

(2003) 05 KL CK 0027
In the High Court Of Kerala
Case No : W.A. No. 535 of 2003

Sojan Francis

APPELLANT

Vs

M.G. University

RESPONDENT

Date of Decision : 26-05-2003

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(1)(4), 19(2), 29(1), 29(2)

Citation : AIR 2003 Ker 290 : (2003) 2 ILR (Ker) 538 : (2003) 2 KLT 582

Hon'ble Judges : K.S. Radhakrishnan, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : Thomas Koshy, for the Appellant; Baby Issac Illickal and V.K. Muhammad Yousuf, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—An important question of considerable public importance concerning the educational scenario in the State arises for consideration in this case. The question is whether an educational institution has got the freedom to prohibit political activities within the college campus and forbid the student from organising or attending meetings other than official ones within the college campus and whether such a restriction would violate Article 19(1)(a) and 19(1) (c) of the Constitution of India.

2. Petitioner is a second year B. A. Degree student of St. Thomas College, Palai with politics as Main and History and Economics as subsidiaries. He is a College Union member and Editor of the College Magazine and Area Committee member of the Students Federation of India. Principal of the College refused to admit him for the second year B.A. Degree examination due to lack of attendance. Petitioner obtained an order from the Controller of Examinations to write the examination provisionally. Principal however did not allow him to write the examination. Petitioner then approached this Court for a writ of mandamus directing the Management and the Principal to allow him to write the examination or in the alternative to hold a special examination of Politics Main for the second

year B.A. degree examination. He has also sought for a writ of mandamus directing the Management and the Principal to pay a compensation of Rs. 25,000/- by way of damages to the petitioner for illegally preventing him from writing the Politics Main Examination scheduled on 4.3.2003 and for causing mental agony and loss of reputation. Learned single Judge dismissed the Writ Petition. Aggrieved by the same this appeal has been preferred.

3. Petitioner, a second year student of B.A. Degree preferred an application for appearing for the second year B.A. Degree examination during March/April 2003 along with various other applicants. Applications received from the students were forwarded to the University by the Principal in January 2003. When the application forms were forwarded to the University the number of attendance of candidates was not taken into consideration since classes were not over. University after affixing the seal returned all the hall tickets to the college with a direction to issue the same to the candidates after verifying the attendance and progress certificates. In the forwarding letter dated 26.2.2003 Controller of Examinations had informed the college authorities to withhold the hall tickets of those who had not fulfilled the necessary requirements. Principal informed the petitioner that he would not be allowed to write the examination due to lack of attendance. Petitioner then submitted a representation to the Controller of Examinations who made endorsement in the representation on 3.3.2003 to admit the petitioner provisionally. Principal did not admit the petitioner to the second year B.A. Degree examination since he did not have sufficient attendance as per rules and regulations. Relevant rules pertaining to attendance is as follows:

A student is eligible to appear for the exam if he has 75% attendance of the total working days for regular courses and 80% for professional courses. A shortage of 20 days could be condoned if applied in prescribed form through the Principal. Condonation will be granted only once during a year.

Total number of working days during the academic year 2002-2003 was 148. Petitioner had attended only 70 days. He had applied for 15.5 days leave. Consequently he had got only 85.5 days attendance including the leave duly applied for and recommended by the Principal. The number of attendance required for writing the examination as per rule is 111 i.e., 75%. Appellant was having only 57.7 % attendance even after giving credit to the leave applied for there is a shortage of 25.5 days of attendance. Rules permit availing of maximum of 20 days leave. Petitioner was therefore not permitted to write the examination. In fact on 28.2.2003 list of students having shortage of attendance was exhibited on the notice board which included the petitioner's name as well. College calendar for the year 2002-2003 also dealt with rules regarding attendance, leave etc. Principal also took up a contention that the Controller of Examination has no jurisdiction to direct him to relax the rules and regulations regarding attendance, consequently petitioner was not permitted to write the second year B.A. Degree examination.

