

(2011) 04 KL CK 0107

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 32003 of 2008 and 15489 of 2009

Manager, St. Albert's College and another

APPELLANT

Vs

M.G University and others

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Mahatma Gandhi University Statutes — Status 9(6)

Citation : (2011) 2 ILR (Ker) 836

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Baby Issac Illickal, for the Appellant; T.A. Shaji, S.C., M.G. University for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice P.R. Ramachandra Menon

1. Whether the rejection of the application preferred by the petitioner college for affiliation to the Post-graduate Course in M.Sc. Space Science & Technology, on the grounds stated in Ext. P-7 [Exhibits are being referred to in the order & chronology as given in W.P.(C) 32003 of 2008] is correct or not, is the basic issue involved in these writ petitions.

2. The petitioner college is stated as an institution of repute, started in the year 1946; with affiliation originally secured from the Madras University. Subsequently, after formation of the Kerala University, the affiliation was automatically shifted to the said University and later in 1983, when the respondent University came into existence, the affiliation was in turn transferred automatically to the above University. The petitioner college is stated as having a wide range of subjects/courses with all necessary infrastructure, competent teaching & non-teaching staff and is running nine post-graduate courses, out of which, six are in the Science subjects.

3. It is the case of the petitioner college that, the then Chairman of the ISRO Dr.

Madhavan Nair, when visited the college in the year 2005, in connection with delivery of a lecture on the subject "10 point Development Mission for Kerala" made a proposal to start a new course in the field of Space Science and Technology, prompting that, it will lead to developing quality human resources in this emerging era, when the space research in India required more man-power and that earnest efforts were being made by all concerned in the field to get the youngsters interested in the field. It was accordingly that the matter was taken serious note of by the authorities of the college and decided to start a post-graduate degree course in M.Sc. Space Science and Technology, particularly, in view of enviable infrastructure already available in the college in connection with M.Sc. Physics, which forms the core subject for the above specialized course, as well.

4. On approaching the University Grants Commission (UGC in short), the Experts/delegates from the UGC appraised/analyzed the credentials of the petitioner college and offered 100 % financial assistance to start the above course of M.Sc. in Space Science and Technology under a Scheme "Innovative Programme"--"Teaching and Research in Interdisciplinary and Emerging Areas". A sum of Rs. 50 lakhs was sanctioned as the "seed money" for starting the course, which in fact was conceived and formulated in association with the Indian Space Research Organization (ISRO). It is contended that, the UGC approved this course from among 432 applicants all over India and only 12 institutions were selected for this prestigious programme of assistance, where the petitioner institution stands to be the only college selected from Kerala for such programme in the field of Science.

5. With the above intent, the petitioner college submitted application for affiliation to the respondent University for starting such a course in the academic year 2006-"07. As pointed out by the University (in paragraphs 4 and 5 of their counter-affidavit), the application for affiliation is to be submitted as prescribed in the M.G University Statutes before the 31st January, preceding the academic year in which the course is proposed to be started. Since, the application preferred by the petitioner college for the academic year 2006-"07 was only in July, 2006, it could not be considered favourably and hence was turned down, intimating that the petitioner may submit fresh application before the 31st of January, 2007. Accordingly, a fresh application was submitted for the academic year 2007-"08.

6. In the meanwhile, the Government vide Ext. P-2 letter dated 27-12-2006, accepting the recommendation of the Higher Education Commission, advised the Universities in Kerala, not to process new application for the courses/colleges for the next academic year. Since, the case of the petitioner college stood on a different footing, they approached this Court by filing W.P.(C) 10632 of 2007, which was disposed of as per Ext. P-3 judgment dated 10-4-2007, directing the University to consider the application and to pass appropriate orders, in accordance with law, within six weeks. Pursuant to Ext. P-3 verdict, the

application was considered and rejected by the University as per Ext. P-4 order dated 17-5-2007, holding that, the same could not be considered favourably, for want of any Scheme and Syllabus approved by the academic bodies for the course, which was cited as a fundamental requirement. This in turn was subjected to challenge by filing W.P. (C) No. 18659 of 2007. In the course of hearing, it was brought to the notice of this Court from the part of the University, that the Scheme and Syllabus for the course had already been approved by the University; under which circumstance, the University was directed to consider the application for affiliation afresh. Ext. P-6 is the judgment passed in this regard, based on which, further steps were pursued by the University.

