
(2009) 12 AP CK 0070

In the Andhra Pradesh High Court

Case No : W.A. No's. 1491 and 1492 of 2009

Osmania University and Others

APPELLANT

Vs

Bommara Sammaiah and Others

RESPONDENT

Date of Decision : 31-12-2009

Acts Referred:

Andhra Pradesh University Act, 1991 — Section 19, 19(14), 19(22)

Citation : (2010) 2 ALT 1

Hon'ble Judges : Ramesh Ranganathan, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; Bojja Tarakam, D. Prakash Reddy for M. Chalapathi and K. Ramakrishna Reddy, Sr. Counsels and G. Jyothi Kiren, for the Respondent

Judgement

Goda Raghuram, J.—The two appeals are directed against a common order dated 29-12-2009 of the learned single Judge in W.P. Nos. 28521 of 2009 and 28567 of 2009. The writ petitions challenged inter alia the circular dated 27-12-2009 issued by the Registrar, Osmania University, Hyderabad (the University), communicating the decision of the Executive Council of the University (the E.C.) to close all the campus, constituent and affiliated colleges under the University's jurisdiction as well as all the hostels and messes on the campus and constituent colleges of the University, during 28-12-2009 to 05-01-2010. All the campus, constituent and affiliated colleges are to be closed during 26-12-2009 to 05-01-2010.

2. The order under appeal records a prima facie conclusion that the power to close hostels is vested in the principal of the concerned institution under Clause 27 of the Rules and Regulations, 2006 framed by the University as is set out in the Hand Book of Hostels and Messes (the Hand book) and that the decision to close messes could be resorted to during summer vacations. It is also observed (in the order under challenge) that whether the Executive Council of the University could legitimately take into consideration the letter dated 24-12-2009

of the Commissioner of Police Hyderabad (the Commissioner) and instructions received by the Vice-chancellor of the University from the State Government needs to be considered at a later stage. The order directs that such of the regular boarders who wish to remain in the hostels and continue their studies ought not to be compelled to leave but should not however be permitted to resort to acts of violence or disturbances in the campus. Accordingly while suspending the circular dated 27-12-2009 (directing closure as already adverted to) certain conditions were imposed viz., (a) that only the genuine boarders, who have valid admissions in the hostels would be entitled to stay and avail the facilities; (b) the boarders shall not resort to violence or other objectionable activities in the hostels; and (c) shall not give opportunity to outsiders to share their accommodation.

3. The learned Advocate General appearing for the appellants contends that the circular impugned was a communication by the Registrar of the University, of the decision of the E.C. taken in purported exercise of powers u/s 19 (14 and 22) of the Andhra Pradesh Universities Act, 1991 (for short "the Act,"); that the E.C.'s decision was after due consideration of the relevant circumstances and on exercise of independent discretion on the basis of its assessment of the law and order situation including as revealed in the advisory of the Commissioner qua the letter dated 24-12-2009; and the decision by the E.C. was a pre-emptive and prophylactic measure to prevent acts of violence and to maintain law and order and tranquility. The learned Advocate General would also contend that the provisions of paragraph No. 27 of the Handbook or the paragraph therein dealing with the "Vacation for Colleges being vacation for Hostels" (page No. 39 of the compilation in W.A. No. 1491 of 2009) cannot circumscribe or diminish the plenitude or contours of the discretion, powers and authority of the E.C. consecrated qua the provisions of Section 19 (14) and (22) of the Act. The appellants further contend that the State and its appropriate agency/authority - Commissioner (for the territories within his jurisdiction) are the constitutional and lawful repositories of the power and thus the concomitant obligation to maintain public order, peace and tranquility. The State and the Commissioner have access to critical and relevant inputs and information and have the expertise to analyse and synthesise the inputs and information coupled with the authority to arrive at a judgment of current and potential threat to public order and peace and the concomitant authority to initiate appropriate measures to meet current or dynamic situations. The University is not equipped nor has the expertise to deal with or access to relevant and critical information to manage law and order even within its territory and must of necessity depend upon and defer to the assessment made in this behalf by the State or its Authorities/Agencies.

