

(1982) 10 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No's. 3848 of 1981-A, 3735 of 1981-F and 4787 of 1981-P

M.P. Varghese and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-10-1982

Acts Referred:

Kerala University Act, 1974 — Section 19, 23, 34, 5, 56

Citation : AIR 1983 Ker 133

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : S. Easwara Iyer, E. Subramani, M.M. Cheriyan, George Jacob, Ashok M. Cheriyan and Poly Mathai, for the Appellant; Govt. Pleader, V. Bhaskaran Nambiar, V.N. Swaminathan and P.G.P. Panicker, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Petitioners in these original petitions filed under Article 226 of the Constitution of India, wanted to start new colleges in various places in the State during the academic year 1981-82. They submitted applications to the University of Kerala seeking affiliation for the academic year 1981-82. Syndicate of the University scrutinised the applications, conducted local enquiries through Commission, and after eliminating a few of the applicants, prepared a list of applicants, including the petitioners in these original petitions, and forwarded the listed applications to the State Government; that was because the Syndicate was required to ascertain the views of the State Government before deciding on the grant of affiliation. In all these original petitions it has been averred that what the Syndicate did was to "recommend" approval to the Government and what the Government did was to "approve" recommendation in regard to only a few colleges. The Government forwarded a list of such approved colleges to the Syndicate. Admittedly, the names of the petitioners are not found in the list approved by the Government, with the result that affiliation was not granted to them. These original petitions have been filed seeking declaration that the State

Government has no authority to approve or take a decision on the question of grant of affiliation to new colleges and to compel the Syndicate to grant affiliation to the colleges proposed to be started by the petitioners in exercise of the power and jurisdiction vested in the Syndicate. On behalf of the State Government, a common counter-affidavit has been filed in these original petitions and on behalf of the University also a counter-affidavit has been filed.

2. The important question arising for consideration in these cases is what exactly are the roles to be played by the Syndicate and the State Government in the matter of grant of affiliation to new Colleges.

3. Clause (xxiv) of Section 5 of the Kerala University Act (hereinafter referred to as the "Act" for short) stated that University shall have power to affiliate to it colleges in accordance with the provisions of the Act and the Statutes, Ordinances and Regulations and to withdraw affiliation of colleges, Section 19 of the Act shows that Syndicate has powers to make Statutes. Section 23 of the Act deals with powers of the Syndicate. Subject to the provisions of the Act and the Statutes, executive power of the University including general superintendence and control over the institutions of the University, shall be vested in the Syndicate. Sub-section (1) says that the Syndicate has power to affiliate institutions in accordance with the terms and conditions of such affiliation prescribed in the Act and the Statutes. Sub-section (b) of Section 34 states that subject to the provisions of the Act, the Statutes may provide for the constitution, powers and duties of the authorities under the Statutes, not specifically prescribed in the Act. Sub-section (h) states that the Statutes may prescribe the conditions and procedure for affiliation of colleges. Section 56 of the Act deals with affiliation of colleges. Application for affiliation to the University of any college shall be sent by the concerned educational agency to the Registrar within such time and within such manner as may be prescribed by the Statute. The terms and conditions of affiliation of colleges and the procedure to be followed by the Syndicate in granting such affiliation shall be prescribed by the Statute. Section 83 of the Act states that the First Statutes and the First Ordinances shall be made by the Government.

4. Clause (a) of Statute 2 in Chap. 1 of the Kerala University First Statutes, 1977 (for short the "Statutes") defines "academic year" as "period of 12 months commencing from the first day of June". Statute 1 in Chap. V empowers the Senate to prescribe and modify the conditions for affiliation of colleges. Chap. XXIII of the First Statutes deals with the procedure to be adopted in granting affiliation of new colleges and new courses. Statute 1 states that application for affiliation shall be addressed to the Registrar and shall be forwarded to him not later than 31st of Oct., preceding the academic year in which the courses are proposed to be started. Statute (2) deals with the form of application, providing for full and detailed information in regard to the matters mentioned therein. Statute 4 lays down that in the case of private colleges applications are to be made by the educational agency. Statute 5 prescribes the application fee.

Statutes 6 to 9 read thus:

"6. Power of the Syndicate to grant affiliation etc--(1) All applications seeking affiliation shall be considered by the Syndicate not later than the month of December.

(2) The Syndicate shall have power to affiliate any College within the Territorial jurisdiction of the University preparing students for degrees, titles or diplomas of the University which satisfies the conditions prescribed in the laws of the University.

7. Procedure on receipt of application.--The Syndicate may call for any further information which it may deem necessary before proceeding with an application, or may advise the Educational Agency that the application is premature or may decline to proceed with the application if it is satisfied that the arrangements made or likely to be made before the beginning of an academic year in which the courses are to be started for the conduct of the courses are not sufficient or suitable, or if the College has failed to observe the conditions laid down in respect of any previous affiliation.

