
(2015) 09 KL CK 0102

In the High Court Of Kerala

Case No : WP(C) Nos. 15791 of 2015 (Y), 19244, 19267, 19274 and 19339 of 2015

R.V. Jose

APPELLANT

Vs

The Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Mahatma Gandhi University Act, 1985 — Section 10(15), 23, 23 (xxiii), 23(ix), 23(xxiii)

Citation : (2015) 4 KLJ 462 : (2015) 4 KLT 312

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Johnson Manayani, Benhur Joseph Manayani and Jeevan Mathew Manayani, for the Appellant; P. Jacob Varghese, and Varughese M. Easo, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Under challenge in these writ petitions is the order dated 17.6.2015 passed by the Chancellor of the respondent university annulling the decision of the syndicate of the respondent university dated 7.1.2013 sanctioning 77 off-campus centres on the ground that the said off-campus centres were functioning without the sanction of the Government, and the consequential proceedings issued by the respondent university.

W.P(C) Nos. 15791/2015 and 19339/2015

2. These writ petitions are filed by a former Head of Department of Economics under the respondent university, who has located off-campus centres at Pala and Kottayam, which according to him, are within the territorial jurisdiction of the respondent university, permitted by Section 4(1) of the M.G. Universities Act (for short, the Act). In W.P(C) No. 15791 of 2015, the petitioner is seeking a direction to the respondent university not to close down the petitioner's off-campus centres and to declare that petitioner's off-campus centres are within the parametres of law. This writ petition was filed when Ext. P10 notice in the said

writ petition was issued to the petitioner by the Chancellor for attending a hearing scheduled to be held on 30.5.2015. He filed the second writ petition i.e. W.P(C) No. 19339 of 2015, challenging the order of the Chancellor dated 17.6.2016 (Ext. P15) passed after hearing the petitioner as well as other affected parties. In that writ petition, the petitioner alleges that emergent steps are taken by the respondent university to close down the off-campus centres by the petitioners.

W.P(C) No. 19244/2015

3. This writ petition is filed by a third year student of Rural Education Community Centre (a centre run by the petitioner in W.P (C) No. 19274/2015) which is an off-campus education centre of the respondent university. He alleges that he belongs to the Scheduled Caste community and is residing at Ayyampilly in Vypin Island having high density of population. According to him, there is neither any Government college nor any private college near his residence. Therefore, when the respondent university has started an off-campus centre, the petitioner joined for B.Com course in the said centre where regular teaching has been going on. The petitioner got himself registered at the M.G. University and appeared for the examinations at the centres decided by the university. He is aggrieved by the proceedings dated 17.6.2015 (Ext. P2) issued by the 2nd respondent (the Chancellor) discontinuing the off-campus centres within its territorial jurisdiction, and the consequential order dated 20.6.2015 issued by the 1st respondent (Ext. P3) implementing Ext. P2.

4. The petitioner points out that he is pursuing final year for B.Com course in the centre and the abrupt discontinuation of the centre would effect his studies and render his life miserable. He further points out that the respondent university did not consider the difficulties faced by him and other similarly placed students before issuing Exts. P2 and P3 orders in that writ petition. He also points out that ongoing studies of the petitioner and other students would be interrupted if Exts. P2 and P3 are implemented. He would further allege that while the students in the affiliated colleges get regular tuition, the petitioner and other similarly placed students are denied that opportunity by implementing Exts. P2 and P3 which amounts to discrimination and injustice.

5. The petitioner alleges that through Ext. P2 proceedings, the 2nd respondent Chancellor has permitted to continue the courses and to protect the interest of the students for continuing the studies. However, in spite of the said direction, the 1st respondent did not take any steps to continue the courses. Ext. P3 order issued after Ext. P2 proceedings only re-iterates the proceedings of the Chancellor. Therefore, according to the petitioner, the respondent university is bound to permit the courses to continue. He also alleges that the Chancellor while issuing Ext. P2 proceedings did not hear him or any of the students who were affected by the same.