4. Sri Bojja Tarakam and Sri D. Prakash Reddy, the learned senior counsel appearing for the respondents in these appeals (the writ petitioners) and Sri K. Ramakrishna Reddy, the learned Senior counsel appearing for the petitioner in W.P. Sr. No. 153494 of 2009 (a writ petition not on Board along with these

appeals, but asserted to involve similar issues as arising in these appeals) seek to sustain the order appealed against.

5. The following are the generic contentions urged on behalf of the respondents. For the nonce, the discourse is confined to the closure of the hostels and messes.

(a) The Executive Council has no decisional authority to close hostels and messes. Such power vests exclusively in the Principal of the college concerned or the warden as the case may be, under the provisions of Paragraph 27 of the Hand Book, published by the Chief Warden, Hostels and Messes, Osmania University, Hyderabad;

(b) There was no independent application of mind by the University/E.C. and the decision communicated by the circular dated 27-12-2009 is therefore vitiated;

(c) There was no material to justify the decision;

(d) The University/E.C. of the University had abdicated its discretion and permitted itself to be dictated to by the Commissioner;

(e) The decision visits the borders of the hostels including the students residing in various parts of the State and foreign students as well with hardship grossly disproportionate to the potential or apprehended injury to public tranquility, law and order, that the decision endeavors to address;

(f) The attendant circumstances do not justify such pre-emptive action; while the note on the E.C. resolution refers to consultations the Vice Chancellor apparently had with University officials, staff associations, police officials and to the constitution of a Coordination Committee with the Principals of Campus colleges, University officials and representatives of Teaching and non-teaching staff; there was no consultation with or a hearing afforded to the principal stakeholders in the matter viz., the borders and hostellers.

(g) The decision to close the hostels and messes runs counter to the direction dated 09-12-2009 in W.A. Nos. 1491 and 1492 of 2009 whereby this Court directed that students who are bonafide boarders staying in the hostels should not be evicted and shall be provided with basic necessities like water, electricity and food while permitting the police and other concerned authorities to identify bonafide boarders, to ensure that they are not evicted. No special reasons are recorded for acting in deviation of the directions of this Court dated 09-12-2009; and

(h) Sri Bojja Tarakam, the learned senior counsel would additionally contend that as the Act constitutes a complete code incorporating all powers, authority and jurisdiction of the concerned University to regulate all activities (academic and other) within its territorial locus, exercise of general executive power including by the Commissioner, to assess the law and order matrix or to issue directives in that behalf is pro-tanto excluded.

Analyses of the competing positions:

The jurisdiction of the University /E.C.:

6. Paragraph 27 of the Hand Book reads: The Hostels and Messes may be closed by the order of the Principal concerned and by the prior permission of the Vice Chancellor for such period as they consider necessary. The paragraph (of this Hand Book) sub-titled "Vacation for Colleges is Vacation for Hostels" states that there are three types of vacations viz., short term, winter and summer vacation; during summer vacation mess facility will not be available and hostels and messes will be closed for all the boarders and no water and power will be available during this period.

7. Though the Hand Book purports to constitute a compilation of the rules and regulations, pertaining to regulation of hostels and messes, the statutory basis for these raft of "rules" is neither apparent nor established. Prima facie, the contents in the Hand Book comprise a raft of guidelines to structure the discretion of the authorities for efficient administration of hostels and messes, at best a manual of instructions for local administration of these establishments.

The relevant legislative provisions:

8. Section 19 of the Act occurs in Chapter-IV, enumerating the Authorities of the University and enumerates powers and duties of the Executive Council. Sub-section (14) consecrates to the E.C. the authority to manage and control all colleges, hostels, libraries, laboratories, museums and the like, instituted and maintained by the University; and Sub-section (22) authorizes the E.C. to supervise and control the residence and discipline of the students of the University and to make arrangements for promoting their health and well-being.

