

(1999) 09 KL CK 0055
In the High Court Of Kerala
Case No : W.A. No. 1928/99

University of Kerala

APPELLANT

Vs

Sree Sankara Vidyapeedom College

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Kerala University Act, 1974 — Section 2

Citation : (1999) 2 KLJ 793

Hon'ble Judges : S. Sankarasubban, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : S. Gopakumaran Nair SC for University of Kerala, for the Appellant; V.N. Achutha Kurup, B.S. Swathikumar, T.R. Harikumar, P. Sivaraj, N. Harilal, Kurian George Kannanthanam, K.R.B. Kaimal, A.K. Suresh and Thomas Abraham, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, Ag. C.J.

1. The University of Kerala and the Registrar of the said University are the appellants in all these Appeals. They are the respondents in the writ petitions filed by the respondents herein. The respondents in all these Appeals are the managements of Unaided Colleges affiliated to the Kerala University. We have heard Shri S. Gopakumaran Nair for the appellants and M/s. Kurian George Kannanthanam, V.K. Beeran, Thomas Abraham and V.N. Achutha Kurup for the respondents.

2. The writ petitions were filed by the managements of the Unaided Colleges to quash the decision of the Syndicate of the University dated 31-5-1999 as evidenced by the Exhibits filed in each writ petition, and also for a mandamus to direct the University to grant affiliation to the courses applied for and recommended by the Sub Committee with effect from the academic year 1999 - 2000 onwards and to grant such other reliefs. According to the respondents/petitioners in the original petition, they submitted applications for permission to

start new courses, and that the applications were given in the prescribed proforma issued by the University itself. It is their case that all infrastructural facilities for opening the new courses were also provided for in their Unaided Colleges, and the managements have the required lands and buildings, etc. put up for the purpose. According to the respondents, the applications were given in accordance with the Rules and the fees prescribed for the same as prescribed by statute 5 were also paid. Under statute 7, the Syndicate can call for additional information which it may deem necessary. If the Syndicate decides to proceed with the application, it shall direct a local enquiry by an expert committee. As per statute 9, on the receipt of the report of enquiry, the Syndicate shall decide the question of the grant of affiliation. As per the said statute, the Syndicate may ascertain the views of the Government as to whether the affiliation be granted or refused either in whole or in part, and in case the affiliation is granted, the fact shall be reported to the Senate at its next meeting. This is because the Government pays the salary to teachers in Aided Colleges. It is the case of the respondents/petitioners that when the Statutes framed as early as in 1977, the concept of unaided colleges were not there and therefore at that time there was no specific provision for that. But this provision has been dispensed with as far as self-financing colleges are concerned, obviously because for such colleges, Government does not pay any salary, nor do they give any grant. As per Government Order dated 27-9-1995, the Government had said that the University can fix the courses in unaided colleges and the batch strength in each course. The said Government Order is produced as Ext.P4. It is seen from Ext.P4 order and as per G.O. (Rt) No. 774/ 95/H.Edn. dated 15-6-1905, a Committee was constituted to recommend to Government the scales of pay of the staff of unaided colleges and the admission and selection of students and fees payable by students in such colleges and based on the recommendation of the committee in this regard, the Government issued G.O.(Ms) 153/95/H.Edn. dated 27-9-1995. In the instant case, since the Syndicate has decided to proceed with the application for starting new courses, it constituted a Sub Committee to conduct a local enquiry. As per the respective communications to each unaided colleges, they were asked to remit a sum of Rs. 4,500/- for the Commission to inspect the colleges and accordingly the said fee was forwarded to the University as per letter dated 28-4-1999 and on other dates mentioned in the other Original Petitions. The Committee visited the colleges on various dates. The Committee submitted reports in favour of the colleges and recommended sanction of the new courses in so far as the respondents/petitioners' colleges are concerned. The reports of the Inspection Committee has also been placed before us at the time of hearing, which have also been marked as Exhibits in all the writ petitions. It is seen from the records that all these records were placed before the Syndicate for consideration and the same were considered by the Syndicate on 31-5-1999. Item No. 2 of the Minutes of the Special Syndicate held on 31-5-1999 relates to affiliation of new courses for 1999-2000. It is seen from the Minutes that the Syndicate considered the proposal to start new courses in the various affiliated colleges on the basis of the Inspection Commission's reports

along with the recommendations of the standing committee on affiliation of colleges and Courses of studies and resolved to recommend the Government to start new Courses in colleges during the academic year 1999-2000 as per list appended. The resolution in regard to the applications made by the unaided colleges under the Kerala University and the resolutions passed by the University were also minuted in the Minutes of the Special Syndicate. The resolution in regard to the application for affiliation of new courses applied for by the unaided colleges reads as follows:

Further resolved that no new courses be affiliated to any of the unaided colleges under this University during the year 1999-2000. Shri Saifudeen Kunju and Shri V.S. Hareendranath, Members, Syndicate dissented to the above decision. They also wanted to include B.A. Arabic also as a new course in Govt. College, Chavara. Shri V.S. Hareendranath also dissented and requested that affiliation for M.Ed. be given to Peet Memorial Training College, Mavelikkara.

It is against this resolution the respondents/petitioners in each of the writ petitions filed the respective writ petitions for the reliefs referred to supra. According to the respondents/petitioners, the resolution of the University rejecting all the applications without assigning any reason is arbitrary and illegal. According to them, granting of affiliation and rejecting the same, are not matters to be done at the sweet whims and fancies of the Syndicate, and it is also not a matter of child's play to collect fee, appoint enquiry commission, collect reports and then say that no new affiliations to start new courses to the colleges affiliated to the University be given. It is contended that every application has to be considered independently on its own merits and decision arrived at independently depending on the merits of each case. It is their case that the respondents/petitioners have established colleges without any profit motive and only to cater to the educational needs of the society at large and excellence in education is their sole moto and the management of each unaided colleges is heavily subsidizing the expenses of their colleges out of their own and from other sources.

3. A counter affidavit was filed by the University in all the writ petitions. It is stated that the application for affiliation of new courses submitted by the respective affiliated unaided colleges along with other applications were considered by the Syndicate after observing due procedures envisaged by the Act/Statutes and the report of the inspection commission with regard to all colleges that had applied for new courses during 1999-2000 were considered by the Syndicate, and the Syndicate has decided that no new courses be affiliated to any of the unaided colleges under the Kerala University during the year in question. It is also stated that the Syndicate of the University, as a policy decision, have decided that no new courses be granted to any of the unaided colleges. It is submitted by the learned counsel for the University that as per Chap. XXIV, Statute 9 of the Kerala University First Statute, 1977, the Syndicate shall decide after considering the report of the local enquiry and after

ascertaining the views of the Government whether affiliation be granted or refused either in whole or in part and hence the action of the Syndicate in taking a policy decision that no new courses be sanctioned in the unaided colleges, after considering all the aspects in the matter and in the light of the larger interests of the society, is justified. Mr.S. Gopakumaran Nair, learned counsel for the University would also submit that the University is at liberty to take a decision with respect to courses and the strength for each course in unaided colleges and there is no point in the respondents/petitioners challenging the University's decision of not sanctioning new courses in unaided colleges. It is also submitted that the Syndicate has the power to decide after considering the report of local enquiry whether affiliation be granted or refused. According to him, the University has observed all provisions as envisaged by the Acts and Statutes and by declining the starting of new courses in unaided colleges, the University has not in any way violated the provisions in the Act/Statutes; on the other hand, it is only a policy decision of the Syndicate. He also denied the submission of the counsel for the respondents that the decision of the Syndicate is arbitrary. In the light of the facts and circumstances, the counsel has submitted that the respondents/petitioners are not entitled to any relief as prayed for.

4. K.S. Radhakrishnan, J. on a consideration of the provisions of the Kerala University First Statutes, 1977 and on a careful consideration of the rival submissions made by the respective parties, allowed all the writ petitions filed by the respondents herein and directed the University to consider the applications of the respondents on merits and take a decision. The learned Judge has also held that a mere statement in the counter affidavit that it is a policy decision of the Syndicate, cannot be accepted, especially in a case where applications preferred by the respondents/petitioners were entertained and a committee was deputed for inspection, which later submitted reports favorable to the respondents. The learned Judge also relied on the decision in Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary and Others, and held that the decision of the University in not allowing to start new courses is bad in law and against the conduct of the University in entertaining the applications filed by the colleges and constituting a committee for inspection. Mr. Gopakumaran Nair reiterated the submission raised by the University in its counter affidavit before the learned Judge. The learned counsel has strenuously contended that the University is always at liberty to take policy decision as to the grant of new courses in any of the aided or unaided colleges and courts have no power to interfere with such policy decision of the Syndicate. It is also his contention that when it is within the domain of the University to take a policy decision, courts are not expected to interfere with such policy decision of the Syndicate and interfere with the decision taken on policy matters regarding academic courses. We cannot countenance the said submission made by the learned counsel for the appellant. In the instant case, the policy decision was introduced for the first time only in the counter affidavit. The University is not in a position to explain to this court in regard to the absence of such a reason in the resolution passed by the University