W.P(C) No. 19267/2015

6. In this writ petition, the petitioners allege that they were granted sanction to operate an academic Off-Campus Centre of the School of Distance Education of the respondent university in Kottayam to conduct selected courses of the university. Accordingly, the petitioners have been running their respective institutions governed by the terms and conditions of the Memorandum of Understanding (MOU) and the operational manual issued by the respondent university.

7. The petitioners in this writ petition allege that as per the impugned order, the 1st respondent holds that by virtue of Section 23 (xxiii) of the Act, Government sanction is required for starting an off-campus centre. According to the petitioners, Section 23(xxiii) has nothing to do with off-campus centre or study centre and that the same is relevant only for starting a university centre.

8. The petitioners further allege that even now, the 2nd respondent university permits distance education by private registration without any facility such as the one provided by off-campus centres. Here, the students have to register with the university directly. However, in both the cases, i.e. Distance Education through off-campus centre and those through private registration, the syllabus is prescribed by the respondent university, the examination is conducted by the university, and the degree conferred is one and the same. As long as the Distance Education is permitted, there is no justification in closing down off-campus centres, while permitting private registration of students even now.

W.P(C) No. 19274/2015

9. The petitioner is a trust registered under the Indian Trusts Act formed by certain people belonging to the Vypin Island with the main object of promoting education in the island. The petitioner alleges that the petitioner has capable persons having experience and expertise in the field of higher education like its members. As the programme of distance education was found suitable to achieve the objects of the petitioner trust, the petitioner has applied for starting an off-campus centre in Vypin island with the intention of imparting collegiate education to students who belong to economically and socially backward families of the undeveloped island. The application was approved by the respondent university and accordingly, MOU was signed between the university and the petitioner trust to start the off-campus centre. Accordingly, the respondent university has selected the Rural Educational Community Centre at Ayyampilly run by the petitioner trust to operate an academic off-campus centre of the School of Distance Education.

10. The petitioner is aggrieved by the proceedings issued by the 2nd respondent (the Chancellor) dis-continuing the off-campus centres within its territorial jurisdiction. The petitioner has raised almost the same allegations raised by the petitioner in W.P(C) No. 19244 of 2015 who is the student of the off-campus centre.

11. In the detailed counter affidavit filed by the respondent university they have contended as follows:

"The university is established as per the Act 12 of 1985 of Kerala Legislature. The university is bound to function in accordance with the M.G. Universities Act, 1985, M.G. University Statutes, 1997 and the Ordinances and the Regulations. As per the preamble of the Act it was considered necessary to establish a new teaching and affiliating university in the State to provide for the urgent development of higher education in the areas comprised in the Kottayam, Ernakulam and Idukki revenue districts, the Kuttanad taluk of the Alleppey revenue district and the Kozhenchery, Mallappally, Thiruvalla and Ranni taluks of the Pathanamthitta revenue district of the State. As per Chapter 42, Statute 2 of the M.G. University Statutes, 1977, the School of Distance Education was established as Statutory Department. As per chapter VI-Powers of Syndicate..., Statute 2. XVII, the syndicate have power to co-operate with other universities or any authorities or association for the purpose of carrying out the objects of the university and as per Section 23 (xxiii) syndicate has the power to recommend to the Government recognition of any local area within the university area as a university centre."

It was further stated that the university has issued regulations vide U.O No. 2351/A1/2/2000/Acad. dated 21.03.2002 for the conduct of courses at off-campus study centres under the School of Distance Education. As per Clause 1.4 of the regulations, the university shall run these programmes through OCAC as per the guidelines that the UGC and the State Government lay down in this regard from time to time. True copy of the relevant page of the regulation is produced as Ext. R1(a). It is also stated that, as per paragraph 01 of the Off Campus Centres-Operations Manual, the functions of the Off Campus Centres are governed by the terms and conditions of the MOU signed between the University and the Centres subject to the provisions of the M.G. University Act, Statutes and Regulations in force besides the formalities and directions of the Government of Kerala and its subsequent modifications, if any. True copy of the relevant pages of the Off Campus Centres-Operations Manual is produced as Ext. R1(b).

