

(2006) 08 KL CK 0078

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7491 of 2000 (p)

Shima Kuttappan and Another

APPELLANT

Vs

Sree Sankaracharya University of Sanskrit and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

University Grants Commission Act, 1956 — Section 1, 14, 14(2)(h), 7(xx)

Citation : (2006) 4 ILR (Ker) 532 : (2006) 2 KLJ 908 : (2006) 4 KLT 617

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : P.C. Sasidharan, E.S. Ashraf and Jacob Sebastian, for the Appellant; B.S. Krishnan (Sr.), K. Anand, Latha Krishnan, K.R.B. Kaimal, S. Krishnamoorthy, G.D. Panicker, N. Sugathan, A.V. Ramakrishna Panicker, Varsha Bhaskar, Babu Karukapadath and K.A. Noushad, for the Respondent

Judgement

A.K. Basheer, J.—Is the decision taken by Sree Sankaracharya University of Sanskrit, Kalady to shift six vacancies of Lecturer from the Departments of Economics, Political Science, Sociology and Ayurveda to the Department of Philosophy, legally valid and sustainable? Petitioners in these two writ petitions contend that the above decision of the University is totally against the provisions of Sree Sankaracharya University of Sanskrit Act, 1994 (for short "the Act") and the Sree Sankaracharya University of Sanskrit Statutes 1997 (for short "the Statutes"). But it is contended by the University that the above decision was taken by the Syndicate strictly in accordance with the statutory mandates and also in compliance with the directions issued by the University Grants Commission.

2. A brief reference to some of the essential facts is necessary to decide the above question which was cropped up in these two writ petitions.

3. On November 21, 2005 the University issued a notification inviting applications from qualified candidates for appointment to six regular posts of Lecturer in the Department of Philosophy. Petitioners in Writ Petition No.

1499/2006 concede that they are not eligible to be appointed to the post since they do not possess the requisite qualifications. While petitioner No. 1 is a post-graduate with M.Phil, petitioner No. 2 is a Doctorate holder in Sociology. Both of them are admittedly working as Lecturers in their respective faculty. But still, they have challenged the decision of the University to make appointment to the six posts of Lecturer in the Department of Philosophy. According to them, the decision taken by the University to shift two posts from Political Science and one post from Sociology to the Department of Philosophy will defeat their chance to apply for the post of Lecturer in the above two departments. Therefore, the petitioners pray for issuance of a writ of certiorari to quash the notification inviting applications for appointment and also the decision of the Syndicate to shift the posts. They further pray for a declaration that the decision of the Syndicate is ultra vires its powers and violative of the provisions contained in the Act and the Statutes.

4. Petitioners in writ petition No. 7491/2006 had responded to the notification and they were interviewed by the selection committee along with respondents 5 to 8 and other aspirants to the post. However, the petitioners contend that the selection process was totally vitiated and farcical. The University had already decided to appoint respondents 5 to 8 and in the process, the relevant provisions in the Act and the Statutes were flagrantly violated. It is in the above circumstances that the petitioners in this writ petition have prayed for issuance of a writ of mandamus or such other appropriate writ or direction to respondents 1 and 2 to conduct fresh selection process.

5. As has been noticed already, the Syndicate of the University had decided to shift six vacant posts of Lecturer in other Departments to the Department of Philosophy. Relevant portion of the resolution of the Syndicate reads thus:

The Syndicate considered the recommendations of the sub committee on staff held on 28-10-2005 and resolved to shift six vacancies of Lecturers to the Department of Philosophy from the Department of Economics (2 posts), Political Science (2 posts), Sociology (1 post) and Ayurveda (1 post) and to advertise the posts with specialisations in Indian Philosophical Systems, as suggested by the UGC as one of the conditions for inclusion of the University u/s XIIB of the UGC Act

(emphasis supplied)

It is beyond controversy that the above six posts in the four departments mentioned above were lying vacant. The University has specifically averred in its counter affidavit that since the work load in the Department of Political Science and Sociology is only 15 hours each per week, the teaching requirement in those Department is being met by one Lecturer each for the last seven years. This was the primary reason why no fresh appointments were made in the two departments, though a notification for appointment was issued in the year 1977.