8. Local Enquiry.--If the Syndicate decides to proceed with the application, it shall direct a local enquiry to be made by a competent person or persons appointed by it in this behalf provided that it shall be competent for the Syndicate to dispense with the enquiry above mentioned in the case of any subject or group of subjects in which it does not, for special reasons to be recorded, consider a local enquiry necessary.

9. Grant of affiliation.--After considering the report of the local enquiry, if any, and after making any further enquiry as it may deem necessary, the Syndicate shall decide after considering the report of the local enquiry and also after ascertaining the views of the Government whether the affiliation be granted or refused, either in whole or in part. In case the affiliation is granted, the fact shall be reported to the Senate at its next meeting."

5. Statute 12 contemplates provisional and conditional affiliation to be granted for a period. If the conditions so stipulated are not fulfilled by the end of the period fixed, the affiliation shall cease automatically. If the conditions are fulfilled the Syndicate shall have power to confirm the affiliation at the end of the period. Statute 22 requires every college to satisfy the Syndicate that adequate financial provision is available for its continued and efficient maintenance in the manner stated therein. Statute 23 requires every college to deposit with the University the amount prescribed by the Syndicate towards the financial guarantee of the college. Statute 24 (1) deals with matters regarding which every college shall satisfy the Syndicate.

6. The provisions of the Act and the Statutes make it clear beyond any controversy that the power to grant affiliation to new colleges or to new courses vests with the Syndicate. The power is to be exercised by the Syndicate in

accordance with the procedure providers in the Statutes. Statutes referred to above emphasize that the satisfaction in regard to various terms and conditions and also with regard to educational needs of a particular locality or the eligibility of the applicant and other relevant matters, should be that of the Syndicate. In arriving at such satisfaction, Syndicate of course has to examine the case of the applicant, apply its mind to the enquiry report and the result of further enquiry, if any, made and also to the views obtained from the Government. The Act and the Statutes do not vest in the government power to grant or to withhold affiliation. The power vests with the Syndicate. The right and also the duty of the Government is only to formulate their own views in regard to various applications made by parties, with reference to financial implication involved, the ability of the Government to meet the necessary financial commitment, the educational needs of various localities in the State as well as public interest involved in providing educational facilities and other relevant factors. Government are entitled to insist that their views should be considered by the Syndicate before taking a final decision.

6A. Affiliation of a new college would make inroads into the finances of the State Government. The Government will naturally be concerned with public interest and public aspirations. The Government have the means to assess educational needs of different localities and on that basis suggest priorities reflecting public interest. The government may also be in a position to offer remarks on the eligibility of various applicants and the desirability of granting affiliations to one or the other of the applicants. The views of the Government presented to the Syndicate are entitled to receive due consideration and weight at the hands of the Syndicate.

6B. Syndicate will not be justified in taking arbitrary decision and impose financial burden which the government may not be able to bear. At the same time, the choice made by the Government in regard to various applicants as reflected in its views conveyed to the Syndicate is not binding on the Syndicate. The Syndicate is entitled and has also the duty to take an independent decision on a consideration of the entire materials before it. It will be a reversal of the scheme laid down by the Act and the Statutes if the Syndicate only recommends the applications to the Government and the latter takes ultimate decision on the question of grant or refusal of affiliation. Such decision can be taken only by the Syndicate, of course, after considering all the relevant materials including the views of the Government.

7. Ext. P-4 in O. P. No. 3848 of 1981 is an extract of a news item which appeared in Kerala Koumudi Daily dated 11-6-1982. It says that the Syndicate has "recommended" certain applications to the Government. In the counter-affidavit filed on behalf of the Government it is stated that the Government never purported to take a decision, but only expressed their views to the Syndicate and the decision was taken by the Syndicate. Petitioners have not placed any material before the court to show that the Syndicate felt themselves bound by

the views of the Government and took a decision accordingly. Of course, the use of the word "recommend" in the resolution of the Syndicate would raise a suspicion. But, on the mere basis of suspicion, no conclusion can be arrived at.

8. Further, in these original petitions, the grant of affiliation to certain other applicants for the year 1981-82 has not been questioned. What is sought is relief in favour of the petitioners by passing an order which will ensure grant of affiliation to them for the academic year 1981-82. That academic year has passed. Colleges in respect of which affiliation was granted have already started functioning. Petitioners cannot be granted any relief with retrospective effect in the matter of grant of affiliation in the facts and circumstances of the case. That is because petitioners have not commenced their colleges and therefore, in any event, no relief could be granted to the petitioners in these original petitions.

In the result, the original petitions are dismissed, in the circumstances without costs.