

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 6882 of 2015 (I)

PETITIONER(S):

**THE MANAGER,
CHRISTIAN COLLEGE, KATTAKADA,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY,
SMT.K.R.RIJA.**

RESPONDENTS:-

- 1. DR.Y.C. ANITA,
KARUNA, NEW KOWDIAR GARDENS,
THIRUVANANTHAPURAM-695 001.**
- 2. THE REGISTRAR, UNIVERSITY OF KERALA,
KERALA UNIVERSITY BUILDINGS,
THIRUVANANTHAPURAM-695 001.**
- 3. THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM -33.**
- 4. THE PRINCIPAL SECRETARY,
HIGHER EDUCATION (D) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

**R2 BY ADV. SRI.BECHU KURIAN THOMAS, SC.
R3 & R4 BY GOVT. PLEADER SMT.M.J. RAJASREE.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 6882 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1. TRUE COPY OF THE APPEAL MEMORANDUM.

EXHIBIT P2. TRUE COPY OF THE OBJECTION.

EXHIBIT P3. TRUE COPY OF THE ORDER DATED 05.02.2015.

RESPONDENT'S EXHIBITS:-

EXT.R3A COPY OF THE NO.18033/D1/12/H.EDN. LETTER DATED 30/06/2012.

EXT.R3B COPY OF THE ORDER NO.M/08/2012 DATED 27/08/2012.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.VINOD CHANDRAN, J.

W.P.(C)No.6882 of 2015

Dated this the 9th day of November, 2015.

J U D G M E N T

The petitioner/the Manager of a minority institution, challenges Ext.P3 order of the Kerala University Appellate Tribunal, by which, the appeal filed by the 1st respondent was found to be maintainable before the Tribunal. Despite notice in the above writ petition, the 1st respondent, who was the appellant before the Tribunal has not chosen to appear. In fact, the Registry has noticed that the notice to the 1st respondent was returned as unserved, stating 'unclaimed'. The petitioner's application for declaration of service has also been allowed.

2. The short issue to be considered is the maintainability of an appeal before the Kerala University Appellate Tribunal, when the College is a minority institution. The University of Kerala, to which the petitioner's college is affiliated, has a provision in the Kerala

University Act, 1974, specifically Section 67 enabling any teacher aggrieved by an order in a disciplinary proceedings to approach the University Tribunal within the period specified thereunder.

3. A Full Bench of this Court in **Manager, St.Joseph's Training College Vs. University Appellate Tribunal (1980 KLT 67)** has found that Sub Sections (5) and (7) of Section 60 of Kerala University Act cannot be applied to an educational institution established and managed by a religious or linguistic minority. It was categorically held so, in paragraphs 30 and 31 as follows :

"30. xxxxxx xxxxxx xxxxxx We would accordingly hold that sub-sections (5) and (7) of S.60 of the Act are inconsistent with the fundamental right guaranteed to religious and linguistic minorities by Art. 30(1) of the Constitution and hence they cannot be applied to an educational institution established and managed by a religious or linguistic minority like the St.Joseph's Training College for Women, Ernakulam. xxxxxx xxxxxx

31. The conclusion that emerges from the foregoing discussion is that the appellate tribunal has acted wholly without jurisdiction in entertaining and dealing with the

appeals preferred by the respondent-principal under sub-sections (5) and (7) of S.60 of the Act. All the impugned orders passed by the appellate tribunal have to be set aside on this ground."

4. The said position has been upheld by the Honourable Supreme Court in **Lilly Kurian Vs. University Appellate Tribunal {1997(1)KLT 722 (SC)}**. There, the Honourable Supreme Court has specifically noticed the provision in the Mahatma Gandhi University Act, 1985, viz., Section 63(6) and found that the principle applied by the Full Bench and upheld by the Honourable Supreme Court would not be applicable, since the provision indicates no "uncanalised" and "unguided" power on the Tribunal. Hence, drawing a distinction between the provisions for appeal to the Tribunal, in the Kerala University Act and the Mahatma Gandhi University Act, the Honourable Supreme Court has categorically declared that the provisions under Section 67 of the Kerala University Act could not be used against a minority institution. There is no amendment made

to the Kerala University Act also. Hence, this Court and all the subordinate courts including the Tribunals are, under Article 141 of the Constitution of India, bound by the decision of the Honourable Supreme Court.

5. The Tribunal, however, has relied on a decision of a Division Bench of this Court in **Prajyoti Niketan College Vs. Dr.Sr.Ancy (2014(2)KLT 293)**, in which case, a similar challenge was made to the Tribunal as against an order passed on disciplinary enquiry and the court found the same to be maintainable. Herein it is to be specifically noticed that in the case of Calicut University Act, 1975, the provision for such an appeal as available under Section 67 is analogous to the provision under Section 67 of the Kerala University Act. But the Division Bench of this Court found that the principle, as enunciated in the decision with respect to the Kerala University Act, by the Honourable Supreme Court, can only lead to a conclusion that there should be necessary guidelines available for the appellate power to be

exercised which would take it out of the violence of an uncanalised and unguided power. It is also to be noticed that, therein, the Division Bench was considering a revision under Section 69 of the Calicut University Act against an order passed by the Tribunal. The Division Bench, going by the accepted principle, that in a revision, there could be no challenge against the provision as such, considered the issue itself, invoking the visitorial powers, reading down the provision in the Calicut University Act, to provide for necessary safeguards, as provided in the Mahatma Gandhi University Act.

6. However, that cannot upset the findings of the Honourable Supreme Court, in so far as Kerala University Act is concerned. There is a categorical declaration that Sub Sections (5) and (7) of Section 63 of the Kerala University Act cannot enable an appeal before the Tribunal as against the action taken by a minority institution. The Division Bench of this Court in **Prajyoti Niketan College's**

case (supra) specifically noticed that S.60 of the Calicut University Act has not been declared as unconstitutional, void and inoperative by any competent court. Drawing support from the Full Bench decision of this Court and the decision of the Honourable Supreme Court, the subject matter of the dispute under the Calicut University Act was looked into, within the four corners of the statutory guidance, restrictions and norms, as delineated in Section 63 of the Mahatma Gandhi University Act, thus removing the vice of uncanalised and unguided power ensuring the protection under Article 30(1) of the Constitution. However, here the provision has been held as inoperative against a minority institution by the Honourable Supreme Court.

7. In such circumstances, despite the Division Bench judgment, the decision of the Full Bench, as upheld by the Honourable Supreme Court, would commend the appeal filed before the Tribunal to be rejected as not maintainable. Accordingly, Ext.P3 order would stand set aside and the

appeal filed would stand rejected. Needless to say that, the 1st respondent can take other appropriate remedy for challenging the order of punishment.

The writ petition is allowed accordingly.

Sd/-
K.VINOD CHANDRAN,
Judge.

ami/

//True copy//

P.A. to Judge