4. Petitioner took up the stand that he was eligible to get duty leave with

attendance for attending the activities of the college union for which he had made request to the Principal in writing. Petitioner's further case is that in order to wreak vengeance and with mala fide intention Principal openly declared that he would not permit the petitioner to write the examination and the hall ticket already issued to him was snatched away by giving direction to his menial staff which was thwarted of by the petitioner. Petitioner also produced Ext. P3 newspaper report dated 6.3.2003 and pointed out that the attempt of the Principal was to curb the activities of Students Federation of India in the college campus. Paper report stated that the action of the Principal was politically motivated. The complaint raised against the Principal which is evident from the Writ Petition, Writ Appeal, reply affidavit and Ext. P3 is as follows:

(i) Principal did not allow the petitioner to write the second year B.A. Degree examination provisionally in spite of the direction given by the Controller of Examinations. The action of the Principal is illegal and mala fide.

(ii) Petitioner placing reliance on Ext. P3 stated that the action of the Principal is politically motivated so as to curb the activities of S.F.I. in the college campus.

(iii) The Principal's decision not to allow the petitioner to write the examination has caused mental agony, loss of reputation and irreparable loss and the Management and the Principal be directed to pay Rs. 25,000/- by way of compensation.

We may first examine whether the action of the Principal is vitiated for not permitting the petitioner to write the 2nd year B.A. Degree examination. Rules regarding the grant of attendance which was made known to all the students by the College Calendar. Student is eligible to appear for the exam if he has 75% attendance of the total working days for regular courses. Shortage of 20 days attendance will be condoned if applied in the prescribed form through the Principal. Condonation will be granted only once during a year. Calendar of the college deals with attendance and leave of absence and the general discipline of the college. Calendar stipulates that student absenting himself from the college even for a day should submit the leave application to the Principal, duly signed by the lecturer in charge. Student absenting himself for a period exceeding five working days, whether with leave or without leave, should on his return to the college, report to the Principal. Student absenting himself without leave for more than ten consecutive days will have his name removed from the rolls and he may be readmitted on payment of college dues, if any. Application for leave shall be countersigned by the student's guardian and recommended by the Tutor or the Teacher in-charge of attendance or the Head of the Department. College calendar also deals with duty leave, which reads as follows:

Duty leave for physical education activities will be granted only to athletes representing the college or university in various matches, tournaments and sports events. Such students should submit their leave applications duly recommended by the Director of Physical Education not later than one week after

the event.

The maximum period for which duty leave can be granted to a student for sports is 10% of the total number of working days.

Going by the calendar, there is no provision entitling the student to claim duty leave for College Union activities. Further petitioner had applied for 15.5 days leave which was recommended by the Principal. Even after giving credit to the leave already applied for and availed of by the petitioner, petitioner is having 25.5 days shortage of attendance even after condonation of 15.5 days. We are therefore in agreement with the Principal that the petitioner did not have sufficient attendance so as to write the second year B.A. Degree examination. Consequently direction given by the Controller of Examination to admit the petitioner cannot be sustained. We hold that the direction given by the Controller of Examinations to allow the petitioner to write the examination would go against the leave rules and undermine the discipline of the educational institution. Therefore the action of the Principal in not permitting the petitioner to write the examination due to lack of attendance is only to be upheld. We do so.

5. Second complaint projected by the petitioner as revealed from Ext. P3 is that the action of the Principal is politically motivated and the attempt of the respondents was to curb the activities of the S.F.I. within the college campus. Principal stated in the counter affidavit that under the pretext of college union activities certain students are absenting from the classes and then approach higher authorities to obtain orders directing the Principal to permit ineligible candidates to appear for the examination provisionally. This according to the Principal, would affect the discipline in the college and would have adverse influence on other diligent students who attend classes regularly. It is stated in the counter affidavit filed by the Principal that if the officers of the University who are expected to uphold the University Rules and Regulations, themselves or on extraneous considerations commit excesses in utter violation and disregard to the various provisions the same would be a dangerous trend which would undermine and affect the standard of education and discipline in the educational institution.