It was further contended that the MOU signed by the officials of the university is for the purpose of the smooth conduct of the academic activities of the off-campus centres. The MOU is subject to the laws laid down in the Act, Statutes, Ordinances and Regulations. It was also contended that in the judgment dated 23.3.2015 in W.A Nos. 605, 615 and 617 of 2015, the Division Bench of this Court endorsed the view of the learned single Judge in W.P(C) No. 27490 of 2014 and connected cases that the university has no authority to commence and continue off-campus centres beyond the shores of the country.

It was further stated that the Chancellor vide letter dated 8.5.2015 directed the Vice Chancellor to comply with the judgment dated 13.2.2015 of this Court in W.P(C) Nos. 27490, 35231 of 2014 and 1722 of 2015 and judgment dated 23.3.2015 in W.A Nos. 605, 615 and 617 of 2015 urgently and the Vice Chancellor acted accordingly. The Chancellor has issued a show cause notice under Section 7(4) of the Act vide his letter dated 21.8.2013 in which among

other things it has been pointed out that there is violation of Section 23(xxiii) of the Act. The then Vice Chancellor offered a reply dated 5.9.13 to that show cause notice. At the time of filing the counter affidavit, proceedings were pending before the Chancellor and hearing was scheduled to be held on 30.5.2015. The Vice Chancellor exercising his powers under Section 10(15) of the Act issued the order dated 8.5.2001 to comply with the orders of the Chancellor, judgment of this Court, UGC guidelines and Government orders in this regard. A special meeting of the syndicate was convened on 23.5.2015 and the Vice Chancellor reported that matter before the syndicate. The syndicate resolved to authorise the Vice Chancellor for taking necessary remedial measures for the continuance of studies of the students of the closed off-campus centres. True copy of the resolution authorising the vice Chancellor for taking necessary remedial measures is produced as Ext. R1(c).

It was further contended that the Vice Chancellor has issued orders in the light of Ext. R1(c) entrusting the Registrar to take remedial measures for continuance of studies of the closed off-campus centres for the smooth transition of teaching/learning/academic/administration and examination process in the context of the closing down of the off campus centres, vide I.ONo. VC. 702/A1/1/2015/Admn. dated 3.6.2015. Copy of the order dated 5.6.2015 is produced as Ext. R1(d). Proposals have been forwarded to the SBT for arranging the receipts of fees from students by online payment and to the Business Post Division of India Posts for the bulk despatch of the study materials directly to the students enrolled with the university. Further projects for imparting practical training for programmes, wherever necessary, are also initiated. However, the students who pursue their second and third year studies shall be facilitated with learning centres/laboratories at a possible nearest place to the off-campus centres where they are presently admitted. It is also stated that all the grounds raised by the petitioners are unsustainable and the stand of the respondent university is confirmed and upheld by the Apex Court by dismissing the SLP No. 12733 of 2015 as per order dated 24.4.2015. Copy of the order is produced as Ext. R1(e).

12. In W.P(C) No. 15791 of 2015, the respondent university has filed I.A. No. 8685 of 2015 for vacating the interim order passed by this Court wherein they have taken the following contentions:

"The Chancellor has subsequently passed Ext. R1(f) proceedings dated 17.6.2015 wherein it was found that the decision of the syndicate dated 17.1.2013 sanctioning 77 off-campus centres and the consequential proceedings of the university are liable to be set aside and it is ordered accordingly. In that proceedings it is made clear that the implementation of the said order would be subject to the directions/orders/judgment, if any passed by this Court in connection with the issue. In furtherance to Ext. R1(f), the respondent university issued order dated 20.6.2015 implementing the Ext. R1(f) order of the Chancellor. Copy of the order dated 20.6.2015 is produced as Ext. R1(g)."

13. The All Kerala Private College Teachers" Association, who got impleaded as

additional respondents in all the writ petitions, justified the impugned orders.

