, University Visveswaraya College of Engineering Bangalore.

After detailed discussion the Syndicate resolved to restore the headship of the Department of Mechanical Engineering to Dr. K. Lingaiah with effect from 1-7-1983 in place of Sri T. G. Nagaraju, Reader in Mechanical Engineering temporarily holding charge of the headship of Mechanical Engineering Department as per Syndicate Resolution dated 27-7-1982."

In Writ Petition No, 11475 of 1983 the entire teaching and non-teaching staff of the department, one of whom was Dr. M. P. Chowdaiah, challenged this resolution before this Court with a prayer for stay. On 24-8-1983 one of us (Puttaswamy, J.) rejected the said writ petition at the preliminary hearing stage without notice to the respondent. Unfortunately the rejection of the said writ petition, which echoed the noble sentiments expressed by the Supreme Court, speaking through Mitter, J. In Dr. G. Marulasiddaiah Vs. Dr. T.G. Siddapparadhya and Others, did not solve the problems of the department but only aggravated them, in that the scene of activity shifted from Courts to the streets and that the entire teaching and non teaching staff of the department went on strike demanding the reversal of the appointment of the petitioner as the Head of the Department. From that time onwards, the Department, in reality, became non functional and the unfortunate students of the subject- became the casualty. A Committee appointed by the Syndicate headed by a senior member of the bar to defuse the situation in the Department did not also succeed in its attempts.

9. While the matters stood as above, on 13-1-1984 the Syndicate had met under the Chairmanship of the then Vice Chancellor Dr. M. N. Vishwanathaiah, to transact various businesses listed for that day. On that day, one Sri Adhip Choudhari, Commissioner for Public Instruction and Member of the Syndicate, moved the Syndicate to discuss and decide the impasse created in the Department and decide on the remedial measures to be taken in the interests of the students, that had grievously suffered beyond ones imagination. On a detailed examination of that subject as "Additional Item No. 2" the Syndicate passed a resolution on that day to appoint Dr. M. P. Chowdaiah, respondent-3 in Writ Petition No. 1721 of 1984 as the Head of the Department, in the place of the petitioner. The resolution passed by the Syndicate, on that day, which is material, reads thus:

ADDITIONAL ITEMS

"On a resolution moved under relevant provisions by Shri Adhip Chourdhuri Commissioner for Public Instruction duly seconded by Shri D. K. Satyanarayana Setty, Director of Technical Education with the permission of the Syndicate the question of headship of Mechanical Engineering Department, University Visveswarayya College of Engineering and the functioning of the department was discussed at length. The Vice-Chancellor brought to the notice of the Syndicate

several representations made by the teaching and non-teaching staff of the department in this regard. It was also noted that after the restoration of headship of Mechanical Engineering Department to Dr. K. Lingaiah in July, 1983, the Department of Mechanical Engineering had come to a stand still. As a result, the University Syndicate constituted a Committee of observers consisting of Prof. B. T. Parthasarathy, Shri K. B. Munivenkata Reddy and Shri Krishna Reddy to make efforts to restore normalcy and report to the Syndicate. In spite of repeated attempts made by the observers in meeting the teaching and non-teaching staff of the Department at several sittings, they could not resolve the deadlock. As such, the Syndicate summoned the teaching non-teaching staff and Dr. K. Lingaiah and heard their points of view and advised them to resume duty in the interest of student community. Still the situation did not improve for nearly three months. The Department became nonfunctional affecting examination schedule and career of Mechanical Engineering Students of University Visveswarayya College of Engineering.

Accordingly, the Syndicate took up the matter to-day and after detailed discussion and examining all aspects of the matter and in view of the prevailing irreconcilable situation in the Department adversely affecting the smooth functioning of the Department which had put academic interests of the students into jeopardy resolved unanimously to appoint Dr. M. P. Chowadaiah, professor of Mechanical Engineering, U. V. C. E. as Head of the Department of Mechanical Engineering vice Dr. K. Lingiah in accordance with Ordinance No. 11-1 framed under S. 37(j) of the Karnataka State Universities Act, 1976.

The Syndicate also took note of the fact that Dr. K. Lingaiah will continue to function as professor of Mechanical Engineering and attend to his academic responsibilities and continue to be the Principal of University- Visveswarayya College of Engineering."

