
(2004) 02 KL CK 0031
In the High Court Of Kerala
Case No : R.P. No. 435 of 2003

Kerala Students Union

APPELLANT

Vs

Sojan Francis

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Representation of the People Act, 1951 — Section 29A, 29A(5)
Constitution of India, 1950 — Article 19(1)

Citation : (2004) 3 ILR (Ker) 105 : (2004) 2 KLT 378

Hon'ble Judges : K.S. Radhakrishnan, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : M. Ratna Singh, General, Thomas Koshy, Baby Issac Illickal, U.K. Muhammed Yousuff, M.K. Chandramohan Das, A. Mohammed Mustaque, N.D. Premachandran, Krishnakumar Mangot, S. Gopakumaran Nair, Manjeri Sunderraj, for the Appellant; Johny Sebastian, P. Balakrishnan and B.K. Rajagopal, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Article 19 of the Constitution of India is not a carte-blanche enabling any citizen to exercise a fundamental right so as to encroach upon similar rights guaranteed to other citizen.

2. Managements of various Educational Institutions, Principals, Teachers and parents are aggrieved by the organizational activities of the various students organizations like SFI, ABVP, AISF, NSC, PSU, KSU (I), KSC. MSF etc. within the college campus which according to them violate the fundamental right guaranteed to the Managements under Article 19(1)(g) of the Constitution of India. They are also concerned with the constant call for strike, gherao, dharna etc. within the college campus disrupting the academic discipline. Several writ petitions questioning the interference of those students organisations were pending before this court when this court decided Sojan Francis Vs. M.G. University, . Those writ petitions were not taken up along with Sojan Francis's case. Review petitions were filed by some of the students Organizations in Sojan

Francis's case. Consequently we posted all the writ petitions and review petitions together for hearing.

3. This court in *Sojan Francis Vs. M.G. University*, upheld guideline 9 of the College Calendar dealing with General Discipline by which political activism was strictly banned by Management in the campus and students were forbidden to organise or attend meetings other than the official ones within the campus. While upholding Clause 9 relating to General Discipline, this court declared that the guideline banning political activities within the college campus and forbidding the students from organising or attending meetings other than the official ones within the campus is not designed to prohibit any of the fundamental rights of the students guaranteed under Article 19(1) (a) or (c) of the Constitution of India. This court held that educational institution established either by minority or majority community have got the fundamental rights guaranteed under Article 19(1)(g), 29 (1), (2) and 30 of Constitution of India, as the case may be, and have the right to maintain discipline and orderly administration.

4. Students Organizations like Students Federation of India (SFI), Akhila Bharathiya Vidyarthi Parishat (ABVP) having its Central Office at Mumbai, All India Students , Federation (AISF) having its Head Office at Delhi, Nationalist Students Congress (NSC) having its Head Office at New Delhi, Progressive Students Union (PSU), Kerala Students Union (I) (KSU (I), Kerala Students Congress (KSC) and Muslim " Students Federation (MSF) have filed petitions for reviewing the judgment contending, inter alia, that Clause 9 is highly undemocratic, unreasonable and violative of Article 19(1) (a) and (c) of the Constitution of India guaranteed to them. Few other organizations like AIDSOS having its Head Office at Calcutta got themselves impleaded and supported those organisations. Contention was also raised that the judgment is vitiated by error apparent on the face of the record and the question decided was not germane for deciding the issue raised before the court.

5. Review petition was also filed by the organization of teachers by name Kerala Private College Teachers Association aggrieved by some of the observation contained in the judgment, though in principle they welcomed the judgment. Council of Principal's of Colleges in Kerala (Principal's Council) and All Kerala Private College Management's Association along with few Professors have also filed O.P.No 15204 of 1996 for a writ of mandamus directing the State of Kerala and the various Universities in the State to take appropriate steps to depoliticise the college campus and ensure peace and harmony in the college campus. O.P. No. 20917 Of 1997 was filed by the Principal of St. Mary's College, Manarcadu and the Secretary of the Council of Principals in Kerala seeking a declaration that the formation or functioning of any politically based student Union or Association inside the college campus is illegal and unconstitutional. Writ of mandamus was also sought for against the State and its officers to see that only the Unions or Association recognised by the University Statutes and free from politics alone are allowed to function in the college campus. Principal of St. Thomas College, Pala

and some of the professors of that college also filed O.P. No. 14308 of 1998 seeking identical reliefs. O.P.No. 9216 of 1999 was also filed by the Principal of St. Thomas College, Pala and the Principal of Deva Matha College, Kuravilangad seeking declaration to the effect that right to uninterrupted higher education in a peaceful academic atmosphere in colleges is a fundamental right guaranteed under Article 21 of the Constitution of India. O.P.No. 18249 of 2000 was also filed by a retired school teacher and a social worker seeking direction to respondents 1 to 3 to issue necessary orders restraining all types of strikes, dharna and other political activities in schools, colleges including professional colleges. Various other reliefs were also sought for.