6. We find from the averments in the Writ Petition as well as from Ext. P3 newspaper report that petitioner is an Area Committee Member of the S.F.I. Complaint against the Principal as evident from Ext. P3 is that the Principal is trying to curb the activities of S.F.I. within the college campus. We have gone through the calendar of the college which deals with general discipline in the college. Relevant portions of the same are extracted below.

General Discipline

It is hoped that the following guidelines will be of help to the students in conducting themselves courteously and in accordance with the highest standards of mannerly behaviour.

3. No student will enter or leave the class room when the session is on without the permission of the teacher concerned.
4. Students are expected to spend their free hours in the Library/Reading room. They should not loiter along the verandahs or crowd at the gate or about the offices.
7. Smoking, which is injurious to health, is strictly prohibited in the college campus.
8. Do not disfigure the walls, doors, windows, furniture etc. with graffiti, bills, engravings etc. Learning not to damage property whether public or private is one of the primary requirements for civilized behaviour.
9. Political activism is strictly banned in the campus. Students are forbidden to organise or attend meetings other than the official ones. Students resorting to strikes are strictly prohibited from entering the verandah of the building or the class rooms.

We have already indicated that the complaint against the Principal was that he was trying to do away with the activities of S.F.I. in the college campus. The question that arises for consideration is whether an educational institution could legally prohibit political activities within the college campus and forbid the students from organising or attending activities other than official ones within the college campus and whether a student who is admitted to the college is bound by the code of conduct laid down by the educational institution. The question is whether such restrictions laid down by the educational institutions would violate the fundamental rights guaranteed under Article 19(1) (a) and (c) of the Constitution of India. Since this question is of considerable general importance and since allegation has been raised against the Principal in Ext. P3 newspaper report, we may examine the issue at length.

7. St. Thomas College, Palai is a college affiliated to the Mahatma Gandhi University. The College was founded by the Diocese of Palai and set up for imparting moral and religious discipline in addition to the instruction aimed at general intellectual and physical advancement. They made it their mission to spread the light of learning all around, irrespective of caste, creed, religion or language. The Institution is run by a minority community entitled to protection under Article 30(1) of the Constitution of India. Article 19(1)(g) gives right to all citizens to practise any profession, or to carry on any occupation, trade or business, the right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain educational institutions. Article 19(1)(g) and Article 26 confer rights on all citizens including linguistic and religious denominations to establish and maintain educational institutions. Article 30(1) confers special rights on the minority community to establish and administer educational institutions of their choice. In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, the Apex Court held that the establishment and running of an educational

institutions where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. The Court further held that the right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Religious denominations or sections thereof, which do not fall within the special categories carved out in Articles 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. For maintaining excellence in education it is important that the teaching faculty and members of staff of the educational institution should perform their duties in the manner in which it is required to be done according to the rules and instructions. For giving effect to the objectives for which the educational institution was established either by minority community or by majority community, they could lay down their own rules and regulations governing the teachers, non-teaching staff as well as students. For giving effect to Articles 19(1)(g) and 30(1), educational institutions can lay down their own code of conduct to be made applicable to the management, teaching staff, non-teaching staff and the students. Only thing is that such restrictions should be reasonable so as to give effect to the fundamental rights guaranteed to them under Articles 19(1)(g), 29 and 30 of the Constitution of India. While examining the reasonableness of those restrictions there must be direct and proximate nexus between the restrictions imposed and the objects sought to be achieved. Reasonableness of the restrictions is to be determined in an objective manner from the stand point of the management and the students, teaching and non-teaching staff etc. as a whole and the institution in general and not from the stand point of the interest of the person upon whom restrictions are imposed or upon abstract consideration.