In conformity with this resolution, the Registrar of the University has issued Notification No. EST. MISC. ENGG 83-84 dated 13-1-1984 (Annexure-D in Writ petition No. 1721 of 1984), the validity of which is challenged by the petitioner in Writ Petition No. 1721 of 1984 with an interim prayer for stay. On 7-2-1984 this Court while issuing the rule nisi has refused the prayer of the petitioner for stay.

10. We will first deal with the validity of Ordinance No. 11-1, then Ordinances Pos. 11-2 and 11-3 and lastly with the order appointing Dr. M. P. Chowdaiah as the Head of the Department, noticing the additional facts, if any, that are necessary.

11. The petitioners have urged that S. 37(j) of the Act under which the Syndicate made the Ordinance did not empower it to make that Ordinance and was ultra vires of the Act. Secondly, the petitioners have urged that Ordinance No. 11-1 was in contravention of the provisions of the Act, the statutes and the existing Ordinances regulating the appointment, of the Head of the Department and was, therefore, ultra vires of the Act.

12. On this or other aspects, the respondents, somewhat, regretfully, have not filed their returns. But, they have seriously resisted these writ petitions on the facts stated in the resolutions, the orders and the legal grounds that will be noticed by us.

13. We have earlier set out the entire notification issued by the Registrar publishing the impugned ordinance. In the notification as also in the original resolution, the Syndicate had stated that it was framing the ordinance under the power tested in it under S. 37(j) of the Act. But, at the hearing Sri G. V. Shantharaj, learned counsel for respondents I and 2, in our opinion also rightly did not seek to sustain Ordinance No. 11-1 under S. 37(j) of the Act and sought to sustain the same as made under S. 28(2)(d) of the Act. Sri. V. A. Mohan Rangam, learned counsel for respondent-3 in Writ Petition No. 1721 of 1984 supported Sri Shantharaj.

14. An Ordinance made by the Syndicate purporting to be made under one provision, as in the present case, can well be sustained under another provision, can hardly be doubted.. A Court cannot strike down an Ordinance or law solely on the ground that the provision for making the same is wrongly described. Sri Mohandas N. Hegde, learned counsel for the petitioners also did not contend that Ordinance No. 11-1 can not be sustained under S. 18 of the Act.

15. We have carefully examined S. 37(j) of the Act. S. 37(j) of the Act, empowering the Syndicate, to make an Ordinance on management of colleges and other institutions founded or maintained by the University did not empower it to make Ordinance No. 11-1. We cannot therefore, sustain the -same under S. 37(j) of the Act.

16. We will also examine whether S. 28(2)(d) of the Act empowered the Syndicate to make Ordinance No. 11-1 and if so, whether the same is in conformity with that provision.

17. Sri. Hegde has urged that Ordinance No. 11-1 was in excess and in contravention of S. 28 of the Act and was, therefore, ultra vires of the Act.

18. Sri. Shantharaj has urged that Ordinance No. 11-1 read in the manner suggested by him was ultra vires of S. 28(2)(d) of the Act.

19. Section 28(2)(d) of the Act, on the true scope and ambit of which the vires of Ordinance No. 11-1 depends reads thus: -

"Each Department or studies shall have a Head who may be a professor or if there is no professor, a Reader and whose duties and functions shall be such as may be prescribed by the Ordinances:

Provided that if there are more than one Professors or, as the case may be, Readers, in any Department, no person shall be appointed to be the Head of the Department except in accordance with the provisions made in this behalf by the Ordinances;

Provided further that if there is no Professor or Reader in a Department, the Dean of the faculty concerned shall be the Head of that Department".

This Section authorises the Syndicate to make an Ordinance on certain aspects of a Head of Department, can hardly be doubted. But, on what matters such an Ordinance can be made and whether the impugned Ordinance conforms to the same is the crucial question that calls for our examination, for which purpose it is first necessary to closely analyse S. 28(2)(d) of the Act.

20. Section 28(2)(d) peremptorily directs that every Department of studies in the University must have a Head of the Department. Every Department of Studies must have a head at all times. The necessity for a Head of the Department is too obvious and does not require a detailed elaboration.

21. As to who should be the Head of a Department of studies is also dealt in S. 28(2)(d) of the Act. If there is a sole Professor in the Department, he should be the Head of that Department. Where there is no Professor in a Department, a Reader can be the Head of that Department, S. 28(2)(d) deals with a ease of a sole Professor or in his absence a sole Reader and statutorily directs that the former, if the former is available and in his absence the latter to be appointed as the Head of the Department of studies. So far as these requirements of the main enacting provision of S. 28(2)(d) of the Act, the Syndicate is not empowered to make any provisions and any provision made cannot also run counter to these requirements also.