6. In this context, it is pertinent to note that petitioner No. 1 in writ petition No.

1499/2006 had applied for the post of Lecturer in Political Science in response to the above notification in the year 1997. In the case of petitioner No. 2 in the above writ petition, she had not even responded to the said notification. In other words, she had not applied for any post in the University at any point of time. The University has taken up a specific contention that the petitioners in writ petition No. 1499/2006 have no locus-standi to file the writ petition at all. The above contention is not without force. But since the petitioners have raised a contention that the University was not empowered to shift the posts from one department to another, the said question has to be necessarily considered.

7. Learned counsel for the petitioners have laid heavy emphasis on Sections 7(xx) and 14(2)(h) of the Act and contended that creation of six posts in the Department of Philosophy without the prior approval of the Government cannot be countermanded at all. Section 7(xx) of the Act postulates that the University shall have the power "to create posts for teaching, research and other allied academic activities with the prior approval of Government and to appoint persons to such posts." It is contended by the learned counsel that it is mandatory that the University obtains prior approval of the Government before creating any post of teaching and non-teaching staff. Further, the University cannot make appointment to those posts without getting approval. Section 14 of the Act deals with the powers and functions of the Syndicate. Clause (h) of sub-section 2 of Section 14 postulates that the Syndicate shall have the power to create teaching and non-teaching posts in the University with the prior approval of the Government (emphasis supplied).

8. The short question is: Is the decision of the Syndicate to shift six vacant posts of Lecturers from other departments to the department of Philosophy tantamount to creation of new posts?

9. Chapter III of the Statutes deals with Teachers of the University. Statutes 1 and 2 of Chapter III which are relevant for the purpose of this case are extracted hereunder:

1. Institution of Posts.- The Syndicate shall be competent to institute with prior approval of the Government, Professorships, Readerships, Lectureships and such other teaching and research posts required by the University.

2. Abolition or suspension of Posts.- On the motion of the Syndicate and after report from the Academic Council the Syndicate may suspend or abolish any Professorship, Readership, Lectureship or other teaching post, subject however to the condition that in the case of a post which is not permanently vacant at that time no such suspension or abolition shall take effect until after six months notice has been given to the permanent incumbent.

The contention of the petitioners is that the Syndicate will be competent to institute Professorship, Readership, Lectureship and such other teaching and research posts in the University, only with prior approval of the Government. Since six posts in the Department of Philosophy were "instituted" or "created"

without the prior approval of the Government, the University is not entitled or authorised to make appointment to those posts. Relying on Statute 2 quoted above, it is further contended by the petitioners that posts of Professor, Reader, Lecturer, etc. can be suspended or abolished by the Syndicate only after obtaining a report from the Academic Council. Since in this case the University does not have a case that the six posts in the various Departments referred to above, have been suspended or abolished, it has to be assumed that the above six posts are still retained in the respective departments. Petitioners further contend that the provisions under the Act or Statutes do not contemplate shifting of posts from one department to another. Creation or institution of posts can be only by exercise of powers contemplated u/s 7(xx) and 14(2)(h) of the Act read with Statutes 1 and 2 of Chapter III. All the above provisions mandate that prior sanction of the Government is sine-qua-non for creation or institution of posts and for making appointments to those posts. Since the University has not obtained any such prior permission for creation or institution of the six posts in the Department of Philosophy, it must be deemed that no such posts exist in the Department of Philosophy, it is contended.