9. On a true and fair construction of the provisions of Section 19 of the Act, it is clear that the powers and authority of the E.C. (to supervise and control the residence and discipline of the students and to maintain and control all colleges, hostels..., instituted and maintained by the University), subsumes authority to order closure of the hostels and messes. As the consecration of such power to the E.C. is not subject to any contrary prescription in any "rules and regulations" or the provisions enumerated in the Hand Book of Hostels and messes, we are not persuaded to accept the contention that the E.C.'s statutory authority is servient to the authority of the concerned Principal or the Warden of the hostel. The circular dated 27-12-2009 issued pursuant the E.C. resolution dated 25-12-2009, we accordingly hold, is eminently within the power, authority and jurisdiction of the E.C. The contention to the contra addressed by the respondents is therefore rejected as fundamentally misconceived.

10. As adverted to in brief earlier, Sri Tarakam, the learned Senior Counsel, has contended that as the provisions of the Act expressly or by implication confer operational autonomy on the concerned University (to regulate all matters within its territory), the executive power of the State or of the Commissioner is excluded in so far as it pertains to administration within the territory of a University. We have not been invited to any provision of the Act which expressly

or by any contextual implication probablise such extravagant construction.

11. The constitutional allocation of powers is too well settled; that legislative power and subject thereto the executive power of the State extends to all matters enumerated in the appropriate lists in the VII Schedule. The Act is not apparently a legislation referable to the field of legislation enumerated in Entries 1 or 2 of List II of the VII Schedule which deal with "Public Order" and "Police" (we are not in these appeals concerned with the exceptions enumerated in entries 1 and 2). It is not the asserted case of the respondents herein that the jurisdiction of the Commissioner does not generically extend to the University campus or of its affiliated and constituent colleges, in respect of which the order of the Commissioner dated 24.12.2009 is addressed. In the absence of any specific provision in the Act conferring special, exclusive or overarching law and order maintenance authority and obligation on the University or any of its authorities, we find no justification for interpreting an exclusion of the jurisdiction of the State or the Commissioner as regards the maintenance of the public order and exercise of policing powers, including in the territory of the University. No other jurisdictional infirmity of the Commissioner is canvassed before us.

12. On the above analyses, the contention of Sri Tarakam, is rejected.

Abdication of discretion of the University/Executive Council - surrender of discretion to the Commissioner of Police and the State:

13. The contentions in this regard on behalf of the respondents/writ petitioners are manifold. It is contended that the decision of the E.C. dated 25.12.2009 (as is apparent from the note, at Pages 47 and 48 of the compilation in W.A. No. 1491/09), is exclusively based on the advisory/directive of the Commissioner, vide the letter dated 24.12.2009; that no independent assessment is made by the University as to whether the situation warranted the "extreme measure" of closure of the hostels and the messes during 28.12.2009 to 5.1.2010; that the exclusive reliance on the Commissioner's communication constitutes abdication/surrender of the discretion of the University to an extraneous authority.

14. The above contention does not also merit acceptance, in our considered view. As noted in the analyses supra, the Commissioner has the jurisdiction and authority, access to relevant and critical information and inputs and the requisite training and expertise to synthesise and analyse the complex and dynamic intelligence inputs received, to make a professional judgment on law and order requirements in respect of the territories within his jurisdiction which includes the University campus, the hostels and messes on the campus and in the constituent and affiliated colleges.

15. In contrast, the text and the scheme (of the several provisions of) of the Act do not signal conferral of authority on the University, its authorities or the authorities of its affiliant and constituent colleges, to regulate or administer general law and order, beyond the incidental areas, concomitant to the University as an essentially academic institution. There is nothing in the qualifications,

experience or background of the several authorities of the University that invests them with the skills requisite to the complex task of intelligence gathering, assessment and execution of law and order functions.

16. Such autonomy as a University enjoys qua the provisions of the Act is autonomy to function effectively as an academic institution of higher learning. The University is not a sovereign entity immune to the exercise of general State powers, except to the extent it is endowed operational autonomy by specific provisions of the Act. Necessarily therefore it is not and cannot be equated to the State. Where therefore the State in exercise of its constitutional obligations and on the basis of its professional judgment, issues directives (not inconsistent with any exclusive or independent functions conferred under the provisions of the Act), the University would have to comply with such directives/instructions, particularly in areas of general law enforcement and maintenance of peace and tranquility, health or hygiene.