14. Arguments have been heard.

15. The main argument advanced by Mr. Johnson Manayani, the learned counsel for one of the petitioners is that the respondent university, being an autonomous body, are entitled to locate their off-campus centres and in such matters, the sanction of the Government is quite unnecessary. It was argued that even if sanction is necessary, it is only a curable defect and the respondent university and the authorities ought to have taken steps to get sanction from the Government, if it is warranted. Therefore, according to the learned counsel, the contention now taken by the respondent university is hit by waiver and acquiescence on their part.

16. It was argued that the petitioners in W.P(C) Nos. 15791 and 19339 of 2015 have made arrangements to start off-campus centres spending huge amount and in such circumstances, closing down the off-campus centres would cause grave loss to the them. It was further argued that all these allegations arose on account of the act of the respondent university and, therefore, they cannot wash of their hands at present. It was also argued that there is no allegation or findings with regard to the conduct of the off-campus centres by the petitioners.

17. Mr. M.M. Monaye, the learned counsel appearing for one of the petitioner, who is a student in the off-campus centre at Ayyampilly expressed his anguish and concern over the discontinuance of the centres which would adversely affect the study of the petitioner and other similarly placed students. It was specifically pointed out by Mr. Monayi that in other universities all the students who were already joined the course have been permitted to continue the course. However, the right of the petitioner and similarly situated students under the respondent university have been taken away by the impugned orders; so submitted Mr. Monayi.

18. Mr. T. Koshy, the learned counsel for the petitioner in W.P (C) No. 19274 of 2015 which is the trust that runs the off-campus centre at Ayyampilly wherein the petitioner in W.P(C) No. 19244 of 2015 is studying, supported the arguments of Mr. M.M. Monayi.

19. Mr. Roy Chacko and Mr. Romy Chacko, the learned counsel appearing for the petitioners in W.P(C) No. 19267 of 2015 would argue that the Chancellor has accepted the contention of the petitioners and other similarly situated centres that they are not covered by the judgment of this Court in W.P(C) No. 27490 of 2014 and connected matters since this Court has not directed closure of any off-campus centres within the territorial limits of respondent university. It was pointed out that, however, the Chancellor has held that by virtue of Section 23(xxiii) of the Act Government sanction is required for starting an off-campus centre.

20. According to Mr. Romy Chacko, Section 23(xxiii) of the Act has nothing to do

with off-campus centre or study centre and the same is relevant only for starting a university centre. It was submitted that the university centre is different from a study centre or an off-campus centre. It was pointed out that the university centre means a department of the university or a centre owned, established and maintained by the respondent university. According to the learned counsel, the study centres of the petitioners are not established or owned by the university. On the contrary, the subject institutions are owned, established and managed by the private persons supervised by the university. Therefore, according to the learned counsel, no sanction from the Government is required for establishing a centre or of-campus centre within the territorial limits of the respondent university. The learned counsel would further submit that the petitioners institutions are not treated as university centre even by the 2nd respondent university as is evident from the list of university centres referred to in the university website. The names of the university centres in the website read as follows:

- "1. KN Raj Study Centre for Planning and centre-State financial.
2. Centre for English Language and Communication Skills.
3. Advanced centre for environmental studies and sustainable.
4. Inter university Centre for Social Science, Research and Extension.
5. Advanced Molicular Materials Research Centre (AMMRC).
6. Inter University Instrumentation Centre.
7. Inter University Centre for biomedical research.
8. Institute for intensive research in basic sciences.
9. International and Inter University centre for Nano Sciences and Inter University for disability studies.
10. Students Web Centres.
11. Centre for high performance computing.
12. Inter University centre for studies in science of music.
13. National Institute of Plant Science Technology.
14. Sophisticated Analytical Instrument facility."

Therefore, according to the learned counsel for the petitioners, the Chancellor was not justified in treating the petitioners centres as university centre for the purpose of Section 23(xxiii) of the Act.

