

(2015) 09 KL CK 0138

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 16435 (D), 16565, 16732 and 17374 of 2015

Vismayas Max Animation Academy

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Mahatma Gandhi University Act, 1985 — Section 10(15), 23(xxxiii), 7(4)

University Grants Commission Act, 1956 — Section 12(b), 2(f)

Citation : (2015) 5 KHC 33

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : S. Chandrasekharan Nair and Raju George, for the Appellant; P. Jacob Varghese, Senior Advocate and Varughese M. Easo, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Under challenge in these writ petitions are the communications issued by the Secretary to the Chancellor of the respondent university as well as the Registrar of the respondent university, by which the petitioners have been directed to close down their Off Campus Centres.

2. As per letter dated 08.05.2015, the Chancellor of the respondent university directed the Vice Chancellor of the respondent university to comply with the judgment in WP. (C) Nos. 27490/2014, 35231/2014 & 1722/2015 as well as the judgment of the Division Bench of this Court in WA Nos. 604/2015, 615/2015 & 617/2015 relating to the functioning of Off Campus Centres of the respondent university outside its territorial jurisdiction. In the light of the said direction, the Vice Chancellor, exercising powers under Chapter III, 10(15) of the Mahatma Gandhi University Act, 1985, accorded sanction to close down all Off Campus Centres of the respondent university, functioning outside the territorial jurisdiction of the respondent university as defined under Chapter II, 4(1) of the

Mahatma Gandhi University Act, 1985 and the provisions contained in Chapter II, 4(2) of the Mahatma Gandhi University Act, 1985.

3. In these cases, the petitioners allege that the judgments of this Court in the aforesaid cases do not apply to the case of the petitioners as those judgments deal only with Offshore Campus Centres situated overseas and not campus centres situated within the State of Kerala. According to them, the directions contained in the said judgment are to close down such centres, which are situated abroad; and the direction issued by the respondent university is not in compliance with the judgments of this Court. Therefore, according to the petitioners, the impugned orders were passed in an arbitrary manner in gross violation of the principles of natural justice.

4. The petitioner in WP. (C) No. 16435/2015 alleges that it is the first DTS studio, which is situated in Kinfra Film and Video Park, Thiruvananthapuram, working in the field of software development entrusted with the authority to give training on free animation software developed by the Amsterdam Blender Foundation. The petitioners allege that an agreement was executed with the respondent university, which entitles the petitioner to conduct off campus course for a period of five years from the date of signing of the agreement; and they are conducting three year course of Animation and Graphic Design. The petitioner alleges that the first batch of the students was admitted in the year, 2013-14; and the course for the second batch was also begun. According to the petitioner, it is its duty to complete the course it had started on the basis of the Memorandum of Understanding (MOU) with the respondent university. According to the petitioner, the respondent university is legally bound to fulfill its promise as per the MOU signed by it.

5. The 1st petitioner in WP. (C) No. 16732/2015 is an association of coordinators of Off Campus Centres of the respondent university, functioning within the State of Kerala registered under the Travancore - Cochin Literary, Scientific & Charitable Societies Registration Act, 1955. The 2nd petitioner is the Centre Coordinator of Nirmala Off Campus Center, Chalakudy, which is conducting courses in various streams under the Distance Learning Programme through Off Campus Academic Centres, started by the respondent university. The petitioners point out that this Court had no occasion to consider the case of Off Campus Centres, situated within the State of Kerala, in the writ petitions and writ appeals referred to above.

6. The petitioner in WP. (C) No. 17374/2015 is running an Off Campus Centre of the School of Distance Education of the respondent university at Alappuzha and is conducting selected courses of the university for a period of five years. The Centre was started on 23.05.2013; and the institution is mainly imparting courses in management for about 150 students. The said petitioner is also aggrieved by the the impugned order, directing sudden closure of the centre.

7. Subsequent to the filing of the writ petitions, the All Kerala Private College

Teachers" Association got themselves impleaded as additional respondent in all the writ petitions. In the counter affidavit filed by them, they justified the stand taken by the respondent university in closing the Off Campus Centres within the territory of the State.