7. As obvious from the pleadings and proceedings, an Inspection Commission was constituted by the University, as contemplated under Statute No. 9 (6) of the Chapter 23 of the M.G University Statutes, which consisted of 3 members of the Syndicate, who conducted the inspection and submitted a report. The same was considered by the Standing Committee of the Syndicate and finally, Ext. P-7 order was passed by the University on 13-10-2008, whereby the application was rejected for the reasons stated therein, which in turn is under challenge in W.P. (C) 32003 of 2008.

8. In the course of the above proceedings, the University took a decision not to consider any application for affiliation in tune with the minutes of the meeting of the Syndicate held on 12-2-2009, followed by Ext. P-8 order dated 3-4-2008, which forms the subject-matter of challenge in W.P.(C) 15489 of 2009.

9. The University has filed counter-affidavit in both the writ petitions seeking to sustain their stand and the petitioners have filed different I.As. for appropriate reliefs at different points of time, including I.A. 10184 of 2009, producing copies of some additional documents and marking the same as Exts. P-8 to P-11 in W.P. (C) 32003 of 2008.

10. Adv. Mr. Baby Issac Illickal, the learned counsel for the petitioners in both the cases submits, with reference to the specific pleadings, that the course pursued by the University in rejecting the application for affiliation was with a mala fide intent, for not acceding to the terms dictated by the University, to drop the disciplinary action taken against a teacher/lecturer, who held political allegiance to the ruling front, having majority in the Syndicate. The petitioner College contends that, suspension of the said lecturer was because of serious delinquency. On conclusion of the enquiry and on proving the guilt, the said delinquent teacher/lecturer was dismissed from the service, who challenged the same before the University Appellate Tribunal. The Tribunal also confirmed the stand of the petitioner management and the appeal was dismissed. It is contended that, there was an unlawful bargain from the part of the University in this regard for granting the affiliation, requiring the petitioner College to reinstate the said teacher, which was not acceptable to the management. Some other reasons are also stated (in connection with the request for affiliation of the MBA course) and all such allegations have been vehemently denied from the part

of the University in their counter-affidavits, contending that, the decision taken as per Ext. P-7 is strictly in tune with the merits involved and not tainted with mala fides.

11. Coming to the merits involved, Ext. P-7 is stated as not correct or sustainable either on facts or in law and that the Syndicate has exceeded its powers and competence, particularly, with regard to the first two grounds mentioned in Ext. P-7, as the reasons for rejection. It is also stated that, the Commission itself, who conducted the inspection was thoroughly incompetent, as there was no "Subject Expert" with regard to the field of "Space Science and Technology" and that the inference made by the Inspection Commission, consisting of "a Lawyer, a Commerce Lecturer and a Lecturer from Physics Department" (who have been impleaded in the part array as respondents 3 to 5) in their capacity as the members of the Syndicate, is not in order. It is further stated that, the findings of the said Inspection Commission, followed by the recommendation of the Syndicate Standing Committee culminating in Ext. P-7 are rather self-contradictory in the light of the observations of the Committee, as reflected from the answers given against the different clauses/queries of Ext. R-1(a) inspection report. The learned counsel for the petitioner College further submits that, as borne by the relevant letters issued by the authorities, Indian Space Research Organization had assured help by way of "Expert assistance" and the same was brought to the notice of the University as well; despite which, no such assistance was sought for, while constituting the Commission to inspect the college. It is pointed out that, instead of appraising the infrastructure available in the college, reference/reliance was made to some irrelevant aspects; with regard to the alleged violation of norms for affiliation without pointing out any specific instance of violation. In fact, the infrastructure facility has already been examined by the "Expert team" of the UGC and it was accordingly, that 100% financial assistance has been ordered by the UGC, who has made it clear vide Ext. P-7 in W.P. (C) 15489 of 2009 that the financial assistance will be limited up to 31-3-2013, subject to the approval by the affiliating University. Reliance is sought to be placed on the decisions rendered by this Court as to the course to be followed by the University in granting affiliation, as reported in *Christian Education Trust v. M.G. University and Another* 2009 (2) K.H.C. 919 and *University of Calicut Vs. Tharanallur Educational and Cultural, National Council for Teacher Education and State of Kerala* .