21. The impugned order was passed by the Chancellor of the respondent university on a reference by the State Government seeking interference of the Chancellor in exercise of the powers vested under Section 7(4) of the Act for

annulling the decision of the respondent university and its syndicate sanctioning 77 off-campus centres in the year 2013 inside and outside the State which, according to the State, was in violation of the relevant statutory provisions. The Chancellor received petitions from certain members of the senate of the respondent university also against the decision of the syndicate to sanction off-campus centres. On the basis of the reference, the Chancellor issued a notice to the Vice Chancellor to show cause why the decision of the syndicate to sanction 77 off-campus centres should not be annulled. A reply was received from the Vice Chancellor. The explanation was forwarded to the State Government for their views. The State Government took the stand that the reply of the Vice chancellor is untenable. The State Government contended that the university cannot franchise any study centres as per the regulations of the Distance Education Council. According to them, the procedures of the study centres like admission, examination etc., should be done by the university itself. It was also contended that the university has not sought the approval of the apex bodies like UGC, AICTE, MHRD, MOEE for opening study centres outside its territorial jurisdiction.

22. The issue before the Chancellor while passing the impugned order was whether the functioning of the off-campus centres though within the territorial jurisdiction of the university, but without the sanction of the Government is legal or proper, whether started in the year 2013 or earlier. By order dated 8.5.2015 the Vice Chancellor of the respondent university has ordered to close down all off-campus centres functioning outside the territorial jurisdiction of the respondent university as defined in Chapter II, Section 4(1) and (2) of the Act and accordingly, 79 off-campus centres functioning outside the territorial jurisdiction of the university were closed down. Before passing the impugned order, notices were issued to all the off-campus centres through the respondent university for personal hearing by the Chancellor on 30.5.2015. It appears from the impugned order that the learned counsel for the petitioners herein were heard by the Chancellor in the matter. The contention now raised by the learned counsel for the petitioner were raised before the Chancellor also.

23. The Vice Chancellor of the respondent university in his written statement filed before the Chancellor contended that the franchisee are commercialising education and the UGC and State has taken a stand against such franchised institutions. Therefore, the university wants to protect the standards of education and is willing and capable of implementing the decisions, if any, taken by the Chancellor. The definite stand taken by the Vice Chancellor before the Chancellor was that the Off Campus Centres Operations Manual states that the functioning of the off-campus centres are governed as per the terms and conditions of the MOU signed between the university and the centres subject to the provisions of the Act, statutes, regulations in force besides the formalities and directions of the Government of Kerala and subsequent modifications, if any.

24. The Secretary of the Higher Education Department of the State Government

has also forwarded an additional statement to the Chancellor asserting the stand that the off-campus centres were established by the syndicate without the approval of the Government and, therefore, the centres within the jurisdiction of the university are to be closed as they are private franchised centres violating norms of Distant Education Council. Their definite stand is that the respondent university does not provide powers to the syndicate to establish off-campus centres on its own way within the territorial jurisdiction or beyond the territorial jurisdiction and the university is bound to act in accordance with the directions of the Government.

25. As already pointed out that the Chancellor was confronted with the task of deciding whether the functioning of the off-campus centres though within the territorial jurisdiction of the university but without the sanction of the Government is legal or proper. The Chancellor examined the ambit of Section 23 of the Act which deals with the powers of the syndicate. Under Section 23(xxiii), the syndicate is empowered only to recommend the Government the recognition of the local area within the university as university centre. Therefore, the Chancellor has found that it is primarily for the Government to decide any local area within the university area as university centre even if the syndicate recommends. It is true that going by the provisions contained in Section 23(xxiii) the syndicate has the power to make such recommendations based on which, Government has to give sanction.

26. The definite stand taken by the Government before the Chancellor as well as before this Court was that notwithstanding the denial of sanction by the Government on 21.12.2012, the syndicate in its meeting held on 17.1.2013 accorded sanction for 77 off-campus centres. The Chancellor has found that none of the officials of the university at the time of hearing had a case that at any point of time sanction was obtained from the Government for starting off-campus centres. Therefore, it was found that as the need of establishing the university centre in any local area is a matter to be decided by the Government and the power of the syndicate is limited to make only recommendations, the Government is the ultimate authority to decide on the issue.