10. It is true that the provisions contained in the Act or the Statutes do not specifically contemplate shifting of a post from one department to another. It is also true that the Syndicate shall be competent to institute a teaching or research post only with prior approval of the Government. "Institute" as defined in Black's Law Dictionary (6th Edition) means "to inaugurate or commence; to set up; to originate; to initiate; to start; to introduce." Obviously Statutes 1 in Chapter III pertains to the initial introduction or commencement of a post, for which undoubtedly prior sanction of the Government is necessary. Similarly, Section 7(xx) mandates obtaining prior approval of Government to create a post and to make appointment to such post. Section 14(2)(h) also empowers the University to create teaching and non teaching post with prior approval of the Government.

11. Shifting or transferring of a post from one department to another is entirely different from creating a post. "To shift" means "to change or move or cause to change or move from one position to another". The word "shift" in its noun form means "the substitution of one thing for another" (D.B. Oxford Illustrated Dictionary). This is evident from the meaning of the word "create" as contained in Black's Law Dictionary (ibid):

"To create" means to bring into being; to cause to exist; to produce.

Thus, undoubtedly shifting or transferring of an existing post in contra distinction to creation of a post, is totally outside the purview of Section 7(xx) and 14(2)(h) of the Act. Similarly, it is also well beyond the ambit of Statute 1 of Chapter HI of the Statutes. Therefore, in my view, the University need not obtain prior approval of the Government for shifting or transferring an existing/sanctioned post from one department to another.

12. It is true that there is no specific provision which enables the University to shift a post from one department to another. But in this context, it is pertinent to note that subclause (x) of sub-section (2) of Section 14 of the Act empowers the Syndicate "to exercise any of the powers of the University not specifically conferred on any of the authorities under this Act and the Statutes". The above provision undoubtedly clothes the Syndicate with the power to do all such acts which in its view, are necessary for the effective control, management and administration of the affairs of the University, subject of course, to the provisions of the Act and the Statutes.

13. In this context, it may also be noticed that it is the Syndicate and the Syndicate alone which is vested with the power to make Statutes in accordance with the provisions of the Act. The Syndicate again is vested with the power to propose regulations or to make ordinances and also to make amend or repeal them. A perusal of the provisions dealing with the various powers and functions of the Syndicate as enumerated in Section 1 of the Act will unambiguously show that the Legislature intended to vest with the Syndicate wide powers for an effective administration of the University.

14. It must be remembered that the above powers are of course, subject to the provisions of the Act and the Statutes. But still the Syndicate can, in appropriate cases, exercise such powers which are necessary for effective administration of the University. In that view of the matter, I have no hesitation to hold that the decision taken by the Syndicate to shift six vacant posts from four other departments to the department of Philosophy is not ultra vires the powers of the Syndicate or that the said action is in any way illegal or against the provisions contained in the Act or the Statutes.

15. There is yet another aspect of the matter. As mentioned already, six posts in the departments of Economics, Political Science, Sociology and Ayurveda were lying vacant for quite some time. Undoubtedly, the above six posts were sanctioned by the competent authority and they were created with the prior approval of the Government. Therefore, if the Syndicate thought it fit to transfer or shift those vacant posts to the Department of Philosophy, the said decision cannot be faulted at all. It is also pertinent to note that the Syndicate was persuaded to take the above decision in view of a direction issued by the University Grants Commission in the light of the request made by the University as a condition for inclusion of the University u/s XII(B) of the U.G.C. Act.

16. It is also discernible from the decision of the Syndicate extracted in the earlier part of the judgment that the University had considered the recommendations of the sub committee on staff. In matters relating to the curriculum, staff pattern in the various departments, creation of new posts, appointment of teaching staff, etc., authorities or bodies like Syndicate, Academic Council or Board of Studies must be given a free hand. It is trite that the courts must desist from interfering with academic matters of educational institutions. Even in cases where the issue does not fall strictly in the realm of academia, the

court must, under normal circumstances, refrain from making easy interventions. In the backdrop of the above facts and circumstances, the Syndicate of the University, in my view, was justified in shifting or transferring six vacant posts of Lecturers from other departments to the Department of Philosophy.

