

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937**

**WP(C).No. 19789 of 2015 (W)**  
-----

**PETITIONER(S):**  
-----

- 1. THE KERALA PRIVATE COLLEGE MANAGERMENTS ASSOCIATION,  
(REG.NO.TR.12 OF 1960), REPRESENTED BY ITS  
GENERAL SECRETARY REV. DR.VINCENT NEDUNGATTU ,  
PRINCIPAL, NIRMALA COLLEGE, MUVATTUPUZHA - 686 661.**
- 2. THE COUNCIL OF PRINCIPALS OF COLLEGES IN KERALA,  
(REG.NO.21/71/CALICUT) REPRESENTED BY ITS GENERAL  
SECRETARY DR.T.M.JOSEPH,  
PRINCIPAL, NEWMAN COLLEGE, THODUPUZHA - 685 585.**

**BY ADVS.SRI.BABY ISSAC ILLICKAL  
SRI.ISAAC KURUVILLA ILLIKAL**

**RESPONDENT(S):**  
-----

- 1. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.**
- 2. UNIVERSITY OF CALICUT,  
REPRESENTED BY ITS REGISTRAR,  
CALICUT UNIVERSITY P.O. - 673 635.**

**R1 BY SENIOR GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN  
R2 BY ADV. SRI.SANTHOSH MATHEW, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
06-08-2015, ALONG WITH WPC. 20501/2015, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 19789 of 2015 (W)**  
-----

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

**P1 - PHOTOCOY OF THE PRO FORMA OF DIRECT PAYMENT AGREEMENT.**

**P2 - PHOTOCOPY OF THE RELEVANT PAGES OF THE ADMISSION RULES.**

**P3 - PHOTOCOPY OF THE PROSPECTUS FOR CENTRALIZED ADMISSION PROCESS  
FOR THE ACADEMIC YEAR 2015-16.**

**P4 - PHOTOCOPY OF THE NOTIFICATION DT.25.04.2015.**

**P5 - PHOTOCOPY OF THE CIRCULAR DT.2.6.2015.**

**P6 - PHOTOCOPY OF THE CIRCULAR DT.17.6.2015.**

**P7 - PHOTOCOPY OF THE REPRESENTATION DT.14.5.2015.**

**RESPONDENT(S)' EXHIBITS:**  
-----

**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msv/

**A.V.RAMAKRISHNA PILLAI, J.**

=====

W.P(C) Nos.19789 & 20501 of 2015

=====

Dated this the 6<sup>th</sup> day of August, 2015

**JUDGMENT**

In these writ petitions, the petitioners are challenging the introduction of Centralized Admission Process (CAP) by the respondent university for under graduate courses in the aided colleges under the university.

2. W.P(C) No.19789 of 2015 is filed by the Kerala Private College Management's Association and the Council of Principals of Colleges in Kerala represented by its General Secretaries of those associations. They allege that the aided college managements comprise of minority and non-minority institutions. According to them, the members of the petitioners' associations are much affected and aggrieved by the CAP in the aided colleges by the Calicut university, which according to the petitioners, was introduced in an arbitrary manner. It was pointed out that the CAP was being

implemented through notification and circulars and no regulation is made by the university for this purpose. It was also pointed out that existing regulation is not repealed and the introduction of CAP is without authority of law. They would further allege that the change in the mode of admission and the taking over of the rights of the managements for inviting applications, conducting interview, selection candidates for admission etc., are unwarranted and violative of the fundamental rights of the managements of the institutions.

3. W.P(C) No.20501 of 2015 filed by the Managers of two aided minority colleges affiliated to the respondent university allege that CAP would take away the basic right of the petitioners to administer institutions. According to them, the right to administer minority institutions includes the right to admit students of the management's choice. Therefore, the seizure of power vested with the petitioners to receive applications for admission, choose students and to prepare ranklist for admission etc., amount to interference

with the day-to-day administration of the petitioners' minority institutions. According to them, the implementation of CAP would in effect deprive of the right of the minorities to educate their children in their own institution. The petitioners would further point out that the CAP is not a reasonable regulation and would not be conducive to the welfare of the petitioners' minority institutions. It amounts to encroachment on the petitioners' fundamental right guaranteed under Article 30(1) of the Constitution.

4. I have heard the learned counsel for the petitioners, the learned standing counsel for the respondent university and the learned Government Pleader in the matter.

5. The learned standing counsel for the respondent university made a frontal attack against as the maintainability of the W.P(C) No.19789 of 2015 filed by the associations. This writ petition is a class litigation instituted by two associations of college managements as well as the Principals of aided colleges with the following reliefs:

- i) call for the records leading to the introduction of CAP for UG courses in the 2<sup>nd</sup> respondent university:
- ii) declare that Centralized Allotment Process for UG Courses as envisaged in Exts.P3 and P6 is not applicable to the aided colleges affiliated to the 2<sup>nd</sup> respondent university.
- iii) Issue a writ of mandamus restraining the 2<sup>nd</sup> respondent from implementing CAP in the aided colleges affiliated to the 2<sup>nd</sup> respondent university.
- iv) Allow the aided colleges affiliated to the 2<sup>nd</sup> respondent university to conduct admissions as laid down in the direct payment agreement.
- v) Issue such other writ, order or direction that this Court may deem fit and proper on the facts and circumstances of the case.

6. The bone of contention in this writ petition is whether the respondent university is competent to make spot admission to the aided colleges. It is settled law that class litigations by an association would be entertained only when the issues raised are of general nature. Of course, instances are there where individual grievances of the members of the associations and such general issues overlap. In the nature of the relief sought for in the writ

petition, it is impossible to hold that the grievance of the petitioners' association as a whole could be redressed in a petition like this. Therefore, I see valid force in the stand taken by the respondent university regarding the maintainability of the said writ petition.

7. Though the contentions raised by the petitioners is that the introduction of CAP by the respondent university is arbitrary and violative of the fundamental rights guaranteed under the Constitution of India, the petitioners in W.P(C) No.20501 of 2015 would give thrust to the fact that the said notification takes away the right guaranteed to the minorities under Article 30(1) of the Constitution. It is settled law [see **St.Stephen's College v. University of Delhi** (1992) 1 SCC 558] that minorities have the right to establish and administer educational institutions of their choice. However, the administration of educational institutions of their choice under Article 30(1) means “management of the affairs of the institution”.

8. The learned counsel for the petitioners heavily relied on the

decision of the Apex Court in **Malankara Syrian Catholic College** v. **T. Jose** [(2007) 1 SCC 386] wherein it is held that to admit eligible students of their choice and to set up a reasonable free structure” is part and parcel of Article 30(1) of the Constitution. There cannot be any quarrel against the proposition that administration which means management of the affairs of the institution must be free from control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular would be best served and, therefore, that part of management cannot be taken away and vested in another body without an encroachment upon the guaranteed right.

9. The learned standing counsel for the respondent university, per contra, would submit that by the CAP the respondent university has no intention to admit students to the management quota. However, the stand taken by the respondent university is that in the

seats earmarked for the minority community which runs the institution, the admission shall be on the basis of the merit. It is with that aim that, the CAP has been introduced. According to the learned standing counsel, it for the benefit of the candidates belonging to the minority community.

10. It is crucial to note that the object of establishing the institution is to provide good education to the deserving candidates and it is not necessarily a commercial venture as observed by the Apex Court in **T.M.A Pai Foundation and others** v. **State of Karnataka and others** [(2002) 8 SCC 481]. It was observed by the Apex Court that the conditions of affiliation or recognition which pertain to academic and educational character of the institution which ensure uniformity, efficiency and excellence in educational courses are valid and they do not even violate the provisions of Article 30 of the Constitution of India. The only thing is that the conditions that are laid down for granting recognition should not be such as may

lead to the Governmental control of the administration of the private educational institutions maintained by the minority.

11. It was strenuously argued by the learned counsel for the petitioners that the present attempt of the respondent university would violate the right of the petitioners guaranteed under Article 30 (1) of the Constitution of India. It is settled law that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of those institutions. It is permissible for the authority to prescribe regulations which must be complied with before a minority institution could seek to retain affiliation and recognition. The only restriction is that such regulations made by the authority should not impinge upon the minority character of the institution. In this case, no such infringement takes place on the minority right of the petitioners. The right under Article 30(1) has not been laid to be absolute or above other provisions of law. It is well settled that even though the words

of Article 30(1) are unqualified, at least certain other laws of the land pertaining to health, morality and standards of education would apply (see paragraph 29 of the judgment in *T.M.A.Pai's* case). The parliament or the State Legislatures are not denuded of their power having regard to restrictions that may satisfy the test of clause (6) of Article 16 of the Constitution of India or regulations in terms of Article 30 depending upon the national/public interest and other relevant factors. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf.

12. As the respondent university has no contention to touch the seats under management quota, the present scheme introduced by the respondent university for the benefit of the students cannot be interfered with by this Court in exercise of the powers conferred under Article 226 of the Constitution of India.

Therefore, the writ petitions are dismissed making it clear that the Centralized Admission Process proposed to be initiated by the respondent university shall not be applied to the management seats provided to the educational institutions concerned.

Sd/-

**A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

krj