6. W.P.(C) No. 22347 of 2003 was filed by some students of T.K.M. College of Arts and Science, Kollam seeking a writ of prohibition prohibiting political activities within the college campus of T.K.M. College of Arts and Science of the various students Unions who have filed review petitions against the judgment in Sojan Francis's case. They also sought for a writ of mandamus to give adequate and effective police protection to them and other non striking students and teaching and non teaching staff of the college and to the properties of the college and educational institution. Parent Teachers Association of various educational institutions got themselves impleaded and wanted total ban of the activities of SFI, KSU, ABVP, etc. within the college campus.

7. Common issues have come up for consideration in all the above mentioned writ petitions and the review petitions filed against the judgment in Sojan Francis's case. Since the issues involved are of considerable general importance concerning the administration of the educational institutions, Principals' authority and students discipline, we directed issuance of notice to all the Universities in the State of Kerala. Permission was also given for impleading of those who are interested in the proceedings before this court. State Government as well as the Universities in the State of Kerala were also directed to file detailed counter affidavit giving their suggestions and views so as to maintain discipline in the campus of the various educational institutions in the State. Detailed counter affidavits and reply affidavits have been filed by the parties interested in the proceedings. We heard the matter at length and have given effective opportunity to either side to project their views on the various issues involved for determination.

8. Right to education is a fundamental right guaranteed under the Constitution of India. Right to uninterrupted education is also fundamental right guaranteed to every citizen of India lest it may affect the right to live guaranteed under Article 21 of the Constitution of India. Article 41 of the Constitution provides that the State shall within the limits of its economic capacity and development make effective provision for securing the right to work and education. Even though this right is not fundamental right, State by legislative or administrative action provides facilities for education which stand conformed to equality and rationality underlined under Article 14 of the Constitution. State as a body will not be able

to provide education to all within the economic constraints but the object and purpose could be achieved by various private recognised educational institutions in the State. Under Article 19(1)(g) the right of citizens to practice any profession or to carry on any occupation, trade or business subject to limits as may be imposed by the State in the interest of public welfare and other grounds enumerated in Clause (6) has been safeguarded.

9. The Constitution Bench of the apex court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , and later in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, held that the establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation. Court held, it is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1) (g). Right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Religious denominations or sections thereof, which do not fall within the special categories carved out in Articles 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. Educational institutions set up in the State by majority communities and the minority communities have laid down various code of conduct to maintain discipline and for proper maintenance of standard of education in the educational institutions administered and managed by them. Constitutional provisions referred to herein before would give educational institutions right to administer those institutions so that it could maintain educational character and standard of such institutions. Rules and regulations have also been laid down by them so as to ensure orderly and strict administration and to secure its proper functioning as an educational institution and to ensure that funds are spent for the betterment of the institution and also to secure interest of the students. Right to administer educational institution cannot include right to maladminister and they cannot be allowed to fall below the standards of excellence expected of educational institutions.

10. Educational institutions in the State like St. Thomas College, Pala which come under the Mahatma Gandhi University and other institutions have laid down various code of conduct in the college calendar, prospectus to maintain general discipline in the institutions established and administered by them. Bone of contention in these cases is with regard to the legality of some of the restrictions imposed, its enforcibility and whether those restrictions would make any inroad into the fundamental rights guaranteed to organizations like SFI, ABVP, NSC etc. and their members students. We may first refer to some of the relevant clauses under the heading "general discipline" in the college Calendar of St. Thomas College, Palai.

General Discipline

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7. Smoking, which is injurious to health, is strictly prohibited in the college campus.

8. Do not disfigure the walls, doors, windows, furniture etc. with graffiti, bills, engravings etc. Learning not to damage property whether public or private is one of the primary requirements for civilized behaviour.

9. "Political activism" is strictly banned in the campus. Students are forbidden to organize or attend meetings other than the official ones. Students resorting to strikes are strictly prohibited from entering the verandah of the building or the class rooms.

Mar Athanasius College, Kothamangalam aided private educational institution, established and administered by Jacobite Syrian Christian community, minority community entitled to protection under Articles 19(1)(g) and 30(1) of the Constitution, issued notice dated 25.6.2003 laying down various rules and regulations in addition to the rules and regulations already framed and issued in order to facilitate smooth and effective functioning of the college. Relevant portions of the same are extracted below:

1. All students in the college shall co-operate with the College Authorities to ensure maintenance of discipline in the College.