8. Management of the minority institution or majority community can lay down their code of conduct to be followed by the Management, teachers and non teaching staff as well as the students. As far as this case is concerned, in order to safeguard the interest of all including the Management, teaching and non-teaching staff and student community and to maintain discipline. Management has laid down various guidelines curbing political activities in the college campus and also forbidding the students from organising and attending meetings other than the official ones. Students resorting to strike are strictly prohibited from entering the verandah of the building or the class rooms.

9. Authority and importance given to the Principal of an educational institution has been highlighted by the Supreme Court and this Court in various decisions. A Division Bench of this Court *Unni Raja v. Principal, Medical College* (1983 (2) ILR Ker 754) held that the head of an education like the Principal occupies a preeminent position and at the same time, now a days an unenviable one. Principal is answerable to the authorities and to the public for the discipline in the

institution. Time was when his authority was never questioned but with passage of time, when educational institutions became the arena of activities by political and political forces, there was a deterioration of values cherished for long and an invasion on his powers. Hence it is necessary to unto him what is his. The Division Bench concluded that the essence of the matter is the Head of the Institution should in law be presumed to possess an inherent right of such acts as are necessary in his opinion to maintain discipline in the institution. This right is incapable of an exhaustive identification. To limit it within defined confines would be to erode into his authority and fetter his discretion. To deny this right to the Head of the Institution would be to sound the death knell of discipline in the institution which is already a casualty, by the combination of diverse forces, from within and from without. A Division Bench of this Court in *Manu Vilson v. Sree Narayana College* (1996 (1) KLT 788) 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. It was also held that 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.

10. Legislature has recognised such code of conduct in order to maintain discipline in the administration in Government Departments, Government Organisations as well as in Educational Institutions. Government Servants' Conduct Rules, 1960 was enacted by the Government of Kerala in accordance with the proviso to Article 309 of the Constitution of India. Rule 67(1) of the Government Servants' Conduct Rules reads as follows:

"67. Taking part in politics an delections. - (1)No Government servant shall be a member of or be otherwise associated with, any political party or any organization which takes part in politics nor shall be take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

Kerala Government Servants' Conduct Rules, 1960 as amended from time to time is made applicable to teachers of the University by Statutes 10 of Chapter III of Mahatma Gandhi University Statutes, 1997. Statute 10 in Chapter HI stipulates that Government Servants' Conduct Rules would be applicable to the non-teaching staff of the University other than University teachers. Chapter 45 deals with conditions of service of teachers and members of non-teaching staff in private colleges. Section 73 of the Mahatma Gandhi University Act says that the Government shall, in consultation with the University and the representatives of the teachers, frame a Code of Conduct to be observed by the teachers of Government and private colleges. Reading the entire statutes and the rules framed, we are of the view, it is well established that teachers, non-teaching

staff of the educational institution cannot engage in political activities while they are in service especially within the college campus. Kerala Education Rules also prevents political activity by teachers or association. Rule 51(b)(1) of Chapter XIV-C stipulates that Government shall withdraw the recognition granted to any association, if it violates the condition that the Association shall not seek assistance of any political party or organisation to represent the grievances of its members, or indulge in any seditious propaganda, or expression of disloyal sentiments. Rules also prohibit payment of contribution towards any expenses incurred by a candidate for any election to a legislative body whether in India or elsewhere or to a local authority or body. They are also prevented from supporting any person in such election. The above mentioned rules were taken note of by one of us (Radhakrishnan, J.) in *Sathyavan v. State of Kerala* (1997 (1) KLT 130) while prohibiting politics from school campus. Students Union filed appeals against the judgment but were dismissed by the Division Bench, though in the appeal filed by the State minor modifications were made with regard to certain direction given by the learned Single Judge. In the judgment learned Single Judge had directed the State Government to issue appropriate regulatory measures so as to give effect to constitutional provisions for functioning colleges as well as other schools of higher education, but no such regulatory measures have been laid down by the State so far. In this connection, we may refer to the decision of the Supreme Court in *Harpal Singh Vs. Devinder Singh and another*, . The Apex Court highlighted the bane of campus politics with resulted in the death of a student studying in the final year M.A. Economics. While dealing with the case, Apex Court held as follows:

"27. Before parting with the case, we feel strongly to add a few more words which are of contextual and topical importance. It is a malady in our country that political parties allure young students through their student wings. They do so because it is an easy method for enlisting support and participation of student population in their political programmes. Students, particularly in the adolescent age, are easily swayed by political parties without much effort or cost as young and tender minds are susceptible to easy persuasiveness by party leaders. But the disturbing aspect is that most of the political leaders do not mind their student supporters developing hospitality towards their fellow students belonging to rival political wings. What happened in this case perhaps was only the tip of the iceberg as campus rivalry has now deteriorated into a bane for the country. The print media is now replete with reports of such calamitous instances in the campus atmosphere.

28. While at the top layer leaders belonging to different political parties dine together and socialise with each other without any personal acrimony as between themselves, it is a pity that they do not encourage that healthy attitude to percolate down to the grassroot level. Tender minds get galvanised on minor issues, frenzy flares up even on trivialities, young children and adolescents unaware of the disastrous consequences befalling their own future indulge in vandalism, mayhem and killing spree against their own fellow students.

29. We think that the time is now ripe for legislative interference to salvage the campus free of political activities. We leave it to the members of legislatures and leaders of the country to ponder over this with the seriousness it deserves and to bring forth necessary measures to plug it."

We are sure that the State Government would come out with appropriate regulatory measures for Government educational institutions as was done in this case by St. Thomas College, Palai. Such measures would achieve the purpose sought to be achieved by the Kerala Government Servants' Conduct Rules, 1960 as well as Conduct Rules laid down for subordinate staff of the educational institutions run by the Government and the affiliated colleges.

11. The Apex Court in *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, had occasion to consider the scope of Rule 22 of the Service Rules applicable to Karnataka State Small Industries Development Corporation. Contention was raised that Rule 22 would amount to curtailment of freedom of speech and expression or the freedom to form association or union. Upholding the action of the Department the Apex Court took the view that a proper balancing of interests of an individual as a citizen and the right of the State to frame a Code of Conduct for its employees in the interest of proper functioning of the State is required. In order to maintain discipline and orderly administration it is always possible for the State Government, educational authorities etc. to lay down their own conduct rules. We have referred to various such provisions under the Kerala Education Rules as well as to the various provisions in the Mahatma Gandhi University statutes. Educational institutions run either by the majority community or minority community under Article 19(1)(g) and Articles 29 (1) and (2) as well as Article 30 of the Constitution, can lay down their own code of conduct to uphold their constitutional rights. It is in exercise of those rights they have laid down code of conduct for students to maintain discipline and for orderly administration. Therefore, Clause 9 of the General Discipline laid by the St. Thomas College, Palai is valid and legal and in consonance with Articles 19(1)(g), 29 (1), (2) and 30(1) of the Constitution of India.

12. The next question to be considered is whether the above restriction under clause 9 would affect the fundamental rights guaranteed to citizens including students under Article 19(1)(a) and 19(1)(c) of the Constitution of India. Teaching and non-teaching staff, students and the Management have the freedom of speech and expression. Right to freedom of speech and expression is subject to Article 19(2) and the right to form association or union under Article 19(1)(c) could be restricted under Article 19(1)(4). State or the authorities can impose reasonable restrictions on the ground of public order decency or morality etc. The Mahatma Gandhi University statutes have restricted political activities by the teaching and non-teaching staff in order to maintain discipline and efficiency in the college and to achieve excellence in education. If the students indulge in the same activities which are prohibited so far as teachers and non-teaching staff

are concerned, the purpose sought to be achieved; by those restriction would be defeated. Students also therefore could be prohibited from indulging in political activities within college campus and from organising or attending meetings other than official ones within the college campus. This is a reasonable restriction which does not in any way violate Article 19(1)(a) or 19(1)(c) of the Constitution.