22. Before dealing with the other requirements of S. 28(2)(d) of the Act it is useful to ascertain the true scope and ambition the two provisos of that Section, in particular the first proviso that is material.

23. The first proviso deals with cases of Departments of studies where there is more than one Professor or Reader. Even here also as in the very Department we are considering, there may be more than one Professor or Reader at one and the same time or there may be Professors only to the exclusion of the Readers or there may be Readers only to the exclusion of Professors. In such cases the first proviso to S. 28(2)(d) directs the appointment of the Head of the Department to be made only in accordance with an Ordinance made in the behalf by the Syndicate. In a Department, where there is more than one Professor or a Reader the appointment must be in accordance with a provision made by the Syndicate. The requirement to make an ordinance by the Syndicate regulating the appointment of a Head of a Department, in such Departments of studies is an obligatory and an imperative requirement of that section. Even here, the power conferred on the Syndicate is not absolute and unfettered. When there are Professors and Readers in a Department, the former takes precedence over the latter. In such a case the Ordinance must provide for appointment of one or the other Professors from the class of Professors only and cannot provide for the appointment of one or the other Reader as the Head of the Department. The Ordinance can provide for the appointment of one or the other Reader only when

there are no Professors in that Department and not otherwise. The reasons for this requirement are obvious. The post of a Professor is a higher post over the post of a Reader or the post of a Reader is lower to the post of the Professor. In a department where there is more than one Professor or more than one Reader. Then the Ordinance to be made by the Syndicate must provide for the appointment of one or the other Professor of the Department as the Head of the Department and the appointment must be made in accordance with the ordinance made by the Syndicate in that behalf. The methodology or the manner and method of appointment of the Head of the Department in such cases must be regulated by an Ordinance made by the Syndicate. The Syndicate is under a compulsive duty to make provision by an ordinance regulating the appointment of the Professor or the Reader in a department where there is more than one Professor and more than one Reader subject to what we have said earlier.

24. The second proviso to S. 28(2)(d) presents no difficulty. In a Department where there is neither a Professor nor a Reader, the Dean of the faculty appointed under S. 17 of the Act and no other person like a Lecturer in the Department should be the Head of that Department.

25. Section 28(2)(d) of the Act empowers the Syndicate to prescribe or stipulate the duties and functions of the Head of the Department of studies by making appropriate Ordinance in that behalf. The power to prescribe the duties and functions of the Head of the Department of studies, whoever be the Head of the Department in all the situations contemplated or arose also a compulsive duty cast on the Syndicate.

26. Undoubtedly an Ordinance to be made by the Syndicate under S. 28(2)(d) of the Act can regulate all the above matters and matters that are incidental to that and no other. We need hardly say that the power to appoint includes the power to remove and a special recital of a provision thereto *ex abundanti cautela* does not add to or diminish that power, if any, available to the appointing authority. With this analysis, we will now examine whether Ordinance No. 11-1 conforms to the requirements of S. 28(2)(d) of the Act.

27. Ordinance No. 11-1 consists of two parts. The first part confers power to appoint and the second part reserves the power to remove the person appointed under the power conferred by the first part of that Ordinance. What is really important is the first part of Ordinance No. 11-1.

28. The first part of Ordinance 11-1 confers absolute and unguided power on the Syndicate to appoint either a Professor or a Reader without reference to the fact situations that are obtaining in a Department. On the terms of the Ordinance the Syndicate is competent to appoint a Reader even when there is more than one Professor in the Department as it once happened in the very Department itself. Even in choosing the Reader, it can even choose the junior most reader. What is provided in the first part of Ordinance No. 11-1 is the very antithesis and is in contravention of S. 28(2)(d) of the Act, more so, the first proviso of that section.

The Ordinance does not also regulate the duties and functions of the Head of the Department. Ordinance No. 11-1 which is plainly inconsistent with S. 29(2)(d) of the Act is clearly ultra vires of that section. The second part of Ordinance No. 11-1 does no more than reiterate the power available to an appointing authority and does not help to sustain the former part of the Ordinance.

29. But, Sri Shantharaj has urged that we should read Ordinance No. 11-1 as consistent with S. 28(2)(d) of the Act and uphold the same.