8. The respondent university has also filed a detailed counter affidavit justifying their stand.

9. Heard the learning counsel for the petitioners, the learning Standing Counsel for the respondent university, the learned Government Pleader, the learned Standing Counsel for the UGC and the learned counsel for the additional respondent.

10. The learned counsel for the petitioners mainly pointed out that the judgment relied on by the Chancellor, which resulted in the impugned order, do not pertain to Off Campus Centres situated within the State. Mr. E.K. Nandakumar, the learned senior counsel for one of the petitioners, pointed out that the question considered by the learned Single Judge in WP. (C) No. 27490/2014 & connected cases, was as to whether a university constituted by a State Legislature has the authority to commence and continue Off Campus Centres beyond the shores of the country. It was further pointed out that the petitioners in those writ petitions were Centre Coordinators of the Offshore Campus Centres of the respondent university situated in middle-east countries and the students of such Off Campus Centres situated overseas. According to Mr. Nandakumar, the judgment does not deal with Off Campus Centres situated within the territory of the State. The same view was shared by Mr. Roy Chacko, Mr. Romy Chacko and Mr. S. Chandrasekharan Nair, the learned counsel appearing for other petitioners. It was argued by them that the Government acted in an undue haste by issuing the impugned order immediately on receipt of the communication without waiting for a single day. It was also pointed out that the impugned order, directing to close down Off Campus Centres, suffers from total non application of mind and it is clear from the fact that it was passed on 08.05.2015 itself. It is also opined by the learned counsel for the petitioners that the UGC has not directed closure of Off Campus situated within the State. The learned counsel for the petitioners also pointed out that the petitioners were not parties to the writ petitions filed earlier and the impugned orders were passed without affording the petitioners an opportunity of being heard.

11. In answer to the said argument, Mr. Varghese Jacob, the learned senior counsel for the respondent university, submitted the following arguments relying on Exts. R1(a) to R1(e);

The respondent university has issued Regulations vide UO No. 2351/A1/2/2000/ Acad, dated 21.03.2002 for the conduct of courses at off campus study centres under the School of Distance Education. Clause 1.4 of the Regulations mandates that the University shall run these programmes through OCAC as per the guidelines that the UGC and the State Government lay down in this regard from

time to time. Ext. R1(a) is the relevant page of the said regulations. It is stated in para 01 of the Off Campus Centres - Operations Manual that "the functions of the Off Campus Centres are governed as per the terms and conditions of the MOU signed between the university and the centres subject to the provisions of the MG University Act, Statutes and Regulations in force besides the formalities and directions of the Government of Kerala and its subsequent modifications, if any. Ext. R1(b) is the relevant pages of the Off Campus Centres-Operations Manual.

It is further argued that the MOU signed by the officials of the university is for the purpose of the smooth conduct of the academic activities of the Off Campus Centres. The MOU is subject to the laws laid down in the Act, Statutes, Ordinances and Regulations.

It is pointed out that in the judgment in WA No. 605/2015 & connected cases, the Division Bench of this Court has held that the judgment of the learned Single Judge dismissing the writ petitions was well justified. It was also observed that as far as the right of the petitioners/students for the private admission/registration within the territorial limits of the university is concerned, it is always open for them to approach the university for appropriate orders. As it was found that there are no grounds to interfere with the judgment of the learned Single Judge in those writ appeals. They were dismissed.

The Chancellor, vide Lr. No. GS3.278/14 dated 08.05.2015, directed the Vice Chancellor to comply with the aforesaid judgments of this Court urgently and the Vice Chancellor had acted accordingly; it is argued. The Vice Chancellor, exercising powers under Section 10(15) of the Act, issued order dated 08.05.2015 to comply with the orders of the Chancellor, judgments of this Court, UGC guidelines and the Government Orders in this regard. A special meeting of the Syndicate was convened on 23.05.2015 and the Vice Chancellor reported the matter before the Syndicate. The Syndicate resolved to authorize the Vice Chancellor for taking necessary remedial measures. The said decision is produced as Ext. R1(c).

According to the learned senior counsel for the respondent university, Ext. P. 4 is a communication from the Chancellor with full authority and with intend to comply with the judgments of this Court and Ext. P. 5 was issued under the orders of the Vice Chancellor exercising powers vested with him under Section 10(15) of the MG University Act, 1985.

It is further pointed out that the Vice Chancellor has issued order in the light of Ext. R1(c) entrusting the Registrar to take remedial measures for the continuation of studies of students of the closed Off Campus Centres and for the smooth transition of teaching/learning/academic/administration and examination process in the context of the closing down of the Off Campus Centres, vide Ext. R1(d), UO No. 3169/A1/1/2015/Admn. dated 03.06.2015. Proposals have been forwarded to the SBT for arranging the receipts of fees from students by online

payment and to the Business Post Division of India Posts for the bulk despatch of the study materials directly to the students enrolled with the university. Further projects for imparting practical training for programmes, wherever necessary, are also initiated. However, the students who pursue their second and third year of studies shall be facilitated with learning centres/laboratories at a possible nearest place to the Off Campus Centres, where they are presently admitted. It is also submitted that all the grounds raised by the petitioners are unsustainable and the stand of the respondent university was confirmed and upheld by the apex court by dismissing the SLP No. 12733/2015 as per order dated 24.04.2015, which is produced as Ext. R1(e).

12. The learned Standing Counsel for the respondent university also submitted that the Chancellor had issued a show cause notice under Section 7(4) of the Act vide letter dated 21.08.2013 in which among other things, it has been pointed out that there is violation of Section 23(xxxiii) of the Act. The former Vice Chancellor of the university made a reply dated 05.09.2013 to that show cause notice. When the counter affidavit was being filed, proceedings were pending before the Chancellor as hearing was scheduled to be held on 30.05.2015. It was submitted by the learned Standing Counsel for the respondent university that the Chancellor had passed orders on 17.06.2015 quashing the decision of the Syndicate dated 17.01.2013 sanctioning 77 Off Campus Centres; and the consequential proceedings of the university were also set aside. Challenging the same, another batch of writ petitions have been filed and those writ petitions are also disposed of today by a separate judgment.

13. As per Chapter 42, Statute 2 of the MG University Statutes, 1997, the School of Distance Education was established as Statutory Department and as per Chapter VI - Powers of Syndicate - Statute 2. XVII, the Syndicate have power to cooperate with other universities or any authorities or association for the purpose of carrying out the objects of the university and it is subject to the provisions of the Act. The respondent university maintains the stand that the university was running Off Campus Centres from 2002 onwards and the UGC and the Government of Kerala has not raised any objection on the functioning of the Off Campus Centres under the control of the respondent university.

14. The learned Government Pleader submitted that the MG University Act does not provide powers to the Syndicate to establish Off Campus Centres on its own, whether within the territorial jurisdiction or beyond the jurisdiction. The university is bound to act in accordance with the directions of the Government in the case of recognition of Off Campus Centres run by the respondent university or any other body. Here, preamble 1.4 of the Off Campus Academic Centre Regulations of School of Distant Education of MG University assumes relevance. It states that the university shall run these programmes through Off Campus Academic Centres as per the guidelines that the UGC and the State Government lay down in this regard from time to time. It is crucial to note that the Distance Education Council (DEC) of IGNOU operates under the UGC according to the new

guidelines for promotion and coordination of its programmes. As per the guidelines now stand, institutions would offer distance courses, which would be provided only through State, Central or deemed Universities. Further, no university, whether Central, State, Private or deemed can offer programmes through franchising arrangements with private coaching institutions even for the purpose of conducting courses through distance mode. Therefore, the Off Campus Centres were franchised to private individuals/Trusts to conduct university courses without observing the norms prescribed by the UGC/Distance Education Bureau (DEB).