2. All strikes, demonstrations, agitations, dharnas, hartals and the like are banned in the College campus. Students who violate the above rule are liable to be dismissed from the College summarily.

3. Students are prohibited from taking part in any meeting in the College campus unless such meetings are convened and organized by the College Authorities.

4. Political activities are completely banned in the College campus. Students indulging in and involving themselves in any kind of political activity in the College campus are liable to be summarily dismissed from the College.

5. No. student shall bring into the College campus any banner, flag, board, notice, pamphlet or other such material for purposes of any political activity.

6. No. student shall indulge in any activity, which may cause disruption to classes or disturbance in the college campus. If any student Violates the above regulation, he is liable to be dismissed from the College summarily.

Principal of Sree Narayana College, Kollam issued a code of conduct for students which stipulates that without the consent of the Principal no student organization

shall hold any meeting or collect any fund. Principal of Fathima Matha College, Kollam has stated, inter alia, that no student organization shall arrange a meeting inside the campus without the written permission of the Principal. Management of N.S.S. colleges in the State, S.N.D.P. S.N. Trust, Muslim Educational Trust etc. have also laid down the code of conduct for their Educational Institutions so as to curb political activities of the students organizations within the college campus. Strike, gherao, dharna etc. within the campus are also banned. Reason for laying down those codes of conduct, according to them, is because of the insurmountable difficulties the Managements had to face for the last so many years due to the interference of various students organizations like SFI, ABVP, KSU etc. in the college campus. In order to maintain discipline and for the smooth administration of the educational institutions, according to the Management, it is highly necessary to lay down a code of conduct for the students. Reasons which prompted them to lay down those codes of conduct have been narrated in detail in page numbers 641 to 656 of Vol.III of the Paperbook, pages 814 and 816 of Vol.III and pages 210 to 270 of Vol.1 and in other parts of the paper books. Further it was also stated that many of the students organizations are outfits of various political parties. SFI is the student wing of CPI (Marxist), ABVP is the student wing of Bharatheeya Janatha Party (BJP), KSU (I) is the student wing of Indian National Congress and so on. The Management and Principal of M.G. College, Trivandrum have reported that ABVP has erected a permanent flag mast in the college campus in the year 1997 and flag was hoisted in it. Principal, VTM N.S.S. Dhanuvachapuram has vide letter dated 23.6.2003 reported that a room in the college building is forcibly occupied by ABVP and they find it difficult to evict them. The Principal of N.S.S. College, Pandalam vide letter dated 24.6.2003 has stated that in the college campus three or four students organizations function, viz., SFI, ABVP, KSU and AISF are functioning with the support of certain political parties. Office bearers from the various political parties used to visit the campus. Several instances where students resort to criminal activities were also highlighted including destruction of properties of the educational institutions. Instances were also quoted where the Vice Chancellor, Registrar, Principal etc. have been gheraoed and kept under captivity. Similar are the complaints of various Managements and the Principals of the colleges which do not require further reiteration.

11. Counter affidavits have been filed by the Managements, Principals, Parent Teacher Associations and others pointing out the various instances where students organizations having allegiance to the various recognised political parties in the country as well as in the State fight each other within the college campus to establish their superiority and supremacy among student community and to inculcate their political ideology and philosophy among the students in the college campus. They want to show their strength in the college campus and to secure as many as students to their fold which affects academic discipline of various educational institutions. Complaints have been raised by the Managements that since most of the students Organizations are political outfits

of various political parties in the State political rivalries among political parties and among their leaders has been led to clash among students Unions in the college campus which affects the proper administration of the college losing many working days causing detriment to the rest of the students who are not members of any of the political organization or their students wings. The activities of these organizations in the campus is a matter of high tension, agony etc. not only to the Management, teaching and non teaching staff but to the parents as well as to the students who are not members of any of these organizations. Managements and the Principals of various colleges maintain the stand that they have got a fundamental right to establish and administer educational institutions under Article 19(1)(a) of the Constitution of India and to lay down regulatory measures in the administration of their educational institution and that the students organizations like SFL ABVP, KSU, etc, have no legal right to interfere with the rights guaranteed to the Management under Article 19(1)(g) of the Constitution of India.