12. Mr. T.A. Shaji, the learned standing counsel appearing for the University submits that, the plea of mala fides is quite wrong and unfounded, simultaneously pointing that, the petitioner institution cannot claim affiliation as a matter of right and the same is subject to the satisfaction of the mandatory requirements. It is stated that, the reasons given in Ext. P-7 are in conformity with the observations of the subcommittee and those of the Inspection Commission, who conducted the inspection, as discernible from Exts. R-1(a) and R-1(b).

13. The reasons for rejecting the application for affiliation as given in Ext. P-7 are as given below:

(i) Due to admission irregularities, the Syndicate has decided to de-affiliate this college and the same is given to the Hon'ble High Court for approval.

(ii) The college is violating University Statutes and disobeying lawful directions of the University.

(iii) The college is lacking necessary infrastructural facilities and teaching staff.

With regard to the first ground mentioned in Ext. P-7, referring to the admission irregularities, the learned counsel for the respondent University submits that, the petitioner college was giving admissions to "Boys" and "Girls", fixing a quota of 50 % each, by maintaining separate lists, which was contrary to the University norms and statutes. In spite of giving clear instruction, it was not rectified and as such, the college had violated the University statutes and disobeyed the lawful directions of the University as well, as referred to in ground (ii) of Ext. P-7. However, in the course of hearing, it is brought to the notice of this Court that the petitioner college is now effecting admissions only in tune with the relevant provisions of law. Further, no specific instance of violation of the law or any action taken by the University against the petitioner has been specifically pleaded or proved by producing the requisite materials before this Court till date. This being the position, this Court finds that, the grounds mentioned at Sl. Nos. (i) and (ii) of Ext. P-7 passed on 13-10-2008 can no longer place any hurdle in the matter of granting affiliation

14. With regard to the remaining ground at Sl. No. 3, referring to the lack of necessary infrastructure and teaching staff, the report and recommendation of the Inspection Committee as contained under clause/paragraph 16 of Ext. R-1(a) reads as follows:

The committee considered the whole matter in detail and resolved to recommend not to grant the new course, viz. M.Sc. Space Science & Technology applied by the Management of St. Albert's College, Ernakulam on the grounds mentioned above. The Report of the subject expert (Dr. Satheesh) is enclosed herewith.

However, the factual data given under the different clauses of Clause 7 (a to e) are noted as "adequate" and no insufficiency/inadequacy is pointed out anywhere therein, which are extracted below:

7. BUILDING (Attach approved plan)

a. Are the area of class rooms and furniture adequate (abstract from Annexure 1)

Yes

b. Is the area and set up of the labs adequate ? (Annexure 1)

Yes

c. Is the lab equipments adequate ?

(Annexure 2 and stock register)

Yes (facilities for special topic is not adequate)

d. Library and reading Room (Annexure 3 & Accession Register)

Adequacy of Areas Area :

593.06+197.28 sq.m

No. of Titles:

28276

No. of Volumes:

33636

e. Details of Hostel facilities

Men:

pius x hostel

Women:

under construction (UGC grant)

Same is the position with regard to the entries in respect of "play ground, teaching and non-teaching staffs", as given in clauses/paragraphs 8,9 and 10 respectively. The irregularity in the matter of admission referred to in clause/paragraph 12 has already been considered and dealt with already [which forms the ground No. (i) of Ext P-7], holding that, the same cannot be a hurdle in the matter of granting affiliation any further. So is the position with regard to the entry against clause/para 14 (c) as to the alleged violation of the instructions of the University.

15. However, in respect of clause/paragraph 14 (e) referring to "any other relevant matter", it has been mentioned as follows:

14 (e). Any other relevant matter.--The educational agency does not possess the minimum required land as stipulated in the M.G University Statutes. As per the Statute, 15 acres of land is mandatory for a first grade college. However the college possess only 4.5 acres of land. Hence it is not possible to start a new course with the existing infrastructure.

Obviously, the alleged defect pointed out with reference to the inadequacy of land was never a subject-matter of consideration ever before, when the petitioner institution was originally granted affiliation by the Madras University and happened to be affiliated to the Kerala University (on formation of the said University) and later affiliated to respondent University from 1983 onwards

(pursuant to the formation of the said University), which was rather automatic and further when affiliation was given by the respondent University itself to the various courses started subsequently.

16. The petitioner has filed an affidavit dated 10-8-2009 in support of LA. 10184 of 2009, wherein it is stated that the land owned/possessed by the educational agency comes to a total of 13.51 acres and that the first respondent had not raised any stipulation as to the land requirement earlier. Considering the nature of the "course" and the intake of the students as proposed and permitted by the UGC (Postgraduate 2 years course with intake of 20 students), this Court finds that, the "Expert team" of the UGC had appraised the available infrastructure for granting 100 % finance for starting M.Sc. Course and as such there is no point in applying the law by its letters, instead of merit. The materials produced from the part of the petitioner college as to the support already extended and proposed to be extended for starting the above specialized course from the authorities like the ISRO, the Cochin University, the UGC etc. support the credentials of the petitioner College and the infrastructure available for starting the course. The factual position that the Inspection Committee deputed by the University consisted only "a Lawyer, a Commerce Lecturer and a Physics Lecturer" without any "Subject Expert" in the field of Space Science and Technology stands rather conceded, having not sought to be rebutted. The version offered from the part of the University during the course of hearing is that, there is no similar course like that of the course proposed, in any of the Universities in Kerala and there is no expert in the particular subject, but for the subject expert in the field of Physics. Even though, the concerned members of the committee have been included in the party array as respondents 3 to 5, they have not chosen to rebut the averments in the Writ Petition by filing any counter-affidavit. This Court is at a loss to understand, why the University did not seek for the assistance of the subject expert, especially when any such help was offered from the part of the ISRO, as borne by Exts. P-3 and P-6 in W.P. (C) 15489 of 2009 and Ext. P-5 in W.P. (C) No. 32003 of 2008. That apart, the "Scheme and Syllabus" of the course was prepared and finalized by, none other than the ISRO, which in fact has been approved by the University, leading to Ext. P-6 judgment. In the said circumstances, it was the bounden duty of the University to have arranged and deputed competent "Subject Expert" to assess the infrastructure available in the petitioner's institution, if the University was having any doubt in this regard.

17. It is an admitted fact, that there is no such course as now proposed by the petitioner College, in the field of Space Science and Technology in any of the colleges under the respondent University or under any other Universities in Kerala. The contents of Exts. P-3 & P-6 letters of the Chairman/Secretary/Authorities of the ISRO and such other Experts in the field have to be appreciated in the said circumstances. The proposal of the petitioner's institution to have started such a specialized course, which is not available anywhere else, ought to have been welcomed by the University giving golden hand shake, instead of finding out ways and means to defeat the purpose. It is no more a

matter of doubt that the Nation needs more and more talented youth and Scientists in the field of Space Science and Technology, to meet the challenges of tomorrow. It is the year of competition, State wise, Nation wise and even at International level and as such, persons with proper aptitude and taste have to be identified, taught, trained and developed to enshoulder the needs and requirements of the Nation, as a whole. The issue stands entirely on a different pedestal than the usual academic courses available in abundance in different institutions/Universities in other fields. The wider public interest lying behind the particular course, providing opportunities to the children of the State and in turn the Nation ought to have been appreciated by the University, promoting such venture, which would have brought glory to the University as well, as a pioneer in the field, at least in the State. Instead of approaching the issue in the right perspective, it was dealt with in a casual manner (though may not be deliberate), virtually spoiling three years, by which time quite a good number of students/scientists of tomorrow could have been moulded. The course pursued by the University cannot, but be deprecated in the strongest possible words.

18. Coming to the power and jurisdiction of the University, it cannot be disputed that the Statute confers the necessary power to meet the object in the matter of granting affiliation to a college for starting a new course and that, it is for the applicant to satisfy the Syndicate as to the credentials in this regard. But, the said power is not liable to be exercised in a casual or arbitrary manner as already made clear by this Court in *Christian Education Trust v. M.G. University and Another* 2010 (2) K.H.C. 919 The sanctity of the report of the "Expert Committee" and their findings has necessarily to be given effect to, as highlighted by the Full Bench of this Court in *University of Calicut Vs. Tharanallur Educational and Cultural, National Council for Teacher Education and State of Kerala* and also by a Division Bench of this Court in *University of Calicut v. Tharanallur Educational and Cultural Society and Others* 2008 (2) KLT 1027. True, the said cases were with reference to various statutory inspections to be conducted by the Higher Level Authorities; whereas in the instant case, as contended by the University, there is no such statutory inspection or higher level scrutiny of the NCTE/AICTE etc. It is also contended that the "UGC inspection" is also not a statutory prescription with reference to the course and its affiliation. But the fact remains that, the petitioner college has been identified by the UGC, pursuant to the assessment of the infrastructure and such other credentials to start this programme of M.Sc. Space Science and Technology, as one of the 12 institutions selected in India for 100 % financial assistance under a Scheme "Innovative Programme" -"Teaching and Research in Interdisciplinary and Emerging Areas". The alleged inadequacy of the infrastructure stated as noted by the Inspection Commission of the University as referred to in Exts. R-1(a) and R-1(b) is quite wrong and unfounded; more so, when the first respondent has not mentioned specifically as to what are the equipments necessary for conducting the special topic of Space Science and Technology. It is stated that, the UGC has allotted funds for procuring the essential laboratory equipments and

as per the guidelines of the Innovative Programme, as in the instant case, the financial assistance is 100 %. It is further pointed out that, the curriculum and syllabus of M.Sc. Space Science and Technology course do not suggest any "Practical test", which should be done out side the petitioner's college and that all the equipments required for teaching the subject topics will be arranged in the college itself, with the "seed money" provided by the UGC and also the funds arranged by the management. It is also made clear in the affidavit dated 10-8-2010 filed in support of I.A. 10184 of 2008 that, the only suggestion in the curriculum is that some of the projects for students can be done in any of the ISRO/DRDO research stations and as such, the question of conducting "Practical test" outside the petitioner's college does not arise at all.

19. This Court finds that, the efforts taken by the petitioner's in starting the P.G. Course in Space Science and Technology; the positive steps taken by the UGC by providing 100 % financial assistance under a particular Scheme and assistance offered from the part of the ISRO and such authorities to give shape to the proposal, shall never be let down. The interference made by this Court earlier by passing judgments in W.P.(C). Nos. 10632 of 2007 and 18659 of 2007 directing the University to consider the matter ought to have been taken in the right spirit as an eye opener, instead of indulging in "shadow fighting" (if any), forgetting the object, duty and even the beneficiaries, as made clear by the Division Bench of this Court in University of Calicut Vs. Tharanallur Educational and Cultural, National Council for Teacher Education and State of Kerala . This is more so, when the University is having sufficient power to grant provisional affiliation, prescribing justifiable conditions. Statute 12 of the Chapter 23 of the M.G. University Statutes 1997 enables to have such a course.

20. In the above circumstances, this Court holds that petitioner College is entitled to succeed. Ext. P-7 is set aside and the respondent University is directed to grant conditional affiliation, as contemplated under Statute 12 of Chapter 23 of the M.G. University Statutes 1997 forthwith and to pursue further steps accordingly, which shall be done as expeditiously as possible, at any rate within two months, so as to enable the petitioner college to start the course of "M.Sc. Space Science and Technology" forthwith.

Both the writ petitions are allowed to the above extent. No cost.