

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WA.No. 1663 of 2015 () IN WP(C).20491/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 20491/2015 of HIGH COURT OF
KERALA DATED 20-07-2015

APPELLANT(S)/PETITIONER :

DR.SOMASEKHARAN UNNI P.K
MEMBER
SYDICATE AND CONVENER OF SYNDICATE
STANDING COMMITTEE OF SELF FINANCING INSTITUTIONS
M.G.UNIVERSITY, PRIYADARSINI HILLS, KOTTAYAM.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S)/RESPONDENTS :

1. THE MAHATMA GANDHI UNIVERSITY
PRIYADARSINI HILLS, KOTTAYAM
REPRESENTED BY ITS REGISTRAR-686 562.

2. THE VICE CHANCELLOR
M.G.UNIVERSITY, PRIYADARSINI HILLS, KOTTAYAM-686 562.

3. DR. BABU SEBASTIAN
VICE CHANCELLOR, M.G.UNIVERSITY, PRIYADARSINI HILLS
KOTTAYAM-686 562.

4. T.K.SAJEEV
CHAIRMAN
SPONSORING COMMITTEE OF M.G.UNIVERSITY OF SELF FINANCE
COLLEGE OF COMMERCE AND LITERATURE
KAVIYOOR, THIRUVALLA-689 101.

5. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

R1-R3 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
R1-R3 BY ADV. SRI.VIVEK VARGHESE P.J., SC, M.G.UNIVERSITY
R1-R3 BY ADV. SRI.P.JACOB VARGHESE (SR.)
R5 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
BY SRI.SURIN GEORGE IPE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-08-2015,
ALONG WITH WA. 1675/2015, WA. 1681/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.R.

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No.1663, 1675 & 1681 of 2015

Dated this the 11th August, 2015

JUDGMENT

Ashok Bhushan, CJ.

These three Writ Appeals have been filed against the judgment dated 20.7.2015 in W.P(C).No.20491 of 2015. Both the writ petitioner, Dr.Somasekharan Unni P.K. and the first respondent, Mahatma Gandhi University are in appeal against the judgment. Another appeal has been filed by one Arya Thampi, who was not a party to the Writ Petition but claims to be affected by the judgment. W.A. No.1663 of 2015 is being treated as leading appeal and it shall be sufficient to refer to the pleadings in W.A.No.1663 of 2015 for deciding all these Writ Appeals. The brief facts of the case are as follows:

The Mahatma Gandhi University has been established under the Mahatma Gandhi University Act,

1985 (hereinafter referred to as 'the Act') as a new teaching and affiliating university in the State to provide for urgent development of higher education. The fourth respondent, Chairman of the Sponsoring Committee of M.G. University Self Finance College of Commerce and Literature, who is also a member of Senate of the University and President of Kaviyoor Grama Panchayat, submitted a proposal to start a new Undergraduate and Post Graduate Vocational Course in the self financing sector under the direct control of the Mahatma Gandhi University at Kaviyoor Grama Panchayat. The Sponsoring Committee offered all the administrative and logistic support to start the courses. They proposed almost 3 acres of land under the ownership of the Sponsoring Committee and 3000 sq.ft. building in the Kaviyoor Grama Panchayat for establishing the college. The Vice Chancellor, in exercise of power under Section 10(17) of the Act, passed an order appointing a member of Syndicate to inspect the proposed site and to submit a

report about the infrastructural facilities available to start the new Under Graduate and Post Graduate Vocational Courses. Dr.N.Jayakumar inspected the site on the same day and submitted a report recommending sanction for establishment and maintaining of a college for higher studies in the land, building and other infrastructural facilities provided by the Kaviyoor Grama Panchayat. The Managing Committee of the Kaviyoor Grama Panchayat passed a resolution on 17.6.2015 approving the allotment of 3 acres of land and 3000 sq.ft. building. The Managing Committee decided to give 2.13 acres of land released by IHRD to the Panchayat for a period of 25 years. The Vice Chancellor passed an order dated 24.6.2015 after considering the inspection report dated 6.6.2015 and the affidavit of the Panchayat granting sanction to start the constituent College at Kaviyoor Grama Panchayat under the direct control of the University in self financing stream and to start the proposed college and courses during the academic year 2015-16. The fourth respondent, in the

meanwhile, has taken on lease two upper floors having 3000 sq.ft. in three storied building owned by one M.P. Georgekutty, situated in Ward No.9 of Kaviyoor Grama Panchayat for the purpose of running the above college on rent. The petitioner Dr.Somasekharan Unni P.K, who is the member of Syndicate and convener of Syndicate Standing Committee of Self Financing Institutions, has filed W.P(C). No.20491 of 2015 in this Court challenging Exhibit P1 order passed by the Vice Chancellor dated 6.6.2015, Exhibit P2 inspection report and Exhibit P3 order dated 24.6.2015 passed by the Vice Chancellor. The petitioner has also prayed several other reliefs in the Writ Petition, which are to the following effect:

“i) Issue a writ of certiorari or any other appropriate, writ, order or direction quashing Exhibits P1, P2 and P3.

ii) To declare that the action of the Vice Chancellor in instituting a constituent college at Kaviyoor Grama Panchayat under the direct control of the University in the self financing stream is beyond his powers, authority and jurisdiction.

iii) To declare that the exercise of power by the Vice Chancellor under Section 10(17) for issuing Exts.P1 and P3 is arbitrary, illegal and that no emergency power has arisen for exercising his power under Section 10.17.

iv) To declare that the Vice Chancellor cannot order to start a self financing college on the request of a sponsoring committee beyond the University Centers that too in the self financing stream without sanction and approval of the Syndicate of the University and also the appropriate committees of the University.

v) To declare that the entire exercise of power for issuing Exts.P1 to P3 is an abuse and misuse of power by the Vice Chancellor and that he is liable to be proceeded under the relevant provisions of the University Act for mismanagement of the affairs of the University.

vi) To declare that since the proposed college does not satisfy the requirements both infrastructural and academic in terms of the prescription of the UGC Regulations, it cannot commence or function the college as sanctioned by the Vice Chancellor."

2. Counter affidavit was filed by the University in the Writ Petition pleading that the University is running 36

Self Financing Institutions, which all started in rented buildings initially and later on with the help of sponsoring committees/local bodies, the University has managed to purchase land or took land on long lease and constructed buildings. A proposal was submitted by the fourth respondent on 3.6.2015 for commencing a College imparting education at Under Graduate and Post Graduate level and also vocational courses at Kaviyoor Grama Panchayat. The Vice Chancellor directed for inspection of the site. The Vice Chancellor, in exercise of power under Section 10(17) of the Act, has sanctioned the new college. It was decided to start the college in the academic year 2015-16 itself, hence, the power under Section 10(17) of the Act has been exercised by the Vice Chancellor, so that allotment of candidates to the Under Graduate programme through the Central Administration Procedure (CAP), 2015 be completed. On 6.7.2015, the Vice Chancellor issued an order modifying the earlier order providing that admission notifications for students and

selection of teachers shall be issued before 25.7.2015 and it was decided to start three Under Graduate Courses having 50 seats each and one Post Graduate Course having 30 seats. The fee structure was also provided in the said order.

3. The fourth respondent also filed a statement in the Writ Petition. It was stated that in the year 2002 the Government was pleased to accord sanction to start an unaided self financing institution during 2002-03 at Thiruvalla under the Mahatma Gandhi University. Based on the above Government order, the Kaviyoor Grama Panchayat had registered 2.1 acres of land in the name of Institute of Human Resource Development (IHRD). However, due to financial constraints on the part of IHRD, the project was not materialised and later by the order dated 7.1.2014, the aforesaid 2.1 acres of land which was registered in the name of IHRD had been returned. A resolution was passed by the Kaviyoor Grama Panchayat to provide the land, which was returned by the IHRD along with another one acre of land to the University to start a

constituent college. It was further stated that all necessary infrastructural facilities are now provided by the Sponsoring Committee. In the statement it was further stated that the Chancellor and Lok Ayuktha have already ordered to conduct an investigation against the petitioner. The first respondent University is running 36 Self Financing Institutions in various branches like Engineering, Medical, Management, Teacher Education etc. All the Self Financing Institutions under the aegis of the first respondent University were started in rented buildings initially and later on with the help of sponsoring Committees/local bodies, the University could manage to purchase land or took land on long lease and constructed buildings. The fourth respondent in his capacity as President of the Kaviyoor Grama Panchayat and also as the Chairman of the Sponsoring Committee had submitted a memorandum on 3.6.2015 to commence a college imparting education at Under Graduate and Post Graduate level at Kaviyoor Grama Panchayat.

4. The learned Single Judge vide its judgment dated 20.7.2015 disposed of the Writ Petition directing the Syndicate of the University to consider the issue in the next meeting itself, after affording the petitioner and the fourth respondent an opportunity of being heard. The learned Single Judge further directed that the University can continue the process of receiving applications for admission to the proposed institutions, but the actual allotment as well as the admission shall be made only after the final decision is taken by the Syndicate in the matter. The writ petitioner, aggrieved by the said judgment, has come up in W.A.No.1663 of 2015.

