

(2009) 04 KL CK 0019

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30048 of 2008 (B)

The Christian Educational Trust

APPELLANT

Vs

M.G. University and Another

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 2 KLJ 468

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; T.A. Shaji, SC, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—This is the 3rd or 4th round of litigation being pursued by the petitioners in these cases to secure affiliation from the respondent University for starting a new college/course. The application was being turned down by the University due to some or other reason, which according to the petitioners, is only with malafide exercise of power. For convenience of reference to the sequence of events, W.P.(C) No. 30048 of 2008 is treated as the lead case.

2. The petitioner in W.P.(C) 30048 of 2008 sought for the affiliation of the University to start a new college conducting B.Com with Computer Application and such other courses simultaneously submitting all the relevant testimonials in connection with the application. After considering the application dated 26.09.2005 with respect to the year 2006 and 2007, the University as per Exhibit P1 order dated 31.01.2007 informed the petitioner that the University has recommended the course to the AICTE and the Government of Kerala and that affiliation would be granted only after the sanction/approval from the Government/AICTE and after fulfilling all the conditions by the University with regard to the affiliation.

3. The stand taken by the University deferring the affiliation and that too, after taking steps for approval of the Government was challenged by the petitioner in W.P.(C) No. 3827 of 2007, wherein Exhibit P2 interim order was passed directing the University to consider the question of affiliation without waiting for the views of the Government. In response to the above interim order, Exhibit P3 proceedings were issued by the University stating that the academic year 2006 - 2007 for which the affiliation was sought for, was already over and hence the University was not in a position to grant affiliation for the said period. Subsequently, the above writ petition was finally heard by this Court passing Exhibit PA judgment, whereby the University was directed to consider the application already submitted by the petitioner for the subsequent year 2007 - 2008 as well, without insisting on the payment of affiliation fee once again. After considering the matter, the University passed Exhibit P5 proceedings holding that the Syndicate Standing Committee on Affiliation held on 09.08.2007 resolved to recommend to the Syndicate, not to consider the application for starting new colleges as the Committee suggested a feasibility study before starting new colleges/courses.

4. However, it is the case of the petitioner that this was without any regard to Exhibit P6 proceedings dated 31.05.2006 whereby the Syndicate had already resolved to recommend to the Government to sanction a maximum of 4 courses in a college during 2006 and 2007 among the courses recommended. It is also discernible from Exhibit P6 itself, that out of the list of new unaided Arts and Science colleges seeking affiliation during 2006 - 2007, the name of the petitioner's college is shown as serial number "1", simultaneously showing the course proposed to be started, for which the affiliation was sought for. The petitioner has also remitted the requisite fee for application for renewal on 31.01.2008 as borne by Exhibit P7. Thereafter, the University issued Exhibit P8 order dated 12.06.2008, whereby two different stands are seen taken, as reflected under Clause (ii) and (v) of the said order. Under Clause (ii) it was decided to constitute Inspection Commissions in respect of the institutions proposed to be started "under the Government", whereas in respect of other "unaided institutions", it was mentioned under Clause (v) that the application need not be considered for the four reasons stated there under; mainly referring to the existing manpower inadequacy to cope up with the additional work consequent on the sanctioning of the new unaided colleges.

5. Petitioner challenged Exhibit P8 proceedings before this Court by filing W.P.(C) No. 24074 of 2008 highlighting the inconsistent and arbitrary stand of the University in dealing with the application submitted by the petitioner and also pointing out that as per the Government Circular dated 25.07.2008 produced as Exhibit P9 in the present writ petition, in the case of Arts and Science colleges, the management could seek the approval from the concerned University itself.

6. In the meanwhile, the reasoning given by the University under Clause (v) of Exhibit P8, order as made applicable to another institution was subjected to

challenge by the said institution in W.P (C) No. 18774 of 2008. After considering the facts and figures, this Court as per Exhibit P11 set aside the above reasoning, holding it as arbitrary and discriminatory and accordingly, the University was directed to grant affiliation to the courses for which the petitioner had filed application. The petitioner herein placed reliance on the above decision in W.P.(C) 18774 of 2008; based on which W.P.(C) 24074 of 2008 was disposed of, directing the University to consider the matter in the light of the verdict passed in W.P.(C) No. 18774 of 2008 (simultaneously disposing the connected W.P.(C) No. 26207 of 2008 filed by the petitioner in W.P.(C) No. 33006 of 2008).

7. It is brought on record that Exhibit P11 verdict passed by this Court was subjected to challenge from the part of the University by filing W.A. No. 2122 of 2008 which led to Exhibit P13 verdict passed by the Division Bench in W.P.(C) No. 33006/2008. However, based on the statement made from the part of the concerned college (as observed in paragraph 11 of the said verdict) conceding that, in so far as MBA course was concerned, the respondent college would not commence the same without obtaining the approval from AICTE, it was accordingly recorded and consequential directions were issued to the University to grant affiliation in respect of the courses except MBA which was only to be considered after the college obtained proper approval from the AICTE as made clear in the paragraph 14 of the said verdict.

8. Coming back to the case in hand, the University, pursuant to Exhibit P10 order considered the matter and passed Exhibit P13 order dated 24.09.2008 and Exhibit P11 dated the same day, in the connected case, holding that the Syndicate in the meeting held on 16.09.2008 had resolved not to grant affiliation to the new unaided Arts and Science college as the University had already decided not to grant affiliation to new colleges/courses and not to increase number of seats in unaided colleges affiliated to the University during 2008 - 2009, which in turn have been subjected to challenge in the above writ petition.