17. Petitioners in Writ Petition No. 7491/2006 have raised a further contention that constitution of the selection committee was not legal or valid. The specific contention is that one member in the category of outside experts, viz. Dr. V.C. Narayana Das being the Dean of Faculty of Arts and Social Sciences in the same University, he cannot be treated as an outside expert. In response to the above contention, the University has averred in the counter affidavit that Dr. Narayana Das is not a salaried employee of the University. More over, he has crossed the age of superannuation. At the time of interview, he was 68 years of age.

18. The other contention raised by the petition is about the relaxation in age given to respondents 5 to 8. In the notification itself the University had indicated that relaxation in upper age limit will be given to persons who are already in the teaching services of the University. Any how, these are all matters which had to be considered by the selection committee. It is the admitted position that the selection committee has not yet published the names of the selected candidates in view of the interim direction issued by this court. Petitioners had approached this court even before the selection process was completed. I am satisfied that the apprehensions raised by the petitioners are nothing but speculative.

19. Though the petitioners have also raised some other contentions with regard to the wisdom of providing additional posts of Lecturer in the Department of Philosophy with specific reference to the students strength in the various centres of the University, I am not impressed with any of those contentions. In my view, in such academic matters, the wisdom of the administration must prevail. In this context, it may be noticed that the whole exercise of revamping or rejuvenating the Department of Philosophy has been taken up in view of the direction issued by the University Grants Commission. It must also be remembered that this court had occasion to make certain remarks about the strange attitude shown by the University to Sanskrit particularly in the backdrop of the fact that the University was started in the name of Jagadguru Sree Adi Sankaracharya. This court had noticed, in the decision reported in Sree Sankaracharya University of Sanskrit v. State (1996 (2) KLT 378), that undue thrust or importance was given to other faculties like Economics, Sociology, Political Science and Ayurveda. This court observed that it was difficult to appreciate the wisdom of the University to start courses in Economics, Political Science, Sociology, Ayurveda, etc. which are totally unconnected with Sanskrit or Jagadguru Sree Adi Sankaracharya. Learned counsel for the petitioners has invited my attention to a decision of their Lordships of the Supreme Court in Civil Appeal No. 933/2006 (Union Public Service Commission v. Girish Jayanti Lal Varghese). I have carefully perused the judgment. But in my view, the above decision has got no relevance as far as the case on hand is concerned.

20. Undoubtedly, the sweeping allegations made against the University and in particular, against one of the members of the selection committee are not in good taste. It is unfortunate that Universities are dragged into unnecessary litigations these days. Very often it has been noticed that some confidential records of the University are being freely made available before court by parties who have absolutely no chance to have access to such documents.

21. It appears that various organisations having affiliation to different political parties are ruling the roost in the offices of the Universities and campuses. Students are used as tools to create acrimony and anarchy in University campuses. Most often, members of the teaching and non-teaching staff unabashedly indulge in ego war with no holds barred. Political as well as personal vendetta are the prime motives in most of these litigations, rather than any ideological or academic issue. It may be true that I have traversed to areas which may not be strictly germane to the issue in this case. But those remarks have been made since it has been noticed that several writ petitions are being filed before this court against the Universities in the State making unsubstantiated or speculative allegations. The observations made above are intended only to alert the authorities concerned to take effective steps to curb this pernicious tendency.

22. Coming back to the writ petitions on hand, I am satisfied that the decision taken by the Syndicate to shift six posts of Lecturers from the Department of Economics, Sociology, Political Science and Ayurveda to the Department of Philosophy is legal and valid. The question posed in the judgment is therefore answered in the affirmative. As regards the other contentions raised by the petitioners in Writ Petition No. 7491/2006, I do not find any reason to grant the reliefs prayed for by the petitioners. I am satisfied that the selection process was held in a proper and legal manner and therefore, the prayer made by the petitioners to conduct a fresh selection cannot be granted.

The writ petitions fail. They are accordingly dismissed.