5. We have heard Sri.P.C.Sasidharan, learned counsel for the writ petitioner, Sri.P.Ravindran, learned Senior Advocate appearing for the University and Sri.P.Deepak, learned counsel appearing for the appellant in W.A.No.1675 of 2015.

6. Sri.P.C.Sasidharan, learned counsel for the appellant (in the leading appeal) submitted that all the

orders of the Vice Chancellor, Exhibits P1 to P3 were beyond his jurisdiction. It is submitted that there was no emergent situation to exercise the power by the Vice Chancellor under Section 10(17) of the Act. It is further submitted that the Vice Chancellor has granted sanction to the College without fulfillment of the norms as laid down by the University Grants Commission for affiliating a college. It is submitted that the norms, which have been laid down to be fulfilled by affiliating college have also to be fulfilled by a college, which claims to be started as a constituent college of the University. The Vice Chancellor claims to start the college in self financing stream, whereas an unaided college can only be started by a private college. There is no provision made in the budget of the University to start a constituent college. For creation of post in the college, prior approval of the Government is required, which having not been obtained, the constituent college could not have been sanctioned. The Kaviyoor Grama Panchayat was also not competent to

give any land to start the college without obtaining prior approval of the Government as per the Kerala Panchayat Raj (Acquisition of Disposal of Property) Rules, 2005. It is submitted that the learned Single Judge ought to have allowed the Writ Petition setting aside Exhibits P1 to P3. It is submitted that a college for higher education cannot be allowed to be started without there being proper infrastructure and permitting start of constituent college is not in the interest of the higher education or in the interest of the students.

7. Sri.P.Ravindran, learned Senior Advocate appearing for the University, refuting the submissions of learned counsel for the petitioner, contended that there was no error in exercising the power by the Vice Chancellor to start a constituent college under the direct control of the University. It is submitted that on the proposal submitted by the fourth respondent to provide all infrastructure, the Vice Chancellor has rightly taken the decision to start the college in this academic year itself,

i.e., 2015-16. It is submitted that the college is being established in the Self Financing Stream and there being no financial liability caused on the State Government, there was no occasion for obtaining any approval of the State Government for creation of posts. It is submitted that the University is running 36 colleges in self financing stream which all were initially started under rented premises. It is submitted that unless the Vice Chancellor exercised the power under Section 10(17) of the Act, the college could not have been started in the academic year 2015-16, since before completion of the admission procedure, all necessary requirements were to be fulfilled. It is submitted that as per the direction of the learned Single Judge the decision of the Vice Chancellor was reported to the Syndicate and in the meeting of the Syndicate dated 1.8.2015 the action taken by the Vice Chancellor exercising power under Section 10(17) of the Act has been ratified. The Syndicate being the authority to establish a college and the decision of the Vice Chancellor

having ratified by the Syndicate, no exception can be taken to start a new college. It is submitted that for establishing a college by the University, which is under direct control of the University, it is not necessary that the University should necessarily purchase the land or building. The University was competent to accept any offer submitted by the Sponsoring Committee through its Chairman, the fourth respondent. It is submitted that the petitioner being the member of Syndicate he had an opportunity to raise his grievances in the meeting of the Syndicate, where the decision of the Vice Chancellor was to be ratified and if the Syndicate did not approve the action of the Vice Chancellor, the matter could have been referred to the Chancellor and filing of the Writ Petition by the petitioner, who is the member of Syndicate was uncalled for. It is submitted that the fee structure in the colleges, which are maintained under direct control of the University is towards lower side, which will give opportunity to large number of meritorious students to

join in the colleges of the University which otherwise could not be afforded by them in private colleges which charge very high fee. The fourth respondent and the Kaviyoor Grama Panchayat having offered land and building and other infrastructure, the start of the College shall benefit the Panchayat as well as the students.

8. Learned counsel for the University further submitted that W.A.No.1681 of 2015 was filed by the University challenging only a part of the judgment of the learned Single Judge by which the learned Single Judge directed that the University cannot make actual allotment as well as admission till a decision is taken by the Syndicate in the matter. The learned counsel further submitted that the Syndicate having already ratified the decision of the Vice Chancellor, the appeal filed by the University for all practical purposes has become infructuous.

9. Learned counsel appearing for the appellant in W.A.No.1675 of 2015 submitted that the appeal was filed

by the appellant, a student, who has applied for admission to the Under Graduate Programmes in the affiliated Arts and Science Colleges of the Mahatma Gandhi University through the Centralised Allotment Process (2015-2016) and in view of the direction of the learned Single Judge that allotment and admission cannot be made till the decision is taken by the Syndicate, her right to be considered against the constituent college to be started at Kaviyoor Grama Panchayat was affected. However, in view of the resolution of the Syndicate dated 1.8.2015 ratifying the decision of the University, W.A.No.1675 of 2011 has also become infructuous for all practical purposes.