30. When the language of the Ordinance is plain and carries only one meaning and no other, we cannot read it in another way or manner and hold that it is consistent with the Act. If we do so, we will only be usurping the power of the Syndicate, which is not permissible. This Court cannot usurp the role of the Syndicate and act as legislative body in exercise of its power of judicial review of legislative action of a legislative body.

31. On the above discussion, it follows that Ordinance No. 11-1 made by the Syndicate, obviously and regretfully without reference to S. 28(2)(d) of the Act, the requirements of that Section and the matters to be provided thereto, but providing for what cannot be provided therein, is ultra vires of that Section, the Act and is liable to be struck down.

32. Sri Hegde has contended that the Act does not empower the Syndicate to make an Ordinance for establishing a departmental council and that even otherwise the same was violative of the provisions of the Act, the statutes and was, therefore, liable to be struck down.

33. Sri. Shantharaj had urged that the Act in general and S. 37(j) in particular, empowered the Syndicate to make Ordinance No. 11-2 and the same does not violate the Act or the statutes.

34. Section 37(j) of the Act that is material, on which reliance is placed by Sri Shantharaj reads thus:

"37. Ordinances-subject to the provisions of this Act and the Statutes, the Ordinance may provide for all or any of the following matters, namely: -

(j) Management of colleges and other institutions founded or maintained by the University. Section 37 of the Act empowers the Syndicate to make Ordinance on the matters set forth in that Section. An Ordinance to be made by the Syndicate in respect on one or the other matters stipulated in that section must not be in derogation of the provisions of the Act and the statutes made by the Syndicate.

35. We are not concerned with the wisdom of having Departmental Councils for each department on their useful role, if any, in the management of an institution or a department as the case may be. We are only concerned with the validity or the legality of the Ordinance.

36. We have carefully examined every provision of the Act and S. 37 in particular. We are of the opinion that the innovative concept of Departmental

Council for an institution or a department is not contemplated by any of the provisions and none of those provisions authorise the Syndicate to make an Ordinance for its constitution, functioning and other related matters.

37. Section 37(j) empowers the Syndicate -to make ordinances on the management of colleges and other institutions founded or maintained by the University. The term management which is not defined in the Act and which is not a term of art has no precise meaning and has varied and different meanings in different contexts. We must, therefore, very carefully ascertain the meaning of that term in the context in which it occurs.

38. In ascertaining the meaning of the term "management" it is useful to bear in mind Ss. 23, 25 and 27 of the Act also S.23 of the Act empowers the Syndicate to formulate policies of the University and suggest measures for improvement and development of the University. S. 25 of the Act empower the Syndicate the power of management and administration of the revenues and properties of the University and control of administrative affairs of the University. S. 27 of the Act empowers the academic council to be the academic body of the University and empowers it to have control over the academic matters subject to the provisions of the Act, statutes and ordinances.

39. The term "management" is defined in Webster's Third New International Dictionary as under:

"management": 1.the act or art of managing: as a: more or less skilled handling of something (as a weapon, a, tool a machine) b: the whole system of care and treatment of a disease or a sick individual (thereof contagious, diseases) c: the conducting or supervising of something (as a business) esp: the executive function of planning, organizing, coordinating, directing, controlling and supervising any industrial or business project or activity with responsibility for results.

"2. Obs: an instance or act of management.

3. Judicious use of means to accomplish an end conduct directed by art or craft skillful and often devious treatment: INTRIGUE 4a: the collective body of those who manage or direct any enterprise or interest: the board of managers b: employer representation in an employer-employee relationship- opposed to labour S. archaic: moderation (as in conduct from respect for the feelings of another CONSIDERATION, INDULGENCE."

Words and Phrases (permanent Edition) (Vol. 26) define the term as hereunder.

"In general "Management"" is a noun meaning the act or art of managing the manner of treating directing; carrying on or using for a purpose; conduct, control, Roberts v. City of Madison, 27 N. W. 2d 233, 236, 250, Wis. 317.

The word "management" may be defined as conduct, administration, guidance, and control judicious use of means to accomplish an end. Lynch v, Commissioner

of Education, 56 N. E 2d 896, 9W.317 Mass 73.

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Management is defined as government, control, superintendence, physical or manual handling or guidance, the act of managing by direction or regulation, or administration as the management of a family, or of a household, or of servants, or of great enterprises or great affairs In responder 36 P. 348, 349, 53 Kan-191, 23 L R. A. 603, Lewis v. Lewelling, 36 P. 351, 352. 53 Kan. 201, 23 L R. A. 5 10".

Encyclopedia of Social Sciences (Vol. 10) explains the term management as under:

"Management may be defined as the process by which the execution of a given purpose is put into operation and supervised The combined output of various types and grades of human effort by which the process is effected is again known as management, in the human sense. Again in, the combination of those persons who together put forth this effort in any given enterprise is known as "the management" of the enterprise. The term, therefore, covers the process of managing, the combined human ability involved in managing and the personnel required to manage.

The word is also generally used somewhat loosely to describe the general conduct and control of an enterprise, irrespective of the different functions involved. A more precise significance is however coming to be accepted. Particularly along those whose studies require something approaching a technical meaning. In this more precise sense management is coming it) mean the control of the process of executing a given policy and is to be clearly distinguished, as regard both the activities involved and the abilities required from the formulation and determination of that policy, which is the task of the process known as administration. The two together constitute the control of the enterprise. In order that they may function the process of organisation builds a living structure, so that what is to be done and the persons to do it are grouped for the most efficient working. These three processes administration management and organization are common to all corporate undertakings. They may assume different form in different enterprises, they may be carried out indifferently or ably; each of those who perform them may participate in all three or concentrate on one alone.

We are of the opinion that in the scheme and context of the Act the term "management" found in S. 37(j) means the control supervision, administration and guidance of a college or an institution founded by the University and does not provide for formulation of policy and its execution also.

40. A Departmental Council conceived or created by Ordinance No. 11-2 far from dealing with the management of a college or an institution founded by the University will really act as a fifth wheel and cripple the management of a college or- an institution founded by the University. What it creates is a super policy

making body for the department, rather than deal with the management of the college or an institution founded by the University. We are therefore of the opinion that ordinance No. 11-2 which is not authorised by (lie Act and S. 37, " j) of the Act is ultra. Vires of the Act and is there fore liable to be struck down.

41. Ordinance 11-3 only provides for the date of commencement of Ordinances 11-1 and 11-2. Ordinance 11-3 cannot operate when Ordinances 11-1 and 11-2 are struck down and therefore Ordinance 11-3 is also liable to be struck down.

42. We have earlier set out the entire resolution passed by the Syndicate on 13-1-1984. on the basis of which the Registrar has issued the consequent Notification on the same day (Annexure-D in Writ Petition No. 1721 of 1984) which is challenged by the petitioner in Writ Petition No. 1721 of 1984.

43. Sri. Hegde has urged that the Syndicate and the University instead of taking action against errant staff has rewarded decision by removing the petitioner without any cause and Justification and the same was therefore illegal and invalid.

44. Sriyuths Shantharaj and Mohan Rangam refuting the contention of Sri. Hegde have urged that notwithstanding any invalidity the decision taken by the Syndicate in the best interests of the students, which has now put the department oil rails should not be interfered with by this Court.

45. Both, sides did not contend before us that the Syndicate was not competent to disturb the appointment of the petitioner anti appoint respondent-3 in his place.

46. In its resolution the Syndicate had relied on Ordinance No.11-1 as the source for disturbing the appointment of the petitioner and appointing respondent-3 in his place.

47. We have earlier found that Ordinance No. 11-1 was ultra vires of S. 28(2)(d) of the Act. When the Court strikes down the very ordinance which is claimed to be the source for making the appointment the Court should normally strike down the resolution and the order made there under reserving liberty to the authority it examine and make a fresh order as is open to it in law. But, we are of the opinion that such a course is not called for in the case for more than one son.

48. Section 28 of the Act and in particular S. 28(2)(d) which empowers the When there is more than one Professor or Reader in the very Department, the appointment of the Head of such a Department had to be done in accordance with the provisions to be made by the Syndicate through an Ordinance. Notwithstanding the same, we have also declined to interfere with the order appointing respondent-3 as the Head of the Department in the circumstances explained by us. We are also aware that a mandamus or a direction to a legislative body cannot. We issued to make a law. But, we are of the opinion that that principle cannot be made applicable to a situation where the appointment to be made depends on an Ordinance to be made by the Syndicate, which incidentally also happens to be the authority to make the appointment. A proper

ordinance should precede an appointment and the power of appointment cannot properly be exercised without there being an earlier ordinance made thereto which the Syndicate had regretfully failed to perform. If the Syndicate fails to perform its legal duty enjoined by law on it, we are of the opinion that this Court can compel it to perform its legal duty. We are, therefore, of the opinion that we should direct the Syndicate of the University to make appropriate ordinances under S. 28(2)(d) of the Act, cannot by itself confer power of appointment of the Head of the Department on the Syndicate.

49. Section 25(1) of the Act vests the power of management and administration of the revenues and properties of the University and control of all administrative affairs of the University in the Syndicate subject to the general directions of the Senate. As we apprehend, the power to appoint the Head of a Department, which necessarily includes the power to disturb an appointment of a person already made and make a fresh appointment of another person can only be exercised by the Syndicate under S.25 of the Act and not under S.28(2)(d) or an ordinance to be made thereunder. From this, it follows that it was open to the Syndicate to appoint the petitioner, disturb his appointment and appoint respondent-3 in his place.

50. Earlier, we have held that the Syndicate should make ordinances on certain matters dealing with the appointment of the Head of the Department. We have also held that Ordinance 11-1 was invalid and has to be struck down. Except this Ordinance, no other Ordinance has been brought to our notice regulating the appointment of the Head of the Department in conforming with S.28(2)(d) of the Act. What emerges from this is that there was no lawful Ordinance regulating the appointment of a Head of a Department in the University. But, as pointed out by the Supreme Court in *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*, the power to make an appointment can be exercised even before the appropriate law is made and the same cannot be held up to await the framing of the relevant law under the relevant Act. , if the circumstances justify the same. We are, therefore, of the opinion that it was undoubtedly open to the Syndicate to disturb the appointment of the petitioner and appoint respondent-3 in his place.

51. Before the Syndicate passed its resolution, it cannot be denied that an impasse had been created grievously affecting the interests of the students, whose interests the college was primarily intended to serve. The Syndicate, a high academic body of the University that is primarily charged with the duty of administering the institution has thought it fit to appoint respondent-3 with the fond hope that it will restore normalcy in the department. While issuing rule nisi, this Court had not stayed the operation of the resolution of the Syndicate and, therefore, respondent-3 has been holding that post which appears to have put the department on rails, at least to some extent, if not to the satisfaction of all, which of course does not satisfy the petitioner. Whatever be the feelings of the petitioner on this score, we should be loath to interfere with such a resolution

made after a very earnest and serious deliberation of the problem and disturb the even tempo working of the department. we are of the opinion that notwithstanding any invalidity, we will not be justified in invalidating the resolution of the Syndicate in exercise of the extraordinary jurisdiction conferred on us by Art. 226 of the Constitution. We, Therefore, decline to interfere with the resolution made by the Syndicate on 13-1-1984 and the consequent order made by the Registrar and reject this challenge of the petitioner.

52. In Writ Petition No. 125 of 1983 the petitioner has challenged the appointment made by the Syndicate in its order No. EST VCE 67/PER-82 dated 27-7-1982 (Annexure-C in W.P. 125 of 1983) appointing T.G. Nagaraju as the Head of the Department in his place. As noticed earlier this order has been revoked by the University itself and is no longer in force. In this view the challenge of the petitioner in Writ Petition No. 125 of 1983 is liable to be rejected, as having become unnecessary.

53. We have earlier found that Ordinance No. 11-1 which was ultra vires of the Act was liable to be struck down. When there is more than one professor or Reader in the very Department, the appointment of the Head of such a Department had to be made by the Syndicate through an Ordinance. Notwithstanding the same, we have also declined to interfere with the order appointing respondent-3 as the Head of the Department in the circumstances explained by us. We are also aware that a mandamus or a direction to a legislative body cannot be issued to make a law. But, we are of the opinion that the principle cannot be made applicable to a situation where the appointment to be made by the Syndicate which incidentally also happens to be the authority to make the appointment cannot properly be exercised without there being an earlier ordinance made thereto which the Syndicate had regretfully failed to perform. If the syndicate fails to perform its legal duty enjoined by law on it, we are, therefore, of the opinion that we should direct the Syndicate of the University to make appropriate ordinances under S.28(2)(d) of the Act, then review the earlier appointment and make a fresh appointment in the light of the ordinances to be made by it with all such expedition as is possible in the circumstances of the case. We are of the opinion that the same can reasonably be completed within a period of four months.

54. We have so far dealt with the merits. But, before we conclude, we regret to record that the development of the department in the college, very appropriately named after one of the greatest Engineer-Statesmen of this country, Bharat Ratna Dr. Sir. M. Viswesvarayya known for his personal sacrifices, Spartan discipline, impeccable behavior in private and public life and whose statue also overlooks the college every moment, as a beacon light and reminder to every one that passes before it and more so to the staff and students of that college to emulate and follow his great qualities, has caused us great anxiety, pain and dismay. We are not hopeful that our order and the further action to be taken by the Syndicate will solve the endemic problems of the Department and we are

even skeptical of the same. We are, however, certain that if there is a reflection and realisation on the part of those that man the department and more so of the teaching staff of their duties and obligations to their students with a little sacrifice and goodwill on their part rather than always asserting their rights and privileges which has become the bane of this country, in the post independence era, the problems of the department will be satisfactorily solved. We need hardly emphasis that a satisfactory solution of the problem of the Department is absolutely necessary in the interest of those that are working in the Department, the college, the University and the cause of Education in the country. We earnestly appeal to all of them, through this order to sink all their differences and help in putting the department on rails, which they can achieve even without any external pressure or enforceable orders. We do hope and trust that that will be achieved by those that are manning the department, even before the Syndicate frames the necessary Ordinances and reviews its earlier order.

55. In the light of our above discussion, we make the following orders and directions:

(1) We strike down Ordinances Nos. 11-1 to 11-3 framed by the Syndicate of the Bangalore University in its meeting held on 9-6-1980 and published by the Registrar in his Notification No. SYN 2 ORD 80 dated 4-7-1980 (Annexure-A in W. Ps. Nos. 29468 of 1982 and 125 of 1983) as ultra vires of the Karnataka State Universities Act, 1976.

(2) We reject the challenge of the petitioner in W. P. No. 125 of 1983 to order No. EST. VCE 67/PER-82 dated 27-7-1982 (Annexure-C in W. P. No. 125 of 1983) as having become unnecessary.

(3) We direct the Syndicate of the Bangalore University to frame appropriate ordinances as required by S. 28(2)(d) of the Act with all such expedition as is possible in the circumstances of the case and in any event within a period of three months from the date of receipt of our order and thereafter review the appointment made in its resolution dated 13-1-1984 and notified by the Registrar in his Notification No. EST. MISC ENGG 8384 dated 13-1-1984 (Annexure-D in W. P. No. 1721 of 1984) with all such expedition as is possible in the circumstances of the case and in any event within one month from the date of publication of the appropriate ordinances made thereto under the Act, and pass such order as the circumstances justifying in accordance with law. But, till then the appointment of Respondent-3 in writ petition No. 1721 of 1984 shall not be disturbed.

56. Writ petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

57. Let this order be communicated to Respondents 1 and 2 within ten days from this day.

Order On The Oral Application Made By Respondents 1 And 2 For A Certificate To

Appeal To The Supreme Court Under Articles 133 And 134A Of The Constitution.

58. In the order just now pronounced, we have struck down Ordinances Nos. 11-1 to 11-3 framed by the Syndicate of the Bangalore University in the purported exercise of its powers under the Karnataka State Universities Act, 1976 (Karnataka Act 28 of 1976). We have also upheld the appointment of respondent-3 in Writ Petition No. 1721 of 1984 for a limited period subject to the directions contained in our order.

59. Sri. G. V. Shantharaju, learned counsel for respondents 1 and 2, prays for a certificate of fitness to appeal to the Supreme Court under Arts. 133 and 134-A of the Constitution in so far as our order has struck down ordinances Nos."11-1 to 11-3, on the ground that the cases involve substantial questions of law or general importance and those questions need to be decided by the Supreme-Court.

60. Sri. Mohandas N. Hegde, learned counsel for the petitioners, opposes the oral application made by Sri Shantharaju. Sri Hegde contends that the decision rendered by us on the validity of ordinances Nos. 11-1 to 11-3 does not involve substantial questions of law of general importance that needs to be decided by the Supreme Court.

61. In invalidating Ordinances Nos. 11-1 to 11-3, we have only applied the well settled legal principles that have been set at rest, by the Supreme Court. We are of the opinion that the cases decided by us do not involve any substantial questions of law of general importance/ that needs to be decided by the Supreme Court. We, therefore, reject the oral application made by Sri Shantharaju under Arts 133 and 134-A of the Constitution for a certificate of fitness to appeal to the Supreme Court.

62. Order accordingly.