which is under challenge in the writ petitions. The resolution only says that no new courses be affiliated to any of the unaided colleges under the University during the year 1999-2000. Except this, no other reason for denying permission sought for, has been mentioned in the said resolution. As pointed out earlier, there is also no reference to the policy decision in the said resolution. The learned counsel for the University is also not in a position to place any decision taken by the University in regard to the policy decision now introduced in the counter affidavit. This Bench in a judgment in OP No. 12250/99 dated 15-9-1999 while dealing with the case of a policy decision, held as follows:

Normally this court will not interfere in the matter where the State set up the defence of policy. This is because the executive is the best person to decide its policy. But the executive cannot arbitrarily deprive a person of his right or entitlement on the mere ground of policy.

Though it is urged that the rejection by the Syndicate is on the basis of a policy decision, no such policy is placed before us at the time of hearing. There is also no reference to such policy decision in the resolution passed by the University. Under such circumstances, we have no hesitation in holding that the rejection of the request to start new courses applied for by the unaided affiliated colleges of the Kerala University is arbitrary, illegal and unjust. It is seen from the affidavit filed in support of the writ petitions and also the records that the University on receipt of the necessary applications from the colleges has followed the procedures provided in Statutes 6, 7 and 8 of Chap. XXIV. The colleges have also remitted the required fee and also complied with all the formalities. The inspection committee set up by the University have also in all these cases submitted a favourable report in regard to the infrastructural facilities available in each of the colleges and recommended affiliation to the new courses applied for. It is stated that the members of the inspection team are also happened to be members of the Syndicate which rejected the application without assigning any reasons. The resolution passed by the University cannot also be countenanced for yet another reason. In the same item No. 2 in the agenda, the University has decided to grant affiliation to the new courses in the various affiliated colleges on the basis of the inspection commission's report along with the recommendations of the standing committee on affiliation of colleges and courses of studies and resolved to recommend to Government to start new courses in colleges during the academic year in question. This resolution is in regard to the Government and Aided Colleges. Under the very next resolution, the very same Syndicate has rejected the application for affiliation to start new courses by the unaided colleges without assigning any reason whatsoever. For the grant of affiliation to the new courses applied for by the Government colleges and aided colleges, the Syndicate has taken into account the report of the Inspection Commission and the recommendations of the Standing Committee on affiliation of colleges, whereas the Syndicate has failed to refer to the report submitted by the Inspection Committee and its sub committee while considering the applications for affiliation made by the unaided colleges. We are of the view that the

procedure followed by the University in granting affiliation to the Government and Aided Colleges and denying such permission to the Unaided Colleges is not only arbitrary, be also discriminatory. We have therefore no hesitation in quashing the resolution passed by the Syndicate in so far as it relates to the applications made by the respondents unaided colleges.

5. In our opinion the power to reject an application is specified in statute 7 which also enumerates the condition on which an application can be rejected or declined. An application can be rejected only if it is satisfied (1) that the arrangements made are likely to be made before the commencement of the next academic year are not sufficient, (2) if the college has failed to observe the conditions laid down in respect of any previous affiliation. The syndicate has no case that any of the said conditions exist in any of the writ petitions. Without the existence of any such condition, the syndicate cannot reject the respondents' applications. This apart, the sanctioning of the Subjects to the affiliated unaided colleges does not cast any financial burden either to the University or to the State. There can only be a reasonable regulation and not restrictions. A decision not to grant the subjects without assigning any reason is totally restrictive and violative of the fundamental rights guaranteed under the Constitution.

6. Mr. S. Gopakumaran Nair, counsel for the appellants submitted that the Syndicate will have no power or authority to deal with the affairs of the unaided colleges after the grant of affiliation. The said contention has no merits. Statute 7 of Chap. XXIV of the Kerala University First Statutes deals with procedure on receipt of applications. Statute 9 deals with grant of affiliation and statute 12 deals with conditions affiliation. Under statute 9, the Syndicate after considering the report of the local enquiry, if any, and after making any further enquiry and also after ascertaining the views of the Government, shall decide whether the affiliation be granted or refused, either in whole or in part. In case the affiliation is granted, the facts shall be reported to the Senate at its next meeting.

7. A provision has been introduced in the University Laws (Amendment) Act, 1995 (Act 9 of 1995) which is an Act further to amend the Kerala University Act, 1974, and the Mahatma Gandhi University Act, 1985. In the Kerala University Act, 1974 (17 of 1974), in Sec. 2 after clause 28, the following clause is inserted, namely 28A: (28A): "unaided college" means a private college which is not entitled to any financial assistance from the Government or the University.

After Chap. VIII, Chap. VIIIA has been inserted which is a special provision in respect of unaided colleges. The special provision (69) reads as follows:

69. Special provisions in respect of un-aided colleges - Notwithstanding anything contained in this Act or the Statutes, Ordinances, Regulations, Rules, bye-laws or orders,--

(a) the scales of pay and other conditions of service of the teaching and non-teaching staff of un-aided colleges; and

(b) the admission and selection of, and the fees payable by students in such colleges,

shall be determined, from time to time, by the Government on the basis of the recommendations of a Committee constituted by the Government consisting of--

(i) one of the Vice Chancellors of the Universities in the State, nominated by the Government;

(ii) the Secretary to Government, Higher Education Department (who shall be the convenor of the Committee); and

(iii) the Director of Collegiate Education.

A reading of the above special provision would show that the Vice Chancellor of the University has also a say in the matter in regard to the scales of pay and other conditions of service of the teaching and non-teaching staff of unaided colleges, the admission and selection and the fees payable by the students in such colleges, and that the scales of pay etc., the admission and selection etc. shall be determined from time to time by the Government on the basis of the recommendations of a committee constituted by the Government consisting of the Vice Chancellors of the Universities in the State nominated by the Government and the Secretary to the Government, Higher Education Department and the Director of Collegiate Education. In view of the Amendment Act 9 of 1995, giving powers to the Universities in regard to the scales of pay and other conditions of service, etc. etc. as enumerated above, it is difficult for us to accept the contention of the learned counsel for the appellants that the University has no power to have any control over the functioning of the colleges after the affiliation is granted to them.

It was argued by the learned counsel for the appellant that the learned Judge has straight away directed the University to grant affiliation to the respondents' colleges. We have read the judgment rendered by the learned single Judge which is under challenge in all these appeals. The learned Judge has expressed his view on the facts and circumstances of these cases and has observed that in the light of the facts and circumstances, the University is bound to consider the applications of the petitioners on merits and take a decision. There is nothing wrong or illegal in issuing such a direction in the facts and circumstances of the case. The direction issued by the learned single Judge to consider the petitioners' applications and to take a decision on merits, is in accordance with law and therefore no interference is called for. Even in the counter affidavit, the University has stated that the syndicate has the power to decide after considering the report of the local enquiry whether affiliation be granted or refused. It is for the University now to consider the entire facts and circumstances of the case and in the light of the report now submitted by the Inspection Committee and take a decision on granting of affiliation. Statute 12 also deals with granting of conditional affiliation. The affiliation granted may be provisional and if provisional affiliation is granted for a period, the length of the

period and the conditions to be fulfilled by the college before the expiry of the period, shall be specified in the order of the Syndicate granting affiliation. If the conditions are not fulfilled by the end of the period fixed, the affiliations shall cease automatically. If the conditions are fulfilled, the Syndicate has the power to confirm the affiliation at the end of the period and the confirmation of the appellant shall be reported to the Senate. A close scrutiny of the above statutes of Chap. XXIV would clearly indicate the powers of the University in granting affiliation either conditional or provisional, and also deal with the other powers of the University in unaided colleges in regard to the fulfilment of the conditions regarding affiliation. In these cases, as already stated, no policy decision has been taken or placed before us. The question whether the Syndicate, on the basis of policy, can reject the application for affiliation, has not been considered by us. If such a course is taken, this question will be considered in the appropriate cases. The Syndicate shall take a decision in regard to the applications made by the unaided colleges for affiliation of new courses within three weeks from today in the light of the observations made in this judgment. All the Writ Appeals fail and are dismissed. However, we order no costs.