12. Prominent students organizations who have filed review petitions in Sojan Francis's case are also respondents in O.P.No 18249 of 2000 and in few other writ petitions. They claimed to be independent organisations having no political affiliation. They submit that they have a fundamental right to carry on their organizational activities in the various educational institutions. Students organizations have been set up, according to them for the welfare of the students community and to equip them as better citizens of the society and to unite the students of our country for defending national independence and sovereignty of the country and democracy and to equip the students to fight against corruption and malpractice in all spheres of national life and especially in the field of education. Students organizations like SFL, ABVP, etc, would maintain the stand that the restriction imposed like Clause 9 under the head "General Discipline" and similar other provisions of various prospectus and college calendar would curb the organizational activities of students organizations within the campus which would create a fetter on the fundamental right of the students and their organization under Article 19(1) (a) and (c) of the Constitution of India.

13. Various Universities in the State of Kerala have also filed detailed counter affidavits. Registrar of the Mahatma Gandhi University has filed detailed counter affidavit. Campus politics according to them has to be viewed more as a co-curricular activity than as a political activity and what is to be totally banned in the campus is violence and not politics. The Joint Registrar In-charge of Registrar of the University of Kerala has also filed counter affidavit. It is stated that University does not interfere with the power of the Principal to maintain discipline except when serious irregularities are reported to the University. Further it is also stated that election to the College Union should be deemed as non-political in every sense of the term and there is nothing in the ballot paper to suggest or indicate their affiliation to any particular student organization or political party. Placing reliance on the objectives of the College Unions and Bye-laws of the Kerala University it is stated that the College Unions are not envisaged for

political activities. Registrar of the Kannur University has stated that the University is giving strict instructions to Principals of colleges and code of conduct is formulated according to which persons who are not in the role of the College register should not be allowed to take part in the propaganda work in the college campus without the prior sanction of the Principal. Students should desist from disfiguring the classrooms, compound walls and buildings in the college campus by pasting of posters or writing on the walls as part of their election campaign.

14. Registrar of Cochin University of Science and Technology has also filed counter affidavit wherein it is stated that the smooth conduct of the academic and administrative activities have to be ensured by preventing students from entering into - unlawful incidents, riots and violence and that majority of the student problems in the campus emanate from issues unrelated to politics but conflicting interests between students organizations like SFI, KSU, AISF etc. Many of the students conflict and problems, it is pointed out, erupt inside the campus are just spill over what happened outside the campus in which outside anti-social elements are also usually involved. Counter affidavit has also been filed by the Registrar of Sree Sankaracharya University stating that no outsider be brought to the campus for organizational activities. Counter affidavits and reply affidavits have also been filed by various other Institutions, Principals, lecturers and others.

15. The Principal Secretary to Government, Higher Education Department has also filed detailed counter affidavit stating that the Government are not in favour of prohibiting campus politics, but they are in favour of controlling elections on political basis and modifying the election system to the parliamentary model. Government it is stated want to maintain strict discipline in the campus and focus on academic activities. Political awareness has to be allowed and strengthened and suitable programmes should be designed to achieve the said objectives. It is stated that political activity shall not be allowed in the campus and demonstrations, campaigning etc. in the campus. Further it was stated that no meeting shall be held inside campus without the permission of the Principal. Banners, flags, posters etc. should not be allowed inside the campus and at the gates and on the compound walls except in cases allowed by the Principal. Further it is stated that no outsider should be invited into the college by any group of students without the consent of the Principal. Further it is stated that specific conditions of admission and the terms of code of conduct for students shall be included in the college calendar or equivalent document being given to the students. Various other measures have also been suggested by the State Government.

16. The basic question that has come up for consideration in all these cases and the review petitions filed in Sojan Francis's case is whether educational Institution or the Principal, as the case may be, could lay down Code of Conduct by which they could prohibit activities indulged in by various students

organizations like SFI, AB VP, KSU etc. within the campus and whether such prohibition would amount to violation of Article 19(1)(a) and 19(1)(c) of the Constitution of India, so far as those students organizations and their member students are concerned. Further question is whether the students organizations like SFI, ABVP etc. could meddle with the fundamental rights guaranteed to the educational institutions under Article 19(1)(g), Article 29 and Article 30 of the Constitution of India by extending those organisational activities within the college campus owned and administered by the Managements. The legality of prohibiting all sorts of strike, dharna, gheraos, hartal etc. within the campus is also an issue to be decided.