27. Though it was strenuously argued by Mr. Romy Chacko that these off-campus centres are not university centres, but only private study centres, I am not inclined to accept the same. The Chancellor had occasion to go through the public notice dated 27.6.2013 and the circular dated 23.8.2013 issued by the University Grant Commission (UGC) regarding the offering of programmes through off-campus study centres by the universities. An argument was advanced by one of the centres before the Chancellor that there is no decision by the UGC stopping any university from starting off campus programmes. However, the Chancellor found that the UGC instructions say that the university can conduct courses through distance mode only in accordance with the provisions of their respective Act and after approval of the UGC. Therefore, going by the UGC norms also, off campus centres can be opened only in accordance with the provisions of

the respective Act governing the university.

28. As per Section 4(2) of the UGC norms, no educational institution situated beyond the territorial jurisdiction of the university be affiliated to the university except with the sanction of the Chancellor and the Government. Therefore, according to Mr. Romy Chacko, it is evident from the aforesaid provision that sanction of the Chancellor and the Government is required only if the institution is situated beyond the territorial jurisdiction of the respondent university.

29. It was pointed out that the petitioners institutions are functioning within the territorial jurisdiction of the respondent university and so the sanction of the Chancellor and the Government is not required. In support of the said argument, Mr. Romy Chacko relied on the decision of the High Court of Judicature of Madras in W.P(C) No. 30039 of 2012. In that case, the Madras High Court was considering the ambit of Section 4 of the Annamalai Universities Act by which the territorial jurisdiction of the university was not extended beyond the radius of 10 miles from its convocation hall which shall be situated in Annamalai Nagar. The Madras High Court observed that the Section 4 cannot be relied upon to restrict the university's area of operation insofar as the distance mode of education is concerned.

30. However, the aforesaid decision cannot improve the case of the petitioners herein. As per the UGC guidelines dated 23.8.2013 which is relied on by the Chancellor, no university, whether Central, State or deemed can offer its programme through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode. The Distance Education Council also prohibits franchising of study centres. Here, one must alertly note that preamble 1.4 of the Off Campus Academic Centre Regulations of School of Distant Education of respondent university which states that the university shall run these programmes through off-campus academic centres as per the guidelines that the UGC and State Government lay down in this regard from time to time. The power of the Government in the matter has to be understood in the light of Sections 23(ix) and 23(xxxiii) of the Act. Section 23(ix) places an embargo on the powers of the syndicate in creating decisions which involves expenditure in excess of the budgetary provision without prior approval of the Government. Going by Section 23(xxxiii) the decision of the syndicate is only recommendatory in nature and as already pointed out, it is for the Government to accord sanction to any local area within the university area as a university centre.

31. The Chancellor has relied on the pronouncements of this Court also and observed that powers of the syndicate is confined to the fields permitted by the legislature and once a matter is outside its field, a resolution or decision without the sanction or approval of the Government is incompetent. Reliance was also placed on the decision of T.K. Koshy Vs. Chancellor, Calicut University and Another, (1980) 2 LLJ 98 wherein it was held that once the action of the syndicate is found to be illegal, without authority and against the provisions of

the Act, the Chancellor is fully justified in overruling the decision under Section 7(4).

32. There is threadbare discussion of the issues by the Chancellor and this Court finds no reason to assail the same on any of the grounds pointed out by the petitioners.

33. As already pointed out, one of the petitioners, who is a student of one of these off-campus centres, has expressed the concern over the abrupt discontinuation of the centres which would adversely affect his studies. However, that also has been taken care by the Chancellor in the impugned order by directing the university to take appropriate steps to ensure that the functioning of those off-campus centres within and outside the jurisdiction without the sanction of the Government are discontinued.

34. On a specific query put by me to the learned Senior Counsel for the respondent university as to whether the interest of the students who are continuing their education in the off-campus centres are taken care of, it was submitted by the learned Senior Counsel that arrangements as stated in the counter affidavit has been made.

35. On a consideration of the entire materials now placed on record, this Court is of the view that there is absolutely no scope of interference with the impugned orders and, therefore, the writ petitions fail. Accordingly, they are dismissed.

However, the respondent university is directed to ensure that the students who have been undergoing studies in the aforesaid off-campus centres are provided sufficient facilities to complete their studies and to take their examinations.