10. From the submissions of learned counsel for the parties and the materials on record, the following are the issues which arise for consideration in these appeals:

I. Whether the orders dated 6.6.2015 and 24.6.2015, Exhibits P1 to P3 passed by the Vice Chancellor were beyond the jurisdiction conferred to the Vice

Chancellor under Section 10(17) of the Mahatma Gandhi University Act?

- II. Whether for a college constituted by the University under its direct control, the norms and conditions required to be fulfilled by an affiliated college shall also apply?**
- III. Whether for a constituent college under the direct control of the University in self financing stream, the posts of teachers are required to be created with the prior approval of the State Government?**
- IV. Whether without there being any budgetary provision for establishing a constituent college by the University, the University was not competent to establish a constituent college in self financing stream?**
- V. Whether on the proposal submitted by the fourth respondent for start of a constituent college, necessary building and land was made available by the fourth respondent to the University for establishing a**

**constituent college of the University,
whereas the fourth respondent has
taken on lease two floors of a building
from a private person?**

11. Before we proceed to consider the various issues as noted above, it is necessary to refer to the relevant statutory provisions of the Act and the Statute governing the field. Section 2 of the Act is the definition clause. Section 2(2) defines 'affiliated college', Section 2(7) defines 'college', Section 2(30A) provides 'unaided college', Section 5 enumerates the power of the University. Section 5(xxiii), which is relevant for the present case is as follows:

“5(xxiii) to establish, maintain and manage colleges, institutes of research and other institutions of higher studies;

Section 10 relates to 'Vice Chancellor' and Section 10(17) provides the case of emergency power of the Vice Chancellor. Section 10(17) of the Act is quoted as under:

“10(17): If at any time, except when the

Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Syndicate or the Academic Council by or under this Act, the Vice-Chancellor may take such action as he deems fit and shall, at the next session of the Syndicate or the Academic Council, as the case may be, report the action taken by him to that authority for such action as it may consider necessary and that authority may, after considering the action taken by the Vice-Chancellor is of the view that such action shall not have been taken by him, refer the matter to the Chancellor whose decision thereon shall be final."

Section 21 provides for 'Syndicate' and Section 23 provides for 'power of the Syndicate'. Section 23(vii) and (ix) are to the following effect:

"23(vii): to establish, maintain and manage colleges and institutes of research and other institutes of higher learning as it may from time to time deem necessary.

23(ix): to create administrative, ministerial and other necessary posts.

Provided that no post shall be created by the Syndicate without the prior approval of the Government if creation of such post involves

expenditure in excess of the budgetary provision.”

Section 46 provides for 'University fund', which is to the following effect:

*“46. **University Fund.**- (1) All grants and loans received from the State Government, the Government of India, the University Grants Commission and from any other source, all revenues of the University, all fees received, all incomes such as rent and profits derived from properties and funds vested in the University, all endowments and donations received from any source whatsoever, all other miscellaneous receipts of the University and all deposits, remittances and service funds, received in connection with the affairs of the University shall form one consolidated fund styled The Mahatma Gandhi University Fund and shall be employed for the purposes, and in the manner laid down in this Act and in the Statutes, Ordinances, rules, bye-laws and orders made thereunder:*

Provided that separate accounts may be maintained for specific purposes.”

12. Section 48 deals with annual statement of income and expenditure. Chapter XXIII of the Mahatma Gandhi University Statutes, 1997 deals with affiliation of colleges.

13. **Issue No.I** relates to emergency power of the Vice Chancellor. Exhibits P1 to P3 orders dated 6.6.2015 and 24.6.2015 were issued by the Vice Chancellor exercising power under Section 10(17) of the Act. The key words in Section 10(17) of the Act are: “.....*the Vice Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Syndicate.....*”. From the materials brought on record it is apparent that on 18.5.2015 the Syndicate Sub Committee of Self Financing Institutions has resolved to start courses under various schools directly run by the University at 5 places at UCTE, Thodupuzha, School of Technology and Applied Sciences, Edappally etc. The petitioner was the convener of the Sub Committee. As there is a restriction of AICTE not to

conduct Arts Programmes at Technical Institutions, the above courses could not be commenced at the above mentioned places. On 3.6.2015 the fourth respondent has submitted a proposal as the Chairman of the Sponsoring Committee to commence Commerce College to impart Under Graduate and Post Graduate level education at Kaviyoor Grama Panchayat. In paragraph 12 of the counter affidavit filed by the Registrar of the University in W.A.No.1663 of 2015 the following has been stated:

“12. It is respectfully submitted that the Vice-Chancellor has ordered to start two colleges at Chuttippara and Kaviyoor in Pathanamthitta district, by exercising power under 10(17) of MGU Act, 1985 considering the exigency of starting of the courses to ensure learning facility to the students at the beginning of the Academic year 2015-16 itself in the spirit of the syndicate resolution dated 28.02.2015. The Syndicate Sub Committee on self financing institutions has resolved Exhibit P9 in a meeting dated 18.05.2015, to start courses under various schools directly run by the University at 5 places, at UCTE, Thodupuzha, School of Technology & Applied Sciences, Edappally, etc.. Exhibit P9 is

the resolution taken by syndicate committee for Self Financing Institution and writ petitioner is the convener of the committee. As there is a restriction of AICTE and NCTE not to conduct Arts Programmes at Technical and Training Institutions, above Courses could not be commenced at UCTE, Thodupuzha, School of Technology & Applied Sciences, Edappally, etc.”

14. In the counter affidavit further has been stated in paragraph 17, which reads as follows:

“17.....Considering the findings of the report and Academic requirements of conducting UG admissions in the month of June-July 2015 itself as exigency, the Vice Chancellor has accorded sanction exercising powers under section 10(17) of MG University Act, 1985 and accordingly U.O.No.3586/SFIII/2015/Admn dated 24.6.2015 has been issued.”

Further,the following has been stated in paragraph 18 of the counter affidavit:

“18. Since the allotment of candidates to the UG programmes through CAP 2015, are in progress, for completing the admission process to the new college at the beginning of the Academic year itself, the Vice-Chancellor has exercised the powers

under 10(17) of MGU Act in exigency. As per the notes and recommendation of the Administration wing of the respondent University, exercising powers under section 10(17) of MGU Act, sanction has been accorded by the Vice-Chancellor, modifying the earlier U O and Exhibit R1(a) U.O. No.3815/SFIII/2015/Admn dated 06.07.2015 is issued for the following:-

1. To rename the new college at Kaviyoor Grama Panchayat the "Mahatma Gandhi University College of Arts and Commerce" named as per U.O. Vide reference (3) above as "Mahatma Gandhi University Institute of Arts and Commerce" an Institution of higher studies established and maintained under Self Financing Scheme under the direct control of the University as envisaged in Chapter II Section 5 - xxii of the MGU Act 1985.

2. Admission notifications for students and Notifications for selection of teachers shall be issued before 25th July 2015, by modifying the SSC minutes dated 18.05.2015 read as (4) above.

3. To fix the number of seats for the new courses is as follows, based on the recommendations of the minutes of the SSC on SF dated 18.05.2015, i.e. as 50 for U.G courses and 30 for P.G. Courses which was approved by the Vice Chancellor by exercising powers under section 10

(17) of MGU Act 1985.:

- i. B.Com (Taxation and Finance) -50
- ii. B.A English Language and Literature
Model-I -50
- iii. B.A. Economics -50
- iv. M.Com (Finance) -30

4. The fee structure for the Under Graduate courses is Rs.9,000/- and for the Post Graduate Course is Rs.18,750/- as per the G.O. Cited (2) above.

5. To entrust Dr.N. Jayakumar, the Member of Syndicate to make sure and report that the Sponsoring Committee has facilitated all class rooms teachers rooms and other infrastructural facilities including Water, Electricity etc for the commencement of the classes in the proposed Institute. The action taken by the Vice Chancellor exercising powers under 10(17) of MGU Act 1985 in this regard and the decision of the Vice Chancellor has reported to the syndicated on the next meeting dated 01/08/2015 and it is become final before law laid down by the Act. True copy of the extract of the minutes along with Agenda Notes on item No.174/15.08/2022 of the meeting of the Syndicate

dated 01.08.2015 is produced herewith and marked as Annexure R1(e)."

15. From the above facts it is clear that there was already a decision of the Syndicate to start a constituent college under direct control of the University in the self financing stream. The University could not start 5 colleges, which were recommended by the Committee on account of the restrictions imposed by the AICTE. When proposal was received by the University on 3.6.2015, the Vice Chancellor took a decision to direct for appointing an Inspection Commission, which inspection was conducted on 6.6.2015 and after receipt of the report of the Inspection Commission, further decision was taken to sanction the constituent college under the direct control of the University. Under the Act to establish, maintain and manage the college is within the power of the Syndicate. The Vice Chancellor can exercise those powers under Section 10(17) of the Act, if the Syndicate is not in session. The Syndicate was not in session when the Vice

Chancellor exercised the powers.

