
(2022) 03 KL CK 0003

In the High Court Of Kerala

Case No : Writ Appeal No. 1947 Of 2019 & Writ Petition (C) Nos. 23387 Of 2019 & 27214 Of 2021

University Of Calicut

APPELLANT

Vs

Nirmala Educational Trust

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Citation : (2022) 03 KL CK 0003

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : P.C.Sasidharan, S.Krishnamoorthy, Nithya Sugunan

Final Decision : Allowed

Judgement

Shaji P. Chaly, J

1. The captioned appeal and the writ petitions are materially connected in respect of affiliation sought for by the writ petitioner in W.P.(C) No. 23387 of 2019 namely Nirmala Education Trust to a Two-year Post Graduation Degree course, M. Com (Finance). Therefore, in agreement, we have heard them together and propose to pass this common judgment.

2. W.A. No. 1947 of 2019 is filed by the University of Calicut and the Vice Chancellor against the interim order dated 30.08.2019 passed by the learned single Judge in W.P.(C) No. 23387 of 2019, whereby the following directions were issued:

"5. As it is seen that the University has not passed orders on the basis of Ext. P9 judgment and that the last date for effecting admissions is 31.08.2019, I am of the view that petitioner deserves interim order, in view of the dictum laid down in the judgment in Nirmala Education Trust's case (supra) and in State of Kerala v. MGM College of Arts and Science Tvm and others: 2017(3) KHC 965.

Therefore, there shall be a direction to the University to grant provisional

affiliation to the petitioner college for starting M. Com (Finance) and permit the petitioner to participate in the common admission process and also to permit the petitioner to effect admissions, provisionally and subject to further orders.”

3. In fact, when the writ appeal came up for admission before the Division Bench on 4th September, 2019, the impugned order was stayed. Apparently, by virtue of the interim order granted by the learned single Judge, the writ petitioner college has admitted 11 students to the First Year M. Com (Finance) course, which was said to be on or before 31.08.2019, being the last date for effecting admission. Whatever that be, later, the University notified the first Semester Regular Examinations for the M.A/M.Sc/M. Com Regular Examinations, as per notification dated 04.11.2019. Thereupon, on the basis of the directions sought for by the college and taking into account various factual and legal circumstances, this Court, by order dated 18.11.2019, directed the University of Calicut to open the portal of the University and include the name of the writ petitioner college so as to enable 11 students undergoing the First Semester M. Com course for online registration for Regular Examinations scheduled in November, 2019. The said order reads thus:

20. University of Calicut, represented by its Registrar is directed to open the portal of the University, by including the name of the college, Nirmala College of AHe and Science, Chalakudy run by the Nirmala Educational Trust, Chalakudy so as to enable the 11 students undergoing the 1st semester M. Com course, for online registration for Regular Examinations, November, 2019. The said direction to permit online registration is subject to the outcome of the writ petition/writ appeal. It is made clear that the students, who are permitted to register through online method pending disposal of the instant writ petition/writ appeal, should not seek for any equity, if later on the Trust does not succeed in their attempt to get affiliation.

21. When we directed learned Standing Counsel for the Calicut University to file a counter affidavit within one week, learned Standing Counsel submitted that the University will file it only after one month.”

4. Later, when the matter came up before this Court on 31st March, 2021, it was submitted by the learned counsel for the writ petitioner that the University of Calicut has granted provisional affiliation to M. Com (Finance) programme to the writ petitioner college with an intake of 15 seats for the academic year 2019-2020 based on the judgment of this Court in W.P.(C) No. 20763 of 2019 dated 13.08.2019 as per the University Order bearing U. O. No. 8279/2020/Admin. dated 17.09.2020. Since the students sought for declaration of the results on the basis of the First Semester examination, we have passed a detailed order on that date, which reads thus:

“On 25.6.2020, we passed the following order:

“Pursuant to our last order dated 20.12.2019 in I.A.Nos.5, 6 & 7 of 2019 in W.P. (C)No.23387 of 2019, students of the first year have been registered with the

University of Calicut and the University permitted the students to appear for the 1st Semester M.Com (Finance) examinations scheduled from 31.12.2019. We granted permission for registration and appearance subject to the outcome of the writ petition.