9. The respondent/University has filed counter in both the cases highlighting the necessity to have the views of the Government and to abide by the same. It is stated therein that the Government, vide letter dated 26.08.2008, have communicated their views stating that affiliation shall be granted only to those colleges which signed an Agreement with the Government as stipulated in Exhibit R1 (a) in W.P. (C) 30048 of 2008. While stating that this was only one of the reasons which persuaded the University to take a decision declining to grant affiliation, it is further stated in the succeeding paragraph that it was also because of the lack of sufficient manpower in the University to cope up with the additional administration and other work if new colleges were to be granted affiliation. The second limb of the above reasoning having been set aside by this Court as per Ext.P12 judgment and confirmed by the Division Bench in Exhibit P13 verdict, the only impediment for the University was with regard to the want of affiliation/approval from the Government; particularly, in view of the stipulation as to the necessity to execute an Agreement as stated in Ext. R1 (a)

issued by the Government.

10. Subsequent to the filing of the counter affidavit, the petitioner in WP(C) No. 30048 of 2008 has filed a reply affidavit, also producing the Ext.P14 Government Order dated 7.11.2008 granting sanction for starting new Arts and Science colleges, subject to the condition specified therein and Ext.P15 No Objection Certificate. The learned Counsel for the petitioner submits that the said proceedings were issued by the Government pursuant to the Agreement executed by the petitioner as stipulated by the Government in Ext. R1 (a). It is accordingly submitted that the sole hurdle placed on the way of the petitioner also got removed and hence that there is no rhyme or reason for the University to reject or refuse to consider application for grant of affiliation any further. The learned Counsel for the petitioner also submits that the petitioner in WP (C)No. 33006 of 2008 also proposes to submit similar Undertaking and Agreement as stipulated in Ext.R1 (a) and that necessary proceedings in this regard would be submitted within no time and on such an event, the matter is liable to be considered by the concerned respondent.

11. The learned standing counsel appearing for the University submits that the matter requires to be examined in a wider magnitude and the credentials of the petitioner as to the availability of necessary infrastructure are to be ascertained and confirmed; the earlier inspection having been conducted way back in 2006. Learned Counsel for the petitioner referring to Ext.P12 report of the Committee constituted by the University in this regard submits that the Committee engaged by the University had inspected the entire infrastructure and it was only after recording satisfaction, that the committee had recommended for granting affiliation. It is pointed out that with regard to the case of the petitioner in WP(C) No. 33006 of 2008 that even the University does not have any such case regarding the infrastructure, which in fact is conceded by the University as well. Learned Counsel for the University referring to the contents of Ext.P12 proceedings of the Committee, who conducted the inspection, submits that the recommendation was made by the University only on the basis of offer/undertaking to provide the necessary infrastructure and not after satisfying the available infrastructure as on the date of inspection. Paragraph 9 of Chapter 23 of the M.G. University First Statutes 1997 dealing with the grant of affiliation shows that the inspection and satisfaction are with regard to the availability of ownership of the land/building, if any, the assets of the management, constitution of the registered body and such other incidental aspects. Even otherwise, the necessity to provide allocation of Teaching Staff and such other similar aspects would come into consideration only after obtaining necessary affiliation and it cannot be presumed that such Staff ought to have been appointed prior to granting affiliation of the University. In any view of the matter, the University is having sufficient power to see that the conditions imposed while granting the affiliation are complied with by the Institution and empowered to take appropriate steps even to cancel or suspend the affiliation, in case any non compliance is reported; which is more so in view of the stipulation as contained

under the paragraphs 1912 and 1914 of the said Statutes.

12. The learned standing counsel for the University also seeks to place reliance on paragraph 1 under Chapter 23 of the above Statutes stating that the application submitted by the petitioners cannot be deemed as valid application, as it can only be regarded as "out of time", as on date, the same having been submitted for the year 2006-2007. It is also pointed out that the maximum life period which can be given is only for two years. In both the cases, applications for renewal have been submitted and necessary renewal fees have already been remitted. Further, there is a specific observation made by this Court while passing Ext. PIO judgment, that the application submitted by the petitioner shall be considered with respect to the subsequent years, taking note of the sequence of the events. This being the position, the submission made from the part of the University with regard to the date of application and also as to the doubted absence of the infrastructure is without any pith or substance.

13. In view of the above discussion, it is very much relevant to note that the petitioner in WP(C) No. 30048 of 2008 has already complied with all the requisite steps for entertaining the application for affiliation including execution of necessary agreement as contemplated under Ext.R1(a) issued by the Government; as evident from Ext.P14 sanction and Ext.P15 No Objection Certificate given by the Government. However, the consistent stand of the University (though proved inconsistent subsequently) as revealed from Ext.P1 was that, affiliation would be granted only after getting approval from the Government. Since the said requirement has already been satisfied, there is no point in delaying the affiliation to be given to the petitioner under any circumstances.

14. In the above circumstances, the respondents are directed to grant of affiliation to the petitioner in WP(C) No. 30048 of 2008 of course subject to the conditions to be stipulated by the University. This exercise shall be pursued and finalised within a period of two months from the date of receipt of copy of this judgment.

15. With regard to the petitioner in WP(C) No. 33006 of 2008, as already observed, the petitioner would execute and submit necessary Agreement as stipulated in Ext.R1(a) produced by the University and as agreed during the course of Hearing forthwith and on such an event, the matter shall be considered in similar terms by the University as directed in the connected case and necessary orders shall be passed granting affiliation for the year 2009-2010 within the period as stated as above.

Both the writ petitions are allowed accordingly. No costs.