13. In *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, the Apex Court dealt with the inter-relationship between Article 19(1)(a) and 19(1)(c) of the Constitution of India and held as follows:

"The fundamental freedoms enumerated under Article 19 are not necessarily and in all circumstances mutually supportive, although taken together they weave a fabric of a free and equal democratic society, eg., the right to reside and settle in any part of the country can be put in jeopardy by the vociferous local group freely expressing its view against persons from another part of the country. Freedom of speech of one affects the freedom of movement of another. Exercising the right to form an association may curtail the freedom to express views against its activities. For example, a person joining an association to promote adoptions cannot express anti-adoption views. He may lose his membership. Some restriction on one's rights may be necessary to protect another's rights in a given situation. Proper exercise of rights may have, implicit in them, certain restrictions. The rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions. In the present case, joining Government service has implicit in it, if not explicitly so laid down, the observance of a certain code of conduct necessary for the proper discharge of functions as a Government servant. That code cannot be flouted in the name of other freedoms. Of course, the courts will be vigilant to see that the code is not so widely framed as to unreasonably restrict fundamental freedoms. But a reasonable code designed to promote discipline and efficiency can be enforced by the Government organisation in the sense that those who flout it can be subjected to disciplinary action.

The Court held that the right to freedom of speech and expression can always be curtailed so as to maintain discipline within the service, to ensure better performance of the employees of the Corporation and to protect interest and prestige of the Corporation. In that case the Apex Court held that Rule 22 does not in any way curtail the freedom to form an association or union. The court held that a rule which is not primarily designed to restrict any of the fundamental rights cannot be called in question as violating Article 19(1)(a) or 19(1)(c).

14. We are of the view, guideline (9) banning political activities within the campus and forbidding the students from organizing or attending meetings other than the official ones within the campus is not designed to prohibit any of the fundamental rights of the students guaranteed under Article 19(1)(a) or 19(1)(c). It is not a total prohibition of any fundamental right, but only a reasonable restriction confined to college campus and the code of conduct cannot be flouted in the name of any other freedom or the rights guaranteed under Article 19(1)(a)

or 19(1)(c). Once students are admitted to an educational institution they are bound by the code of conduct laid down by the educational institutions through the prospectus or college calendar and it is implicit that they should observe the code of conduct necessary for the proper administration and management of the institution. Restrictions are only reasonable and designed to promote discipline in the educational institution so that the objectives of the educational institution could be achieved and wisdom of laying down those restrictions cannot be challenged by the student after getting admitted to the educational institution. The right to admission not being absolute there could be regulatory measures for ensuring educational standards and maintaining excellence in education. Rules are made for inter discipline in the educational institution which was made applicable equally to management, teaching staff, non-teaching staff and the students community as a whole for its proper functioning and maintaining discipline. Clause 9 of the General Discipline laid down by St. Thomas College, Palai does not violate Article 19(1)(a) or 19(1)(c) of the Constitution of India and therefore liable to be upheld. In other words, those restrictions are for the proper functioning of the educational institution itself.

15. In the above perspective we uphold Clause 9 of the General Discipline framed by St. Thomas College, Palai and declare that it is open to the educational institutions to prohibit political activities within the college campus and forbid students from organizing or attending meetings other than the official ones within the college campus and such a restriction would not violate Article 19(1) (a) or (c) of the Constitution of India. We therefore reject the contention that the action of the Principal was politically motivated. The claim for monetary compensation as against the Management and the Principal is also rejected. Unnecessarily allegations and imputations have been made against the Principal who is a Reverend Father by a student of the second year B.A. Degree examination without any rhyme or reason and projected the same in a newspaper which is not good for the proper functioning of the educational institution and its discipline. Appeal lacks merits and it is accordingly dismissed.