17. We may at the outset point out that there is a misconception among the review petitioners and certain others that this court in Sojan Francis's case has totally prohibited the students from indulging in political activities so as to affect the fundamental rights guaranteed under Article 19(1)(a) and 19(1)(c) of the Constitution of India. While interpreting Clause 9 of the General Discipline in Sojan Francis's case, we held as follows:

"We are of the view, guideline (9) banning political activities within the campus and forbidding the students from organizing or attending meetings other than the official ones within the campus is not designed to prohibit any of the fundamental rights of the students guaranteed under Article 19(1)(a) or 19(1)(c). It is not a total prohibition of any fundamental right, but only a reasonable restriction confined to college campus and the code of conduct cannot be flouted in the name of any other freedom or the rights guaranteed under Article 19(1)(a) or 19(1)(c). Once students are admitted to an educational institution they are bound by the code of conduct laid down by the educational institutions through the prospectus or college calendar and it is implicit that they should observe the code of conduct necessary for the proper administration and management of the Institution. Restrictions are only reasonable and designed to promote discipline in the educational institution so that the objectives of the educational institution could be achieved and wisdom of laying down those restrictions cannot be challenged by the student after getting admitted to the educational institution".

Clause 9 of the General Discipline framed by St. Thomas College, Palai was upheld after laying down the above principle and declared that it was open to the educational institutions to prohibit political activities within the college campus and forbid students from organizing or attending meetings other than the "official ones" within the college campus and such a restriction would not violate Article 19(1) (a) or (c) of the Constitution of India. In that case Sojan Francis was a second year B.A. Degree student with Politics as main and History and Economics as subsidiaries. He was College Union Member and Editor of the College Magazine and Area Committee Member of the Students Federation of India. Placing reliance on Ext.P3 newspaper report dated 6.3.2003 Sojan Francis stated that the action of the Principal in not permitting him to write the examination was politically motivated so as to curb the activities of SFI in the college campus.

In the reply affidavit filed in W.A.No. 535 of 2003 he stated being a candidate of the S.F.L during the time of college election he lost a few attendance. It is also stated that being a S.F.I. Union member he had participated only in strikes called by the Union, Statewide or on regional basis and on those days all the students were on strike. The question whether the conduct of Sojan Francis in such circumstances would fall under Clause 9 of the General Discipline was also mooted before this court. Principal of the College justified the action since Sojan Francis lacked attendance due to his involvement in political activities of the S.F.I.

18. The question is whether the organizations like SFI, ABVP, etc. could widen their organisational activities within the campus, so as to disrupt the general discipline in the campus. The Management and the Principals of the various educational institutions are not against the students advocating any political philosophy or ideology or discuss the same in the various forums ear-marked for them by the University laws like College Unions, Students Council as part of their co-curricular activities, but not through the students organizations like SFI, ABVP, etc. within the campus with whom the Management has no legal relationship. Sojan Francis has however no grievance against the judgment and has not filed any review petition, but the students organizations like SFI, ABVP, etc. have come up with a grievance that those restrictions would affect their organizational activities within the campus.

19. Educational institutions imparting higher education in the State of Kerala are established and maintained by the State Government, Universities, Corporate Educational Agencies, individual management etc. State of Kerala have enacted various legislations like Kerala University Act, 1974, Mahatma Gandhi University Act, 1981, Calicut University Act, 1975, Cochin University of Science and Technology Act, 1971, Kannur University Act, 1996, Sree Sankaracharya University Act, 1994 for establishing teaching residential and affiliating Universities for the State of Kerala. Statutes, Ordinances, Rules and Regulations have also been framed under the various University Acts to be followed by the Managements, students, teachers and non teaching staff etc.

20. The first legislation enacted in the State of Kerala is the Kerala University Act, 1974. We may now refer to some of the provisions of the said Act, Statutes and Ordinances with particular reference to rights of the management, principals and students. There are large number of affiliated colleges in the State coming under the direct supervision and control of the Universities. Affiliated colleges are maintained by the minority communities as well who are entitled to protection under Article 30 of the Constitution of India. "Affiliated college" is defined u/s 2(2) of the Kerala University Act to mean college affiliated to the University in accordance with the provisions of the Act and Statutes in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations. Educational Agency has been defined in Section 2(9) of the Act to mean person or body of persons who or which establishes and maintains private college or more than one private college. Government college is defined in

Section 2(11) to mean a college maintained by the Government and affiliated to the University. Principal has been defined u/s 2(15) to mean Head of the college. Private college is defined in Section 2(16) to mean college maintained by an educational agency other than the Government or the University and affiliated to the University. Student has been defined in Section 2(24) to mean a part-time or full-time student receiving instruction or carrying on research in any of the colleges or recognised institutions. Students Council has been defined in Section 2 (25) to mean Students' Council of the University. Section 5 of the Kerala University Act confers the University to supervise and control the residence and discipline of students of the University, colleges and recognised institutions and to make arrangements for promoting their health and general welfare and exercise such control over the students as will ensure their physical and moral well being.

21. The University laws also authorise the constitution of a Board to entertain and if it thinks fit to adjudicate and to redress any grievances of the students of colleges, who may for any reason be aggrieved otherwise than by an act of the court. It also enables the University to institute and provide funds wherever necessary for the maintenance of Students' Advisory Bureau, Employment Bureau, University Union for Students, University Athletic Clubs, National Cadet-Corps, National Service Corps, Students Cultural and Debating Societies and co-operative societies and other similar institutions for promoting the welfare of the students and employees of the University. Section 16 of the Act deals with authorities of the University like, Senate, Syndicate, Academic Council, Faculties, Boards of Studies, Students' Council, Finance Committee and such other boards or bodies of the Universities as may be declared by the Statutes to be authorities of the University. Section 17 of the Act deals with Senate which consists of Chancellor and Officers of the University including Chairman of the University Union, ex officio members, ten members elected by the members of the General Council of the University Union. Students also would get representation in the Syndicate provided they got elected in the Senate. Section 29 of the Act deals with Students Council. Chairman of the University Union being an ex officio member of the Students Council, three members elected from among the full time students of the Departments of the University are also ex officio members of Students Council. Section 30 enumerates duties and powers of the Council. Chapter VIII of the Act deals with private colleges and affiliation of-colleges. Chapter VIII of the Kerala University First Statutes deals with Students' Council. Statute 17 deals with powers of Students Council which enables them to supervise and coordinate the activities of the different students associations, societies and other organizations. Various other powers have also been conferred with the Students' Council.

22. We have gone through the various University Acts, Statutes and Ordinances dealing with affiliated colleges, government colleges etc. University legislations confer considerable powers to students to exercise their freedom of speech and expression and to assemble peacefully in the various statutory bodies established

under the University Statutes. The University laws are highly democratic and it permits, organisational activities within the campus, through recognised forums like Students Council. College Council. University Senate. Syndicate. University Union. Cultural and Debating Solution. Students Advisory Bureau etc. Students could ventilate their grievances and express their views on any political issue as a co-curricular activity through these forums within the campus, thereby the rights of the students have been effectively safeguarded by the University laws and statutes. Apex court in University of Delhi and Another Vs. Sh. Anand Vardhan Chandal, held that right to education is a fundamental right but to participate in the Students Union activities at best is only a statutory right and not a fundamental right guaranteed under Articles 21, 19(1) (a) or (c) of the Constitution of India. Students could exercise only those statutory rights permitted by the University law's within the campus of the institutions.

23. The Kerala University Act. Statutes. Ordinances and other legislations governing the affiliated colleges and the educational agencies or the State Government have not recognised SFI. KSU. ABVP. AISF. NSC. MSF etc. Organizations like SFI. ABVP. KSU etc, are separate legal entities and there is no legal relationship between them and the Management of an educational institution or the State Government. They have no fundamental or other statutory rights to carry on their organizational activities within the premises of an educational institution established and administered by various Educational Agencies in the State as well as by the State Government. Educational institutions are not interfering with the organizational activities of these organizations. Fundamental rights guaranteed to educational institutions under Article 19(1)(g) to administer their colleges cannot be interfered with by SFI, ABVP, KSU, etc. through their organizational activities directly or through member students and such interference is illegal and could be prevented. Political parties with whom, it is alleged that, the students organizations have got allegiance are governed by the Representation of People Act, 1951. Section 29-A provides for registration of an association or a body as a political party with Election Commission. Section 29A(5) obliges every political parties to respect the fundamental right of the citizens embodied in Part III of the Constitution which means they have to respect the fundamental right of the Management of an educational institution. Full Bench of this court in Bharatkumar v. State of Kerala 1997 (2) KLT 287 1997 (2) KLJ 1 has recognised this principle affirmed by the apex court in Communist Party of India (M) Vs. Bharat Kumar and Others, .

24. The apex court in Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh, held that the exercise of freedom under Article 19(1) (a), (b) and (c) will come to an end as soon as the right of someone else to hold his property intervenes. The validity of that limitation is inherent in the exercise of tests prescribed by Sub-articles (2) and (3) of Article 19. The court held that the contents of the freedoms guaranteed under Clauses (a), (b) and (c) of Article 19 do not include the right to exercise them in the properties belonging to others. The Apex Court in Life Insurance Corporation of India and Union of India and

another Vs. Prof. Manubhai D. Shah and Cinemart Foundation, held that every right has a corresponding duty or obligation and so has the fundamental right of speech and expression. The freedom conferred by Article 19(1)(a) is therefore not absolute, it carries with it certain responsibilities towards fellow citizens and society at large. A citizen who exercise this right must remain conscious that the fellow citizen too has a similar right and the right must be so exercised as not to come in direct conflict with the right of another citizen. Students organizations like SFI, ABVP, etc. have therefore no legal right to interfere with the fundamental rights guaranteed to managements of various educational institutions in the State under Article 19(1)(g) of the Constitution.

25. Discipline is the bedrock on which an educational system is founded. In common parlance, discipline may be a state of order maintained by training and control a particular system of regulation or conduct, instructions and exercise, designed to train to proper conduct or action. Jurisprudentially examined it brings forth something more. "Obedientia est legis essentia" obedience is the guiding force to sustain the law, rule, regulation or custom. Principal is charged with a duty, to maintain the discipline. University Laws including Mahatma Gandhi University Statutes have given considerable powers to the Principals of educational institutions to enforce discipline in the college. Educational Institutions can lay down code of conduct and guidelines to be enforced by the Principal of the educational institution. The apex court in M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, , while considering the scope of Rule 22 of the Service Rules held that a proper balancing of interests of an individual as a citizen and the right of the State to frame code of conduct for its employees in the interest of proper functioning of the State is required. Rules which are directly linked to and are essential for proper discharge of duties of a public office would be protected under Article 19(1)(g) of the Constitution in public interest. Reference may also be made to the decision in P. Balakotaiah Vs. The Union of India (UOI) and Others, and Kameshwar Prasad and Others Vs. The State of Bihar and Another, .

26. Statute 20 of Chapter 24 of the Kerala University First Statutes, 1977 states that every college shall have duly constituted College Council properly representing the teaching staff to advise the Principal in the internal affairs of the college. Statute 21 prescribes that in every college the Principal shall be the Head of the college and shall be responsible for the internal management and administration of the college. This unenviable position of the Principal of the educational institution is recognised and reiterated by this court in several decisions. But for the Principals vital and vibrant presence within the educational campus no effective administration would be possible in an educational institution. Around the Principal wheels the tone and temper of the institution, on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching, as stated by the Full Bench of this court in Rt.Rev.Aldo Maria Patroni v. E.C. Kesavan and Ors. 1964 KLT 791. Reference may also be made to the decision of this court in Thampan v. Principal, Medical

College 1979 KLT 45 Unni Raja v. Principal, Medical College ILR (1983) Ker 754 Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, . The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , held that teacher occupies pride of place next below the parents as he or she imparts education and discipline in the students. On a proper balancing of individual freedom of the citizen and proper functioning of an institution, the institution is entitled to lay down their own code of conduct and the Principal of the educational institution has got a duty and obligation to enforce the code of conduct laid down and has got the power to do so and it is the legal obligation of the University authorities and the State Government to give him all support to enforce discipline in the educational institution.

27. Principal, teaching faculty and the Managements while imparting education is discharging a public duty and are regulated by rules and regulations of affiliating Universities. Code of conduct laid down by various educational institutions includes banning of strike, dharna, gherao etc. in the college campus violation of which would entail disciplinary action against the students. State Government and the Universities in the counter affidavit have stated that because of the strike, dharna, demonstration, agitation, gherao etc. within the campus by students organizations like SFI, ABVP, KSU etc. and the students in general several academic days have been lost and necessary measures are to be taken to curb those activities. Collective bargaining, strike, go slow, dharna, agitation, gherao, absenteeism etc. were alien to academic domain. Unfortunately now a days those tendencies are on the rise and unless curbed it will engulf the entire system. The relationship between teachers and students is solemn and sacred and the relationship is not that of master and servant or employer and employee. Strike, dharnas, gherao, go slow and absenteeism are weapons used by the labour force for establishing their demands under the labour laws and they are not academic tools to be used against the teaching faculty or against the management to vindicate the rights of the students. Such modes of bargaining power is foreign to the relationship between teachers and students and the students and the managements. University Statutes do not contemplate such modes of redressal though the word "strike" finds its statutory expression u/s 2(q) of I.D. Act. University Statutes enable constitution of Boards to redress the grievances of the students. Strikes, gherao, dharna, bandh, etc. within the campus are illegal and do not have the support by any law and could be prevented failing which disciplinary action could be taken against the students.

28. The Apex Court in Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, examined the rights of lawyers to strike work and held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike and held them personally liable. Similar view was taken by the apex court while dealing with bandh in Communist Party of India (M) Vs. Bharat Kumar and Others, : 1997 (2) KLT 1007 (SC) . So also in Rangarajan v. Government of Tamil Nadu 2003 (3) KLT 86 where the Apex Court after following the earlier decisions

held that there is no fundamental right to go on strike by the government employees. Situation of the students is worse since they are engaged in academic pursuit in an educational institution governed by rules and regulations. We have therefore no hesitation to hold that students are bound by the code of conduct laid down by the educational institutions in which they are studying and the code of conduct banning strikes, bandhs, hartals, gheraos etc. in the college campus is binding on them and could be enforced. Grievances of the students can be redressed by the grievance forum to be established under the University Laws and through other legal processes known to law.

29. Counsel on either side has argued at length on the meaning of the expression, "politics", "political activism" and "political activities", placing reliance on various authoritative text books and contended that students have got the freedom to indulge in various political activities. The term "politics" was first used by Aristotle and called it as "master of science". The word "politics" is derived from the Greek word polis meaning a city. City was the State for Greeks and the subject that dealt with the City-State and its problems was designated Politics. Some eminent political scientists like "Harold Laski, R.H. Soltau, Karl Deutsch and many others prefer the term Politics for the subject matter of study. The term Politics has acquired a new meaning in the context of advancement of late made in the "discipline of political science". Jouvenal Bertrand de Pure Theory of Politics explains that political activity is the urge in the human person to control and dominate and direct the wills of other individuals, which may assume many forms, but is manifest, wherever men enter into group life, as they must. Lasswell and Kaplan in Power and Society define "politics" as an imperial discipline on the study of the shaping and sharing of power and as a political act, one performed in power prospectives. A judgment of the Supreme Court of Pakistan in M. Ismail Qureshi v. M. Awais Qasim 1993 S.C.M.R. 1781 was cited at the bar wherein the court held that those who "indulge in politics" in the educational institutions being a very small minority violate several fundamental rights of a vast majority of the students, their parents and guardians, besides of those who are otherwise directly or indirectly linked or connected therewith. The court even directed that at the time of admission to an educational institution, the student and his parents/guardian shall give an undertaking that the student shall not "indulge in politics"; failing which, he shall not be allowed admission. The court noticed that the dignity of the teachers, the institution and the majority of students community has been severely adversely affected, besides infringement of several other fundamental rights including those relating to movement, expression, speech, freedom of assembly and above all the dignity of the teachers and a large majority of the students gets violated in one or the other set of circumstances.

30. We need not labour much on the meaning of the word "politics", "political activities" or "political activism". The Managements have taken up a clear stand what is bothering them and the teaching faculty is the interference of students organizations like SFI, ABVP, KSU, etc. within the campus directly and through

member students and also the constant strike, dharna, gherao etc. indulged in by the students within the campus. Students can, according to them, voice their opinion on any political issue in the various forums earmarked to them under the University Statutes, but not through the organizations which have not been recognised either by University Statutes, State Government or by the educational institutions.

31. The Principal Secretary, Education, Government of Kerala in the counter affidavit has suggested various measures to maintain discipline in the educational institutions in the State. In sub para 3 of para 7 of the counter affidavit filed by the State Government it is stated that political activity shall not be allowed in the campus and demonstration, campaign, rioting etc. shall not be allowed. Further it is also stated no banners, flags, posters etc. should be allowed inside the campus. Sub para (11) of para 7 it is stated that specific conditions of admission and terms of a code of conduct shall be included in the college calendar and an undertaking be obtained from the students and parents. The Principal Secretary to Education Department also stated in the counter affidavit that the Government would implement those measures based on the directions of this court. Measures suggested by the State Government are to be welcomed while upholding the right of the Managements to stall organizational activities of students organizations like SFI, ABVP, KSU etc. directly or through their member students within the campus. Strike, dharna, gherao etc. indulged in by the students within the campus can also be prevented and State Government and the Universities have got a legal obligation to protect the rights of not only the Management, Principal and the teaching faculty of the affiliating colleges but also that of Government owned colleges and educational institutions and to take appropriate measures to enforce those rights. In the decision of the Apex Court in Harpal Singh Vs. Devinder Singh and another, , Thomas, J. in his inimitable style has highlighted the bane of campus politics which resulted in the death of a student studying in the final year M.A. Economics. Measures suggested by the State Government, in our view, would strengthen the Managements and Principals to enforce the discipline.

32. We are therefore inclined to give a direction to the State Government and to all the Universities in the State of Kerala to lay down appropriate rules and regulations in the light of the declarations made by us before the commencement of the next academic year relating to all the colleges including Government owned and affiliated colleges which will be binding on all the students studying in those institutions. Rights of the private Managements and the educational agencies in prohibiting the interference of students organizations like SFI, ABVP, KSU etc. within the campus either directly or through their member-students and also the prohibition of strike, gherao, dharna, bandh, hartal etc. within the campus are also upheld. Review petitions are accordingly dismissed and the writ petitions are disposed of as above. We make it clear we have not determined the rights of the teacher vis-a-vis the Management in Sojan Francis's case, and the observations, if any, made would be obiter.