16. From the counter affidavit filed by the Registrar it is clear that the Vice Chancellor intended to start the college in the academic year 2015-16 itself for which admissions are to be completed in the month of July-August. In the event the Vice Chancellor had not exercised the power under Section 10(17) of the Act, there was no chance of constituent college starting from the academic year 2015-16 and the next academic year would have been only 2016-17. Thus, in view of the above facts, we are of the view that the exercise of power under Section 10(17) of the Act was based on relevant consideration and with a sense of urgency.

17. Learned counsel for the petitioner has placed reliance on the judgment of this Court in **George Thiomas v. Mahatma Gandhi University** (2009(2) KLT 591). In the above case, the Vice Chancellor of the University has modified the promotion procedure in exercise of power under Section 10(17) of the Act, which

was challenged by the students admitted to B.Farm Course in the college. The following was held by the learned Single Judge in paragraphs 8 and 10 of the judgment:

“8. A reading of this section shows that except when the Academic Council is in session, the Vice Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Academic Council, he may take such action as he deems fit. Therefore, existence of an emergency requiring immediate action for exercise of the powers of the Academic Council is a condition precedent for the Vice Chancellor to exercise his power under S.10(17) of the Act.

xx xx xx

10. Therefore, in the light of statutory provisions contained in S.10(17) of the Act, I am of the view that law laid down in the aforesaid two judgments fully applied to the facts of this case. If that be so, question is whether there was any circumstance justifying the exercise of power under S.10(17) by the Vice Chancellor. Answer to this question has to be found in the counter affidavit filed by the University, where all that is stated in para 10

is that the Academic Council of the University had constituted a Sub Committee to discuss the amendment of regulation and the Committee has recommended amendment, which was approved by the Vice Chancellor subject to ratification by the Academic Council. It is stated this is the usual procedure followed by the University. In my view this explanation is totally unsatisfactory and at any rate does not answer the requirement of S.10(17) of the Act to sustain Ext.P28."

18. In the above case no explanation had been given by the University for taking an urgent action and the action of the Vice Chancellor was approval of modification in the promotion procedure. In view of the above facts, this Court held that there was no emergency situation, which covers under Section 10(17) of the Act. The above case is clearly distinguishable from the facts of the relevant case. In the facts of the present case as noted above, we are satisfied that the power exercised by the Vice Chancellor cannot be faulted. The first issue is answered accordingly.

19. **Issue No.II.** The submission, which has been

pressed by learned counsel for the petitioner is that when the norms for infrastructure including building and land have been provided for affiliated colleges, the same norms ought to have been fulfilled by the constituent colleges, which are under direct control of the University. The affiliated colleges are defined in Section 2 of the Act as quoted above. The very definition of 'affiliated college' means a college affiliated to the University in accordance with the provisions of the Act and the Statute. The definition of 'college' come in Section 2(7), which means, an institution maintained by or affiliated to the University. Thus, institutions maintained by the University and affiliated to the University are two different set of colleges. The Regulation, i.e., UGC (Affiliation of colleges by Universities) Regulations, 2009 are applicable only to the institutions seeking affiliation with the University. Thus, the norms, which have been prescribed by the UGC are with regard to colleges, which are seeking affiliation with the University. Statute 23 also contains provisions for

affiliation of colleges. Under Section 5(xxiii) of the Act, the University is empowered to establish, maintain and manage colleges. When the University is empowered under the Act to establish, maintain and manage colleges and there being no statutory provision in the Act or Statute laying down the norms, it is in the domain of the University to take decision for establishing, maintaining and managing the colleges. We, thus, find that the statutory provisions providing for norms and condition for affiliation of colleges to the University are not applicable to the colleges established, maintained or managed by the University. Issue No.II is answered accordingly.

20. **Issue No.III:** Whether before establishing constituent college under direct control of the University, the University was obliged to obtain prior approval of the State Government for creating the post of teachers in the constituent college. Section 23(ix) as quoted above empowers the Syndicate to create administrative, ministerial and other necessary posts.

21. The constituent college, which has been created is a college under direct control of the University in self financing stream. Self financing stream clearly indicates that no financial burden is expected to be borne by the State Government. The prior approval of the Government is contemplated only if creation of such post involves expenditure in excess of the budgetary provision. But when the college is being established in self financing stream, the expenditure of the college is expected to be borne from the fees received by the college as has been pleaded by the University. We are of the view that the proviso to Section 23(ix) of the Act is not attracted. Present is not a case where any prior approval was required from the State Government for creation of the post. Issue No.III is answered accordingly.