17. The powers of the State are referable to the several fields of legislation enumerated in the appropriate Lists of the VII Schedule of the Constitution. The executive powers of the State are exercised by different branches, departments and authorities having diverse, training, expertise and infrastructure support, relevant to executing the areas of responsibility conferred on each of them. In the administrative complexity involved in the governance of a State each of such specialised agencies also receives and defers to the expertise of another agency in arranging its affairs and delivering its functions. It is such symbiotic relationship that contributes to effective governance and to the sustained equilibrium of the society.

18. Even the University must of necessity rely on several external agencies in the conduct of its day-to-day affairs and manages its administration on the basis of inputs received from several such agencies like the Municipality, the Health department, the Police department and the like. Even though law and order maintenance is a State subject, the State normally defers to and relies on intelligence inputs received from federal agencies or health advisories received from other States, National or even International agencies.

19. If the Commissioner, on the basis of his professional judgment is satisfied that law and order, maintenance of tranquility and avoidance or recurrence of violent incidents warrants a particular curative or pre-emptive course of action and the University defers to such professional assessment, such would not in our considered view constitute either abdication of the discretion of the University or its surrender to extraneous authority. In the context of the law and order maintenance, the Commissioner is neither an extraneous authority nor is his opinion irrelevant.

20. The authority of the University and a concomitant obligation u/s 19 (14) and (22) is effectively executed, in our considered view, when the E.C. considers all relevant inputs including information/advisory received from the Commissioner.

Having regard to its structural limitations and the authority and the expertise of the Commissioner, the University would be acting in conformity with its statutory obligations and not in derogation thereof, if it defers to an advisory from the Commissioner in respect of law and order.

21. The exercise of discretion by the University as expressed in its resolution dated 25.12.2009, on the basis of the information/advisory received from the Commissioner is thus a legitimate, rational and valid exercise of discretion and cannot be faulted.

22. It has also been contended that there is no factual basis, either in the letter of the Commissioner dated 24.12.2009 or in the decision of the E.C. dated 25.12.2009, legitimising the closure of hostels on the campus and the affiliated and constituent colleges, during the period in question. The letter of the Commissioner dated 24.12.2009 (to the extent relevant for the purposes of these appeals), states that after the second statement of the Union Home Minister on 23.12.2009, the pro-Telangana agitation had recommenced and within hours thereafter, the JAC students of Osmania University had gathered at the campus, took out rallies and resorted to violence at Tarnaka X Roads causing damage to public and private properties; that within 12 hours, about 75 violent incidents were reported in Hyderabad city alone. The Commissioner's letter (to the Vice-Chancellor) further states that JAC students are planning to organize various agitations which may turn violent and may include physical attacks on law enforcement agencies, lead to destruction of public and private properties and involve infiltration of outside and anti-social elements having militant background, a matter of serious concern for public order. The letter concludes with an assessment that students are planning many more agitations which may turn violent and therefore it is requested to close down educational institutions including hostel facilities, for at least 15 days.

23. The E.C. (note) refers to the communication received from the Commissioner and the request contained therein and thereafter resolves to close the hostels and messes during the period in question. Neither the letter of the Commissioner nor the deliberations of the E.C. refer to or advert specifically to the involvement of the authorized boarders resident in the hostels in the violent incidents that are said to have earlier transpired. The letter of the Commissioner or the deliberations of the E.C. do not disclose or explicate an assessment that closure of the hostels (and messes) together with the closure of the educational institutions concerned is a cordon sanitaire strategic requirement with a view to dismantle or sterilize the territorial nucleus of the theatre of conflict and unrest.