2. Students who have completed the 1st Semester M.Com (Finance) examinations seek to register themselves for the 2nd Semester examinations. However, University of Calicut vide letter dated 15.1.2020 informed the Principal, Nirmala College of Arts and Science, the petitioner in the interim application, that a re-inspection has been conducted by the District Level Inspection Commission on the application for additional affiliation to M.Com Finance Programme, in compliance with the directions of the High Court of Kerala in judgment dated 13.8.2019 in W.P.(C)No.20763 of 2019 and interim order dated 30.8.2019 in W.P. (C)No.23387 of 2019 and submitted the inspection report. The University of Calicut by the said letter has also informed the college that meeting of the Syndicate held on 30.12.2019 has considered the re-inspection report submitted by the District Level Inspection Commission and the Syndicate resolved to wait for the final judgment of the High Court of Kerala.

3. But inviting the attention of this court to the notification dated 16.6.2020 issued by the Controller of Examinations, University of Calicut, Mr.S.Krishnamoorthy, learned counsel for the Nirmala Educational Trust submitted that the last date for remittance of fee for online registration for the 2nd Semester M.Com (Finance) examinations is 26.6.2020 and that unless and until this court grants permission to register the students who have completed the 1st Semester M.Com (Finance) examinations, they will not get a chance to participate in the 2nd Semester M.Com (Finance) examinations.

4. Ms.Boby U. Nair, learned counsel representing Mr.P.C.Sasidharan, learned standing counsel for the University of Calicut seeks time.

5. Fact that earlier this court granted permission for the students to take up the 1st Semester M.Com (Finance) examinations on 31.12.2019 of course subject to the final outcome of the writ petition is not disputed. Students have also taken up at the 1st Semester M.Com (Finance) examinations. Classes of the 2nd Semester have been completed, and according to the learned counsel for the college, students have also satisfied the required attendance prescribed by the University of Calicut, for the 2nd Semester.

Having regard to the above said submission and taking note of the contentions of the writ petitioner, we hereby direct the Calicut University to permit the students to remit the fee for online registration of the 2nd Semester M. Com (Finance) examinations. We make it clear that the above interim order is subject to the result of the writ petition."

2. It is stated that subsequent to the above, on inspection, affiliation has been granted by the University of Calicut vide proceedings dated 17.9.2020 , which is extracted hereunder:

"UNIVERSITY OF CALICUT

Abstract

CDC - Additional affiliation to M.Com. Finance programme with an intake of 15 seats at Nirmala College of Arts and science, Chalakkudy, Thrissur for the academic year 2019-20 based on the judgement of Hon'ble High Court of Kerata – granted - Orders issued.

CDC-A

U.O. No. 8279/2020/Admn Dated, Calicut University P.O, 17.09.2020

Read-1. Notification No.161918/CDC – A3/2017/Admn. Dated 29/09/2017.

2. UO.No. 8975/2018/Admn dated 27/07/2018

3. Letter No.182425/CDC - A3 2017/Admn dated 06/07/2019

4. Judgment dated 13/08/2019 of the Hon'ble High Court of Kerala in WPC) No 20763 of 2019

5. Interim order dated 30/08/2019 of the Hon'ble High Court of Kerala in WP (C) No.23387/2019.

6. Syndicate Resolution no. 2019.872 and 2019.922 dated 19/09/2019

7. Syndicate Resolution no. 2019.1065 dated 05/11/2019.

8. Syndicate Resolution no 2019.1358 dated 30/12/2019

9. Orders dated 16/09/2020 of the Vice Chancellor.

ORDER

The Principal, Nirmala College of Arts and Science, Chalakkudy, Thrissur applied for starting M.Com. Finance programme for academic years 2018-19 and 2019-20 in accordance with the provisions mentioned in the notification read as first above

2. The District Level Inspection Commission, appointed by the Syndicate, conducted inspection at the College and submitted report without recommending the proposed programme due to reasons recorded therein. The Syndicate held on 21.07.2018, considered the reports submitted by the DLICS concerned with regard to granting of new programmes for academic years 2018-19 and 2019-20 and resolved to accept the same vide U.O. read as 2nd above. Subsequently, the

application submitted by the College for starting M.Com. Finance programme was rejected and the matter has been intimated to the College.

3. A re inspection was conducted by the DLIC in Nirmala College of Arts and Science, Chalakkudy, Thrissur in the light of request from the College and recommended M.Com Finance programme for the academic year 2019-20. Subsequently, the recommendation was forwarded to Govt. for obtaining views of the Govt. as stipulated CUFS 1977, vide paper read as 3rd above, but the Govt. did not grant sanction to start M.Com. Finance programme for the academic year 2019-20.

4. In the event of non-granting of affiliation, College approached the Hon'ble High Court of Kerala by filing W.P(C) No 20763 of 2019 and the Hon'ble Court, vide paper read as 4th above directed University to consider and pass orders on the question of affiliation on the basis of recommendation already made, in accordance with law, within a period of two weeks, taking note of the judgments (i.e., University has to decide the question of granting affiliation independent of the views of the Govt.).

5. The College approached the Court again by filing WP(C) No. 23387/2019 and the court vide paper read as 5th above, directed the University to grant additional affiliation to M.Com. programme at Nirmala College of Arts and Science, Chalakkudy and permit the petitioner to participate in common admission process and also to permit the petitioner to effect admissions, provisionally and subject to further orders. The University challenged the interim order dated 30/08/2019 in WP(C) No 23387/2019 by filing Writ Appeal (C) No. 1947 of 2019.

6. The meeting of the Syndicate held on 19/09/2019 considered the question of implementation of the judgment dated 13/8/2019 and interim order dated 30/08/2019, vide paper read as 6th above, and deferred the matter for detailed study by Standing Committee on Affiliation and Legal Affairs. Subsequently, meeting of the Standing Committee on Affiliation and Legal Affairs held on 26/09/2019, recommended to conduct inspection to ascertain qualification of teachers, laboratory facilities and library facilities available in Nirmala College of Arts and Science, Chalakkudy. Meanwhile, the College filed a Contempt of Court Case No.1721 of 2019 against non compliance of the judgment dated 13.08.2019 in W.P(C) No 20763 of 2019.

7. The meeting of the Syndicate held on 05/11/2019 considered the recommendation of the Standing Committee on Affiliation and Legal Affairs, vide paper read as 7th above, and resolved to conduct inspection by DLIC. Subsequently, an inspection was conducted by DLIC at the college and submitted report by recommending M Com Finance programme for the academic year 2019-20. The meeting of the Syndicate held on 30/12/2019, vide paper read as 8th above, considered the re-inspection report submitted by the DLIC and resolved to wait for the final judgment of Hon'ble High Court of Kerala.

8. Considering the whole matter in detail, the Vice Chancellor, on 16/09/2020,

accorded sanction for granting provisional affiliation to M Com Finance programme with an intake of 15 seats at Nirmala College of Arts and Science, Chalakkudy, Thrissur, for the academic year 2019-20, subject to ratification by the Syndicate, and report the whole matter to Government. Further, the College is directed to remit required affiliation fee and submit an affidavit in the prescribed format.

9. Orders are issued accordingly.

Thabeetha George C

Deputy Registrar”

3. It is submitted by learned counsel for the petitioner that despite granting affiliation, University has sent a communication that results of the examination undertaken by the students would be published only after final verdict of this Court.

4. It is the submission of learned counsel for the petitioner that once affiliation is granted, students are entitled for publication of results as a matter of right. Pendency of writ petition ought not have been cited by the University of Kerala.

5. Learned counsel for the petitioner submitted that nothing survives in this writ petition for adjudication, for the reason that affiliation has been granted. However, learned counsel for the University of Calicut seeks time.

Post on 7.4.2021.”

5. When the matter came up before this Court on 7th November, 2019, this Court directed the registry to post W. P. © No. 23387 of 2019 along with the appeal for hearing on 18.11.2019 and that is how the said writ petition happened to be posted along with the writ appeal. Later, on 27th May, 2021, another Division Bench of this Court, taking into account the relief sought for by the college to declare the results, passed the following order, after taking into account the previous orders passed by this Court.

“3. We see that in the writ appeal there are various orders passed, the last of which permits the students of the College to participate in the examinations. The prayer now made is that the results, if not published, the students who were admitted by the College would be prejudiced insofar as they being not able to apply for revaluation or for improvement in the supplementary examination scheduled; for which the last date for remittance of fee is 31st of this month. We are of the opinion that the appeal and the writ petition have to be heard, especially since the admissions were made based on the order passed in the writ petition. These are all matters to be considered in the final hearing. But for the present, as an interim measure, we direct the University to intimate the marks obtained by the students to the students, which shall not be treated as a regular mark sheet. The University shall make such endorsement in the mark sheets issued to the subject students. The students would be entitled to apply for

reevaluation as also for the supplementary examinations, subject however to the final approval of their admission by this Court. The writ appeal shall be posted along with the Writ Petition."

6. Apparently, when W.P.(C) No. 27214 of 2021 filed by the students, seeking declaration of the results, issuance of degree certificate etc, was posted before the learned single Judge on 14th January, 2022, as per the request of the learned Standing Counsel appearing for the Calicut University, it was directed to be posted along with the pending matters after taking orders from the Honourable the Chief Justice, and accordingly it is also tagged on with the above appeal.

7. The learned counsel appearing for the writ petitioner submitted that the subject matter of the appeal has virtually become infructuous, in view of the fact that the University has passed orders granting affiliation to the writ petitioner College for the academic year 2019-2020, subject to the ratification by the Syndicate as per order dated 17.09.2020 and therefore, on reading together the interim order granted by the learned single Judge leading to the writ appeal and the order passed by the University, it is clear that the admissions made by the writ petitioner college is regularised, since the affiliation was granted for the academic year 2019-2020 onwards.

8. However, learned Standing Counsel for the University, Sri. P. C. Sasidharan, submitted that the admissions were made by the college without securing prior affiliation and therefore, the admissions made are illegal and the students are not entitled to get any equity on the basis of the admissions granted pursuant to the interim order passed by the learned single Judge, which is stayed by this Court in the appeal. He has further submitted that the impugned order of the learned single Judge was stayed by this Court in the writ appeal on 04.09.2019. However, the learned counsel appearing for the writ petitioner college submitted that since the last date of admission was on 31.08.2019, by virtue of the order granted by the learned single Judge, 11 students were admitted on or before that date.

9. The learned Standing Counsel for the University has invited our attention to Chapter 23 of the Calicut University First Statutes, 1977, which regulates the procedure for grant of affiliation and invited our attention to the Statutes 1 and 26 of the University First Statute, they read thus:

"1. Date of Application: Application for affiliation of a college or for affiliation in additional subjects shall be addressed to the Registrar and shall be forwarded to him not later than the 30th June in the case of Professional Colleges other than Law and Training Colleges and the 31st of October in the case of all other colleges preceding the academic year in which the courses are proposed to be started.

Provided that late applications received upto 31st December of the concerned year which are accompanied by a fine of Rs. 1,000 (Rupees one thousand only)

for additional Courses in existing colleges and of Rs. 2,000 (Rupees two thousand only) for new colleges shall also be considered.

Further provided that notwithstanding anything contained in Statute 1 an application for affiliation of colleges and courses received in the office within the time prescribed and found in order shall be valid for two academic years.

26. Matters to be complied with for seeking affiliation:

(1) Every College shall satisfy the Syndicate on the following aspects:

(i) that the college if started will supply a need of the locality, having regard to the type of education intended to be provided by the College, the facilities existing for the same type of education in the neighbourhood and the suitability of the locality.

ii. The suitability and adequacy of the buildings, libraries, laboratories and other equipments;

iii. The character, qualifications and adequacy of the teaching staff and the conditions of their service.

iv. the buildings in which the college is to be located are suitable and that provision will be made in conformity with the laws of the University for the residence in the college or in lodgings approved by the college, if students are not residing with their parent or guardian and for supervision and welfare of students;

(v). Such other matters as are essential for the maintenance of the tone and standard of the University education.

(2) In regard to the matters referred to in clause (1), the Syndicate shall be guided by the reports in Inspection Commission and by the rules which may be prescribed by it."

10. Heavily relying upon the said provisions, the learned Standing Counsel for the University contended that since the college has admitted the students without securing affiliation, they are not entitled to get any equity or relaxation from the provisions of the statute on the basis of the admission given and the participation of the students in the examination, even pursuant to the interim order passed by the learned single Judge, as well as this Court on various dates which are extracted above.

11. We have heard, Sri. P. C. Sasidharan, the learned Standing Counsel for the University, Sri. S Krishnamoorthy for the Nirmala Education Trust, the first respondent in the appeal and Smt. Sneha Rose for the writ petitioners in W.P.(C) No. 27214 of 2021 and perused the pleadings and material on record.

12. The reliefs sought for in W.P.(C) No. 27214 of 2021 is for a writ of mandamus directing the University of Calicut, the first respondent therein, to issue Provisional M.Com (Finance) Degree certificate to the petitioner therein; to issue

a writ of mandamus or other appropriate writ, order or direction declaring that the students are entitled to issue with degree certificate of M. Com (Finance) completed during the Academic years 2019-2020 and 2020-2021; and to issue a writ of mandamus or other appropriate writ, order or direction to issue degree certificate for M. Com (Finance) course to the petitioner therein in pursuance to the affiliation granted by the first respondent University as per order dated 17.09.2020, which is extracted in the order dated 31st March, 2021 in W.A. No. 1947 of 2019. Therefore, it can be seen that the decision taken by this Court in the writ petition leading to the appeal would decide the fate of the writ petitioners in W.P.(C) No. 27214 of 2021.

13. The facts stated above, including the order passed by the University granting affiliation, are all virtually admitted, except that the students admitted by the College on or before 31.08.2019 are disputed by the University. However, on a scrutiny of the order dated 17.09.2020 passed by the University granting affiliation to the writ petitioner college, it can be seen that the said order was passed based on the judgment rendered by this Court in W.P.(C) No. 20763 of 2019 dated 13.08.2019, which is produced as Ext. P9 in W.P.(C) No. 23387 of 2019, as per which this Court has directed the University and the Vice Chancellor, who are respondents 4 and 5, to pass orders on the request for affiliation on the basis of the recommendation already made in Ext. P8 communication of the University dated 06.07.2019 in regard to the affiliation for the academic year 2019-2020 of courses for various colleges.

14. It is evident from Ext. P8 that the writ petitioner, Nirmala College of Arts and Science, Kunnappilly, Chalakudy, numbered as serial No. 37, is recommended for the grant of affiliation to the M. Com (Finance) with an intake capacity of 15 students. Accordingly, in the said communication addressed by the University to the Principal Secretary to the Government, Higher Education Department, Government of Kerala, the views of the Government was sought for on the aspect of granting affiliation to the writ petitioner as well as the other colleges mentioned therein for the academic year 2019-2020.

15. Apparently, the University has not taken a final decision and since the cut off date fixed for the admission was about to expire, the writ petitioner college filed the present writ petition and secured the interim order leading to the appeal. These are all matters borne out from the records of the appeal filed by the University itself.

16. Now we come to the order dated 17.09.2020 passed by the University granting affiliation to the writ petitioner college. On a reading of the same, it is clear that the procedure contemplated under the University First Statute was followed by the University and accordingly, the Syndicate appointed District Level Inspection Commission, who conducted inspection at the college and submitted a report. The syndicate which held on 21.07.2018 considered the report submitted by the District Level Inspection Commission of the respective districts in regard to the granting of new programmes for academic years 2018-2019 and

2019-2020 and resolved to accept the same as per University Order bearing U.O. No. 8975/2018/Admn. dated 27.07.2018. It is also evident from the order that the application submitted by the writ petitioner college for starting M.Com (Finance) was rejected in the first instance and the matter has been intimated to the college. Anyhow, it is quite explicit from the order that a re-inspection was conducted by the District Level Inspection Commission in the writ petitioner college in the light of the request of the college and recommended M. Com (Finance) programme for the academic year 2019-2020 and subsequently, the recommendation was forwarded to the Government for obtaining the views of the Government as stipulated in the Calicut University First Statute, 1977, vide letter dated 06.07.2019, which is specifically referred to in the order granting affiliation to start M. Com (Finance) programme for the academic year 2019-2020.

17. It is also pointed out in the order that it was by virtue of the directions issued by this Court in W.P.(C) No. 20763 of 2019 that the University had to decide the question of granting affiliation independent of the views of the Government. Anyhow, after analysing the whole lot of facts and other legal situations, we find that it is clearly stated in the said order that considering the whole matter in detail, the Vice Chancellor on 16.09.2020 accorded sanction for granting provisional affiliation to the M. Com (Finance) programme with an intake of 15 seats to the Nirmala College of Arts and Science, Kunnappilly, Chalakudy, Thrissur, the writ petitioner, for the academic year 2019-2020, subject to the ratification by the Syndicate, and reported the whole matter to the Government.

18. Be that as it may, the University further went ahead and directed the College to remit the required affiliation fee and submit an affidavit in the prescribed format. In our considered opinion, the order passed by the University granting affiliation speaks for itself that the University granted the affiliation with retrospective effect with the intention of protecting the interest of the college and the students admitted to the course in question. In regard to the contention advanced by the writ petitioners that the students were admitted in the college on or before the last date of 31.08.2019 on the basis of the interim order passed by the writ court leading to the writ appeal filed by the University, and which aspect is disputed by the University, we are of the view that if the intention of the University was not to regularise the admissions of the students, there was no requirement for granting affiliation to M. Com (Finance) course for the academic year 2019-2020. This we say because, the affiliation was sought for by the writ petitioner college for the academic year 2019-2020 only for M. Com (Finance) and therefore, the order of the University granting affiliation can only be couched in that manner so as to protect the interest of the college as well as the students.

19. We are also informed that the University has granted affiliation to the college for M. Com (Finance) for the academic year 2020-2021 also.

20. Having assimilated the factual and legal circumstances, we are of the definite opinion that the University has granted affiliation to the M. Com (Finance) course to the writ petitioner college as per the order dated 17.09.2020 with

retrospective effect from the academic year 2019-2020. Which thus means, the students already admitted are entitled to participate in the class and the examinations as of right and in accordance with law.

21. Having considered so, we are of the clear opinion that in view of the subsequent developments, the writ appeal filed by the University has virtually become inconsequential, redundant and infructuous and the same is, accordingly, dismissed. Consequently, W.P.(C) No. 23387 of 2019 is disposed of, by making the interim orders extracted above absolute, and recording that the University of Calicut has granted affiliation to the writ petitioner college for the academic year 2019-2020 and thereby, the college and the students were entitled to attend and participate in the classes and examinations respectively.

22. Accordingly, the reliefs sought for in W.P.(C) No. 27214 of 2021 have to be granted. Therefore, the said writ petition is also allowed and the University is directed to declare the results of the students of the writ petitioner college in M. Com (Finance) Programme for the academic years 2019-2020 and 2020-2021; and issue the mark sheets/certificates/degree certificates etc. to the students at the earliest and at any rate within one month from the date of receipt of a copy of this judgment.

23. To sum up, 1) W.A. No. 1947 of 2019 is dismissed; 2) W.P. (C) No. 23387 of 2019 is disposed of recording that the M. Com (Finance) course granted to the writ petitioner college is affiliated with the University for the academic year 2019-2020 and thereby, the college and the students are entitled to get their results declared and to receive all certificates from the University in accordance with law; and 3) W.P.(C) No 27214 of 2021 filed by the students is allowed.