22. **Issue No.IV:** The issue is whether without there being any budgetary provision for establishing a constituent college by the University, the University was not competent to establish a constituent college in self

financing stream? Before we proceed further, it is to be clarified that the constituent college, which has been sanctioned by the Vice Chancellor is nothing but a college maintained by the University. The definition of 'college' under Section 2(vii) contemplates two types of institutions; one maintained by the University and the other affiliated to the University. Thus, the constituent college is a college, which is maintained by the University. From the orders dated 18.6.2015 and 24.6.2015 it is clearly mentioned that the college established in the Kaviyoor Grama Panchayat is the college under the direct control of the University in self financing stream. Section 46 of the Act provides for University Fund, whereas Section 48 provides for annual estimates of income and expenditure. Sections 48 and 49 of the Act are quoted as below:

“48. Annual estimates of income and expenditure.- (1) The Syndicate shall prepare the financial estimates of the income and expenditure of the University for the next ensuing year before

such date as may be prescribed by the Statutes and forward the same together with a memorandum conveying explanatory notes thereon to the Chancellor for consideration.

(2) The Chancellor shall consider the financial estimates and shall approve it either without alterations or with such alterations as he may deem fit.

49. Funds earmarked for a purpose not to be diverted without prior approval of government.- The University shall not,-

(a) without the prior approval of the Government,-

(i) divert funds earmarked for a purpose for any other purpose; or

(ii) implement any scheme which involves any matching contribution from the State Government; or

(b) implement any scheme which imposes a recurring liability on the Government, after the assistance from the sponsoring authority ceases."

23. The annual estimate as referred to in Section 48 is estimated for the next ensuing year. We proceed on the premise that annual estimate submitted by the University did not contain the college in question, since

the college in question has been sanctioned by the Vice Chancellor only in June, 2015 exercising its power under Section 10(17) of the Act. But, when the constituent college is being constituted in self financing stream, the annual budget need not reflect the expenses of constituent college, which is being situated in self financing stream. The provisions of the Act do not put any embargo on the University in establishing any self financing institution in the event its expenditures are not included in the annual estimates. The only prohibition, which is contained in Section 49(b) is that the University shall not implement any scheme which imposes a recurring liability on the Government, after the assistance from the sponsoring authority ceases. The orders passed by the Vice Chancellor do not indicate that the self financing stream being implemented by the University is creating any recurring liability on the Government. The submission of learned counsel for the petitioner that without there being reference of expenditure in the annual

budgetary estimate, the University was incompetent to establish self financing institution cannot be accepted. Issue No.IV is answered accordingly.

24. **Issue No.V:** Whether the sponsoring authority has made available sufficient land or building for establishing the college is the issue to be answered. The fourth respondent in his statement has referred to order dated 4.9.2002 of the Mahatma Gandhi University granting provisional affiliation to the unaided Arts and Science Colleges during the academic year 2002-2003. One of the institutions as item No.9 was IHRD, Thiruvananthapuram, Tiruvalla (B.Sc Comp. Science and B.Sc Electronics). The Kaviyoor Grama Panchayat had registered 2.1 acres of land in the name of the Director of IHRD in the year 2002 for the aforesaid purpose. But, due to financial constraints, the IHRD could not start the institution and by Exhibit R4(b) order dated 7.1.2014 the IHRD returned the 2.1 acres of land to the Kaviyoor Grama Panchayat. The President of the Grama Panchayat has

submitted a proposal for 3 acres of land including 2.1 acres of land which was returned by the IHRD. A resolution dated 17.6.2015 was passed by the Kaviyoor Grama Panchayat in that regard. Although it is true that on the date when proposal was submitted by the fourth respondent offering 3000 sq.ft. building and 3 acres of land for establishing the college under direct control of the University, resolution of the Grama Panchayat was not yet passed, nor 3000 sq.ft. building area was taken on rent. However, when the Vice Chancellor passed order dated 24.6.2015, it refers to 3 acres of land and a building with 8 class rooms, which were also taken into consideration at the time of inspection on 6.6.2015. On the date when the Vice Chancellor sanctioned the constituent college, the building and land being clearly available for opening the constituent college, it cannot be said that the proposal submitted was unfounded. Further, the Vice Chancellor has passed a subsequent order dated 6.7.2015 modifying his earlier order, where Dr.N.Jayakumar, the Member

Syndicate was entrusted to make sure and report that the Sponsoring Committee has facilitated all class rooms teachers rooms and other infrastructural facilities including water, electricity etc. for the commencement of the classes in the proposed institute. The Sponsoring Committee having been undertaken to provide all administrative and logistic support, there is no error in the decision of the Vice Chancellor sanctioning the constituent college under direct control and management of the University. We, thus, are of the view that the Vice Chancellor did not commit any illegality in taking the decision to sanction the constituent college on the proposal submitted by the fourth respondent offering 3 acres of land and 3000 sq.ft. building area.