15. It was during February, 2005, that the apex court has rendered the judgment in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, AIR 2005 SC 2026 : (2005) 2 ESC 129 : (2005) 2 JT 165 : (2005) 5 SCC 420 : (2005) 3 SCR 23 : (2005) AIRSCW 1168 : (2005) 2 Supreme 322 , interdicting the setting up of study centres outside the territorial jurisdiction of the concerned university. Later, in 2007, the apex court in Kurmanchal Inst. of Degree and Diploma and Others Vs. Chancellor, M.J.P. Rohilkhand Univ. and Others, AIR 2007 SC 2253 : (2007) 8 JT 24 : (2007) 8 SCALE 178 : (2007) 6 SCC 35 : (2007) 7 SCR 191 : (2007) AIRSCW 3931 : (2007) 5 Supreme 376 , declared that operation of study centres can be conducted by the university only within its territorial area. In the year 2009, the UGC addressed letter to all the State Governments to amend the State Acts in tune with the judgment in Prof. Yashpal's case (cited supra). A copy of the said communication is produced as Ext. R5(g) in WP. (C) No. 16732/2015. Ext. P5(h) is the notification issued by the Distance Education Council of the Indira Gandhi National Open University regarding policy on territorial jurisdiction.

16. It can be seen from para 10 of the common judgment in WP. (C) No. 27490/2014 & connected cases [Ext. P12 in WP. (C) No. 16565/2015] that the Ministry of Human Resources Development, Government of India repealed Statute 28 of the IGNOU Act by an order dated 16.05.2013, by which the DEC is dissolved and the role and responsibility of DEC entrusted with the UGC and the AICTE. It is crucial to note that it was ignoring the aforesaid aspects that the order of the respondent university sanctioning 77 new Off Campus Centres during 2013-2014 under the School of Distance Education has been issued. A true copy of the same is produced by the additional 5th respondent as Ext. R5(i) in WP. (C) No. 16732/2015. Ext. R5(j) is the public notice issued by the UGC regarding the territorial jurisdiction of the universities. The salient features of Ext. R5(j) are as follows;

"b) A University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location.

d) no University, whether Central, State, Private or Deemed, can offer its programmes through franchising agreement with private coaching institutions even for the purpose of conducting courses through distance mode.

C. Distance Education programmes of the Central Universities and State Government Universities - The Central/State Universities can conduct courses through distance mode in accordance with the provisions of their respective Act and after the approval of the UGC."

It is in this background, the Chancellor has issued show cause notice under Section 7(4) of the MGU Act requiring the Vice Chancellor to show cause why Ext. R5(g) proceedings of the University shall not be annulled as the same is not in consonance with the Act and the Statutes, Rules, Ordinances, Regulations etc. framed thereunder.

17. As rightly pointed out by Mr. S. Krishnamoorthy, the learned Standing Counsel for the UGC, the UGC has powers to give directions to the University to maintain the minimum standards of higher education under Section 2(f) and 12(b) of the UGC Act, which is a central legislation. The respondent university need not hesitate to adopt the relevant regulations and directions of the UGC to standardize the Distance Education System under the university. Though the petitioners heavily relied on the Memorandum of Understanding executed by them between the university, it has to be borne in mind that it is only for the purpose of smooth conduct of the academic activities of Off Campus Centres and the same is subject to the laws laid down by the State in the field of activity. The university admits in the counter affidavit that the university has failed to get sanction from the State Government to start 77 Off Campus Centres in the year, 2013. Though the university recommended to start Off Campus Centers under Section 23(xxxiii), the recommendation of the university was rejected by the Government. However, ignoring the same, the syndicate granted permission to start 77 Off Campus Centres. It was in this background that the Chancellor issued show cause to the Vice Chancellor, which led to the final decision said to have been taken.

18. As the very origin of these 77 Off Campus Centres was illegal on account of want of sanction from the Government, the petitioners cannot have any special right to continue the same. It is settled law that a Memorandum of Understanding, which is having all the trappings of an agreement, cannot be enforced through a proceeding under Article 226 of the Constitution of India.

In the result, the writ petitions fail; and accordingly, they are dismissed.