24. To the above extent there appears no correlation between the facts set out in the Commissioner's advisory or the deliberations of the E.C. on the one hand and the eventual decision on the other (to close down the hostels and messes). In our considered view, if it is assessed that the closure of the hostels and messes is either required for maintenance of peace, restoration of tranquility or pre-emption of violence or other un-toward incidents, either on account of the

boarders of the hostels participating in violent or untoward incidents or even that evacuation of the campus or the institutions would contribute to restoration of normalcy, it would be legitimate to order closure. There is however, no apparent assessment on this aspect, either in the letter of the Commissioner or the deliberations of the E.C. dated 24.2.2009 and 25.12.2009 respectively. We therefore consider it appropriate that the Commissioner and the University should reconsider this aspect of the matter, before giving effect to the decision regarding closure of the hostels and messes.

25. Another contention is that in view of the order of this Court (dated 9.12.2009 in W.A. No. 1431 of 2009), neither the University, the Commissioner nor the State (which are parties to the writ petition) could have ordered the closure of the hostels and messes. It requires to be noticed that the order of this Court was in the context of an appeal arising from an order of the Learned Single Judge in a writ petition challenging the orders of the State Government in G.O.Rt. No. 856, Higher Education Department dated 3.12.2009 and certain consequent orders of the University on the basis of the said order, pertaining to closure of hostels. This Court while adjourning further hearing of the appeal to 14.12.2009 ordered that during the interregnum bona fide boarders of the hostels shall not be evicted and shall be provided with basic necessities like water, electricity and food.

26. In the very nature of separation of powers under our Constitution, the orders of this Court dated 9.12.2009 cannot be understood as an exclusive and permanent assumption by the judicial branch, of the jurisdiction to maintain law and order. The order is also limited in time till the next date of hearing namely 14.12.2009. Neither expressly nor by any compelling implication of the phraseology of the order could it be legitimately concluded that on account of it, the State, the Commissioner or the University as the case may be, are denuded the authority to perform constitutionally or statutorily assigned functions including of maintenance of regulatory, public order or policing functions. Law and order maintenance, ensuring the well being and health of the students of the University and ensuring peace and tranquility in the University campus or the affiliated and constituent colleges as the case may be continues to be a function of the authorised agencies including the State. The contention that the order to close the hostels and messes overreaches the order of this Court dated 9.12.2009, is misconceived and is accordingly rejected.

27. The contention on behalf of the respondents, that the decision as to closure is vitiated by the failure to consult or even consider the views of the boarders of hostels, in our considered view does not merit acceptance. The discussions amongst the University authorities or with police officials was an operational choice of the University; not a legal requirement. These confabulations were also not in the context of the decision in question. We have already concluded that the assessment of the situation by the State and/or the Commissioner is a relevant input and deserves due consideration and deference by the University. As law and order maintenance in any part of the territory of a State is the

concern of the State, the temporal statutory authority of the University to take a complimentary decision as to closure of educational institutions under its administration and control including ancillary establishments like hostels, must complement the decision by the State in this regard. On this view of the matter the decision of closure need not be preceded by a consultation with or opportunity to the student community, including boarders of hostels.

28. On the aforestated analyses, we hold (a) that the Executive Council of the University has the power, authority and jurisdiction to order closure of hostels including messes, qua Section 19 (14) and (22) of the A.P. Universities Act 1991. Such power to order closure of messes and hostels operates notwithstanding any conferral of power set out in the hand-book of Hostels and Messes; (b) that the public order maintenance jurisdiction of the Commissioner of Police extends to all the territories within the jurisdiction of the Commissioner of Police, Hyderabad including territories of the Osmania University and its constituent and affiliated colleges as fall within such jurisdiction; (c) that any advisory issued by the Commissioner of Police on a rational law and order or other public tranquility assessment constitutes a legitimate and expert advice which the University can take into account and ought normally to defer to; and (d) that the Commissioner of Police and the Executive Council of the University must again consider whether the closure of the hostels and messes is required for the maintenance of law and order, restoration of tranquility or avoidance of violent or untoward incidents in the context of contemporaneous events, either as a curative or prophylactic measure.

29. As these writ appeals arise from an interlocutory order, the appeals are disposed of as above and the order of the learned Single Judge dated 29.12.2009 is modified to the extent above indicated. There shall, however, be no order as to costs.