25. One of the submissions, which has been made by learned counsel for the petitioner is that the Kaviyoor Grama Panchayat could not have given its land for establishing an institution by the University without prior approval of the State Government. He has referred to Rule

6 of the Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules, 2005 which provides as follows:

“6. Transfer of Panchayat's own property through sale.- Panchayat may transfer any of its own property by sale with the prior permission of the Government and such transfer shall be in accordance with Form II appended to these rules.”

26. Rule 6 as noted above is with regard to transfer of property which cannot be made with the permission of the Government. Present is not a case of any sale of the property. Rules 7 and 8 permit the Panchayat to lease out its property. Thus, we do not find any violation of the Kerala Panchayat Raj (Acquisition of Property) Rules, 2005 in offering a land by the Panchayat for establishing constituent college under direct control of the University.

27. Before we close the discussion, it is necessary to refer to two important aspects of the matter. The University claims the College as constituent college, which has now been renamed as 'Mahatma Gandhi College of Arts and Commerce'. The University's clear stand is that

the above constituent college is under direct control and management of the University. The statutory provision, as noted above, empowers the University to establish, maintain and manage the colleges. The college in question has thus to be maintained and managed by the University by its direct control. The other norms and conditions for affiliated college are not made applicable to the colleges maintained and managed by the University for the reason that colleges, which are maintained and managed by the University, are under its direct control and the University is capable of taking care of all aspects of the matter including infrastructure, teaching staff, discipline and other aspects.

28. We, thus, are of the view that the college in question has to continue to be under direct maintenance and management of the University and further it is the obligation of the University to ensure that necessary infrastructure, staff and other facilities are available to the students, who are studying in the college. The University

is to take measures, including periodical inspections of the college to find out deficiency, if any, and to take appropriate steps in that regard. We, thus deem it fit and proper to issue some general directions to the University with regard to the college in question.

29. The decisions of the Vice Chancellor dated 6.6.2015 and 24.6.2015 have been ratified by the Syndicate in its meeting dated 1.8.2015. The relevant proceedings of the Syndicate has been brought on record as Annexure R1(e) in the appeal.

30. Learned counsel for the petitioner, in the reply, has submitted that nine members of the Syndicate have expressed their strong dissent in the matter of ratifying the matter of the Vice Chancellor in sanctioning the constituent college at Kaviyoor. However, even if the dissent as claimed by the petitioner was placed before the meeting of the Syndicate, the Syndicate having already approved the orders of the Vice Chancellor by ratifying the action taken under Section 10(17) of the Act, the

consequence is ratification of the decision of the Vice Chancellor. Thus, the dissent as claimed by the petitioner in any manner does not impeach the decision of the Syndicate.

31. Coming to W.A.No.1681 of 2015, the University, as noted above, has filed the appeal only challenging a part of the judgment of the learned Single Judge in which the learned Single Judge has directed that the annual allotment as well as admission shall be made only after final decision is taken in the Syndicate. The Syndicate having already ratified the decision of the Vice Chancellor, the appeal has become infructuous. Accordingly, W.A.No.1681 of 2015 is dismissed as infructuous.

32. Coming to W.A.No.1675 of 2015, the said appeal having been filed by the appellant, who claims to have submitted an application for seeking admission in the Central Admission Process, the grievance raised in the appeal has come to an end. Therefore, W.A.No.1675 of 2015 is also dismissed as infructuous.

33. Coming to W.A.No.1663 of 2015, although we do not find any ground to interfere with the judgment of the learned Single Judge dated 20.7.2015, we deem it fit and proper to dispose of the Writ Appeal with the following directions:

- i) The Mahatma Gandhi University College of Arts and Commerce constituted at Kaviyoor Grama Panchayat shall function as the constituent college maintained and managed by the University in its direct control. The University shall not abdicate its jurisdiction to maintain and manage the college.**
- ii) The University shall ensure that necessary infrastructural facilities and staff for the college is made available and for the above purpose the University, through its appropriate committee, shall cause periodical inspection of the college ensuring availability of all infrastructural facilities and staff to the college in question.**

In the result, W.A.No.1663 of 2015 is disposed of with the directions as stated above and W.A.Nos.1675 and 1681 of 2015 are dismissed as infructuous.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs