

(1996) 04 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No"s. 600 and 601 of 1996

Manu Wilson and Others

APPELLANT

Vs

Sree Narayana College and Others

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Article 21
Kerala University Act, 1974 — Section 23
Kerala University First Ordinances, 1978 — Ordinance 8

Citation : (1996) 04 KL CK 0002

Hon'ble Judges : K. Sreedharan, Acting C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : G. Janardhana Kurup, for the Appellant; P.K. Behanan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, Acting C.J.

1. These appeals arise out of O.P. Nos. 340/1996 and 2342/1996 respectively, which were disposed of by a common judgment. When these appeals came up for admission, learned Counsel representing the Respondents entered appearance and wanted the appeals itself heard and disposed of. Accordingly, as agreed to by counsel appearing on either side, we heard them at length and we are disposing of the appeals. Since the issues raised in these appeals are same, we consider it advantageous to dispose of them by a common judgment.

2. Short facts necessary for the disposal of these appeals are as follows: Sree Narayana College, Cherthala is one affiliated to the Kerala University. On 30th October, 1995 at about 11.30 a.m., while class was in full swing in room No. A2. 2, six students of the college, who did not belong to the class, trespassed into the room and manhandled some of the students who were attending the class. The teacher, who was engaging the class, was also not spared. The matter was reported to the Principal. Principal convened a meeting of the College Council.

The Council took an unanimous decision to initiate disciplinary proceeding against the miscreants. An Enquiry Commission was constituted for the purpose. Memos were issued to all the six delinquent students to appear before the Commission on 8th November 1995. After enquiry, Commission by its preliminary report dated 24th November 1995, found the six delinquent students to be guilty of the misconduct. Report of the Enquiry Commission was approved by the College Council. Consequently, six delinquent students were suspended from the college on 28th November 1995. Notice dated 1st December 1995 was issued to the students for holding a proper detailed enquiry. After such enquiry, the Commission filed final report dated 12th December 1995, wherein all the delinquents were found guilty of the violent incident. The Commission, accordingly, recommended serious action against them. Report was considered by the College Council. Thereupon, the Principal on 13th December 1995 decided to expel three of the miscreants. One of the students accepted Transfer Certificate voluntarily. Since the other two did not turn up for receiving the Transfer Certificate, the Transfer Certificates were forwarded to the University. Consequent on the disciplinary proceedings, the Principal anticipated unlawful activities on the part of the delinquent students and their supporters to disrupt the working of the college. So, the Principal sought assistance from the police to conduct the college without disturbance from outside elements. A handful of students, along with outsiders, gathered in front of the college and tried to obstruct the willing students and members of the staff from entering the college. They resorted to abuse girl students in indecent language, throw away their books, damaged the furniture in the college and caused troubles to the smooth running of the college. Out of the 3,400 students studying in the college, only a very few, with the help of outsiders, created the trouble. Since police did not afford sufficient protection to the institution and to the students who wanted to study, the Principal approached this Court by filing O.P. 340/1996 praying for the issuance of a writ of mandamus directing the police officers to take steps to prevent obstruction to the students and members of the staff and to prevent entry of outsiders into the college campus.

3. While the college was being run with police help as ordered by this Court in C.M.P. 540/1996, a further development took place. During the last week of December 1995, after the issue of Transfer Certificates to the three delinquent students, Sri K.V. Devadas, a native of Cherthala where the college is situated and a Member of the Syndicate of the Kerala University, had a conciliation talk with the Principal and some of the members of the staff. According to the Principal, the suggestions made by Sri K.V. Devadas was not palatable to the local unit of the political party who was supporting the delinquent students. On 18th January 1996, Principal received a communication from the University of Kerala informing that a committee consisting of four members of the Syndicate- Sri K. Madhavan Nair, Sri K.V. Devadas, Sri T.N. Raman Pillai and Sri Sudheer Jacob-would enquire into the matter relating to the issue of compulsory Transfer Certificate to the two delinquent students, namely Sri jyothikrishnan and Sri

Manu Wilson. It was also stated that the case relating to inter-collegiate transfer of Sri V.K. Raju will also be enquired into by the committee. The authority of the committee to enquire into the issue was doubted by the Principal. Accordingly, the committee was told about the impropriety of such an enquiry. Sanction, which was accorded by the Registrar, for the inter-collegiate transfer of Sri V.K. Raju, one of the three delinquent students, was resiled. Of the four members of the Syndicate who came to enquire into the incident that took place in the college, except Sri Sudheer Jacob, Ors. were active members of the same political party which was supporting the delinquent students. The above three members of the committee filed a report to the University directing the Principal to hold a fresh enquiry into the incident by a committee consisting of the Principal, Senior Professor of the college, Convenor of the Standing Committee on student discipline, Sri. K.V. Devadas, Member of Syndicate and the Registrar of the University. The order to that effect issued by the Registrar on 3rd February 1996 is under challenge in O.P. 2342/1996.

4. The fact that on 30th October 1995 at about 11.30 some unruly students under the leadership of three, who were given compulsory Transfer Certificate, entered class room No. A2. 2 while a teacher was engaging the students there and manhandled those who were attending the class and the teacher is not in controversy. This incident was reported to the Principal. The Principal immediately convened a meeting of the college council. As per the unanimous opinion of the Council, disciplinary proceedings were initiated against the delinquents. An Enquiry Commission was constituted on 4th November 1995. The Enquiry Commission issued memos to all the six delinquent students to appear before the Commission in connection with the enquiry on 8th November 1995. After a preliminary enquiry, they filed an interim report dated 24th November 1995 finding the six delinquent students as prima facie guilty of misconduct. When that report was accepted by the College Council, Principal suspended the delinquent students from the college and ordered a further detailed enquiry. The delinquent students were issued notice, dated 29th November 1995, to appear before the Enquiry Commission. Memo of charges were also sent along with that notice. The Enquiry Commission conducted the enquiry in compliance with the principles of natural justice. They found the delinquents guilty of all the charges. The report, finding the delinquents guilty, was accepted by the Council. It further decided that three of the delinquent students must be sent out of the institution. One among the three, approached the Principal for inter-collegiate transfer. Transfer Certificate in respect of that student was given to him. The other two students refused to accept the Transfer Certificate. So, it was sent to the University. In such a situation, one has to examine as to what power vests with the University to interfere with the decision taken by the Principal in consultation with the College Council.

5. As per Statute 21 of Chapter 24 of the Kerala University First Statutes, 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. The

pivotal position of the Principal in a college is recognised by Courts in various decisions. While considering the importance of a Headmaster of a school, a Full Bench of this Court in *Aldo Maria Patroni v. E.C. Kesavan* 1964 KLT 791 observed:

The post of the headmaster is of pivotal importance in the life of a school. Around him 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.

The said observation applies on all fours to the Principal of a college. Thus, the function of the Principal in maintaining the internal discipline is sacrosanct. This power of the Principal can under no circumstance be diluted by the University even. A Division Bench of this Court, after examining the relevant provisions of the University Act and the Statutes, in *Thampan v. Principal, Medical College* 1979 KLT 45, took the view:

These provisions only enable the Syndicate to exercise powers of supervision and control under certain circumstances and conditions specified in them. But they do not in our view in any way destroy the authority and jurisdiction inherent in the Principal of a College, as the head of the institution to deal with matters affecting the discipline of the College. That is inherent in the nature of his authority and the performance of his functions.

We are in respectful agreement with the said observation. It is beyond doubt that the right and authority of the Principal to take action for maintenance of discipline among students in the college in consultation with the College Council is virtually absolute. University has no authority to interfere with the said power of the Principal. In *Unni Raja v. Principal, Medical College, Trivandrum* ILR 1983 (2) Ker 754, this Court said:

The head of an educational institution like the Principal occupies a pre-eminent position and at the same time, now-a-days, an unenviable one. He is answerable to the authorities and to the public for the discipline in the institution. Time was when his authority was never questioned. With passage of time, when educational institutions became the arena of activities by political and apolitical forces, there was a deterioration of values cherished for long and an invasion on his powers. Still it is necessary to give unto him what is his.

From this, it is clear that the law presumes that the head of the institution must possess inherent authority and right to do such acts as are necessary in his opinion to maintain discipline in the institution. If any attempt is made to water-down the right of the head of the institution, it would be to sound the death-knell of discipline in the institution. This is especially so when we come across unwanted and uncalled for interference by political parties and their stooges in the working of the educational institutions. The Supreme Court in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, held that a teacher occupies pride of place next below the parents and he imparts education and discipline to the students. According to Their Lordships,

Principal owes social responsibility and accountability to discipline the students by total dedication and sincere teaching. Teachers and Headmasters are in the position of loco-parentis to all students (vide Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, . From the above decisions, it can safely be held that for maintaining the discipline in educational institutions, it has become necessary to strengthen the hands of the heads of the institutions and to arm them with sufficient powers, so that those who are keen to study and to improve their career should not be made the victims of a handful of persons who are found to spoil the academic atmosphere by indulging in anti-social activities. The Principal, the head of the institution, in consultation with the College Council, should have the primary authority to initiate appropriate action against the students for maintenance of discipline. His wisdom supported by the College Council alone should prevail in this regard over all other considerations. Whatever may be the differences of opinion between the students in the matter of political ideologies, they are not matters to be brought into the college campus or to the class rooms, lest it may affect the rights of other students whose prime consideration is academic excellence. Such students, who are interested in studies, have a right to have uninterrupted education without any political interference. Such a right, as per the decisions of the Supreme Court, is a fundamental right guaranteed under Article 21 of the Constitution of India.

6. In the case on hand, the University sought to interfere with the decision taken by the Principal in consultation with the Council. In support of this action, reliance was made to some of the provisions of the Kerala University Act, Kerala University First Statutes and the Kerala University First Ordinances. At first, reference was made to Section 23(xx) of the Kerala University Act. Section 23 of the Act deals with the powers of the Syndicate. It states that subject to the provisions of the Act and the Statutes, the executive powers of the University, including the general superintendence and control over the institutions of the University, shall be vested in the Syndicate. It also states that the Syndicate shall have the powers to arrange for and direct the investigation into the affairs of private colleges; to issue instructions for maintaining their efficiency; for ensuring proper conditions of employment of members of their staff and payment of adequate salaries to them and in case of disregard of such instructions, to modify the conditions of affiliation or recognition or take such other steps as it deems proper in that behalf. A college affiliated to the University of Kerala can under no circumstance be considered as an institution of the University. No provision of the Act makes an affiliated college an institution of the University either. No argument has been advanced by counsel appearing in the case to contend that a college affiliated to the Kerala University is an institution of the University of Kerala. Then the next question to be considered is whether the Syndicate can, by resort to clause (xx) of Section 23, enquire into and take decision on the discipline of students in the affiliated college. A reading of Clause (xx) makes it clear that the Syndicate's power of investigation can only relate to

the affairs of the college affiliated to the University. "Affairs" of an institution as per "the Random House Dictionary of the English Language" means anything done or to be done; anything requiring action or effort; business. As per the "Websters" New Dictionary", "affairs" means business operation; any small matter, romantic attachment. When Clause (xx) empowers Syndicate to investigate into the affairs of the private college, that investigation can only be in relation to the management or the college affiliated to the University. It cannot, under the cover of this clause, interfere with the discipline of the students which is the sole matter under the control of the Principal.

7. Statute 5 of Chapter 6 of the Kerala University First Statutes, 1977 provides for investigation into the affairs of the private colleges by the Syndicate. Such investigation can only be in relation to the management of the college and matters connected therewith. For a proper understanding of Statute 5, we read the same:

5. Investigation into the affairs of Private Colleges- (1) The Syndicate shall, under Clause (xx) of Section 23 of the Act, direct investigation into the affairs of a Private College, if it is satisfied that there is a prima facie case for such investigation; or

(2) If a complaint in writing is received from any of the teachers or students or the Managing Council or Governing Body of a Private College upon any matter relating to that college; or

(3) If it is so required by the Senate.

This provision shows that the Syndicate shall direct investigation into the affairs of a private college which falls squarely under Clause (xx) of Section 23 of the Act. That investigation may be of its own motion, if it is satisfied that there is a prima facie case for such investigation. If a complaint in writing is received, from any of the teachers or students or the managing council or governing body of a private college upon any matter relating to that college falling under Clause (xx) of Section 23, by the Syndicate, then also an investigation into the affairs of the private college can be ordered. Lastly if the Senate so require, Syndicate can direct investigation into the affairs of a private college which falls under Clause (xx) of Section 23. Since clause(xx) of Section 23 of the Act does not deal with the discipline of the students, we are clear in our mind that the Syndicate of the University has no power to order any investigation into the matters relating to the discipline of the students. These provisions of the University Act and the first statutes have been lost sight of by the University when it directed a committee consisting of Sri K. Madhavan Nair, Sri K.V. Devadas, Sri T.N. Raman Pillai and Sri Sudheer Jacob to enquire into the disorderly behaviour of the three students who were ordered to be expelled from the college. According to us, the exercise carried out by that committee was unwarranted and has no legal consequence.

8. Constitution of college council of an affiliated college is provided in Statute 20 of Chapter 24 of the Kerala University First Statutes. It states that every college

shall have a duly constituted college council properly representing the teaching staff to advise the Principal in the internal affairs of the college. The Principal is to consult the council in all matters relating to the internal affairs of the college. Discipline of the students of the college is an internal affair of the college. In matter of discipline when the Principal is to take a decision, Principal is bound to consult the college council. If only the Principal overrules the decision of the college council, need he report the matter to the Vice-Chancellor. If there is no difference of opinion between the Principal and the college council, the matter is not to be reported to the Vice-Chancellor. The decision taken by the Principal in accordance with the recommendation of the college council is final and neither the University nor the Vice-Chancellor can interfere with the same.

9. The next aspect to be dealt with is the effect of Ordinance 8 of Chapter III of the Kerala University First Ordinances, 1978. The said provision reads:

If any student is expelled from any college maintained by or affiliated to the University, intimation of the fact of expulsion with a statement of the reasons therefor shall be given forthwith by the Principal to the parent or guardian of the student, and to the Syndicate. Intimation to the Syndicate shall be accompanied by the Transfer certificate of the student. The Syndicate on the application of the student or his parent or guardian may, after making such enquiry as it deems proper, deliver the certificate to the student or his parent or guardian with necessary endorsement or withhold it temporarily or permanently.

From the above, it is seen that if any student is expelled from the college, intimation of the fact of expulsion with a statement of the reason should be given by the Principal to the parent or guardian of the student, and to the Syndicate. In the case of one student who voluntarily took the Transfer Certificate for inter-collegiate transfer, the Principal was to give the said information only. The other two students refused to accept the Transfer Certificates. In such a case, while informing the Syndicate of the decision of the Principal, taken in conformity with the views of the council, the Transfer Certificate should also be forwarded to the Syndicate. In such a situation, the student or his parent or guardian may apply to the Syndicate for getting the Transfer Certificate. When such an application is so made, the Syndicate, after making such enquiry as it deems proper, deliver the Transfer Certificate to the student or his parent with necessary endorsement or withhold it temporarily or permanently. In a case where a student is expelled by the Principal by issuing Transfer Certificate, the following situations may arise. On the issue of the transfer certificate the student or the guardian may receive it from the Principal. Then the factum of the issue of Transfer Certificate should be intimated to the Syndicate. In such a situation, the Syndicate has no further part to play. If the student or the guardian refuse to accept the Transfer Certificate, then the Principal has to forward the same to the Syndicate. In a case of this nature, the student or the parent has to apply to the Syndicate for further action on the matter. On such an application, the Syndicate may make an enquiry and deliver the Transfer Certificate to the student or the parent with or without any

endorsement on the Transfer Certificate. The Syndicate can resort to two other courses of action as well. The first one is to withhold the Transfer Certificate for a temporary period. If it is so withheld for a temporary period, then the student will be denied the right to continue his studies during that period. In more serious cases, the second option that is available to the Syndicate is to withhold the Transfer Certificate permanently. If it is so done, the student will be permanently debarred from continuing his studies. Apart from the above courses of action that are available to the Syndicate as per the provisions of the Act, Statutes and the Ordinances, the Syndicate has no power to interfere with the Transfer Certificate issued by the Principal of the affiliated college. While issuing the order dated 3rd February 1996 directing the Principal to hold a fresh enquiry into the misconduct of the students, the University acted in ignorance of the above statutory provisions and so, the learned Single Judge was justified in quashing the same.

10. Lastly it was contended by the counsel representing the Appellants the delinquent students that the enquiry into the alleged misconduct was conducted by the college authorities in violation of the principles of natural justice. We are not impressed with this argument. It is well settled that natural justice will not be placed in a strait-jacket. As has been observed by Their Lordships of the Supreme Court in *The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills* and another, no particular form of notice is required for complying with the principles of natural justice. It all will depend on the facts and circumstances of the case. The standard of notice and hearing will vary depending on the facts and circumstances of each case. In the instant case, where enquiry into the misconduct was held, proper notice by registered post acknowledgement due were sent to the students. One refused to accept it and Ors. after accepting it took part in the enquiry in a militant attitude. Thereafter, it is not open to them to contend that the enquiry was held in violation of the principles of natural justice. We overrule the said contention.

11. Learned Counsel representing the Appellants raised yet Anr. contention questioning the propriety of the judgment of the learned Single Judge in directing the police to afford protection to the college for conducting the classes. According to him, when the student organization has withdrawn its agitation, there was no necessity for directing the police to extend any protection to the institution. We are not at all impressed with this argument. The agitation, started by one of the student organization, has been taken over by a political party. Followers of that political party resorted to vandalism inside the college campus. They also ransacked the residential buildings of some of the members of the college council and caused extensive damage to their buildings and the vehicles parked therein. In such a situation, we concur with the learned Single Judge in directing the police to give adequate and effective protection to the educational institution.

12. Before parting with the case, with a heavy heart, we are forced to observe

that political parties create unholy situations in the campus which are not at all conducive to the studies. Campus politics has become a menace to our educational institutions. On account of the politicisation of the student organizations, students who go to the colleges and other educational institutions keep away from studies and fight each other without actually knowing the cause for which they keep away from classes. It is high time for the academicians, educationists, administrators and grown up politicians to sit together and sort out methods for wiping out unwanted politics in the campus, so that the students may continue their educational activities without hindrance from militant political workers. If such actions are taken by the responsible persons, we hope the future of the nation will become brighter and the new generation will become more law abiding.

In view of what has been stated above, we find no merit in these appeals. They are accordingly dismissed. However, we make no order as to costs.