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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.06.2016

ORDERS DELIVERED ON : 11.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.10045 of 2016

and

W.M.P.(MD)Nos.7888, 8256 & 8921 of 2016

S.Subbaraju

.. Petitioner

vs.

1.Manonmaniam Sundaranar University
Rep. by its Registrar,
Abishekapatti, Tirunelveli.

2.Dr.A.John De Brittto
The Registrar
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli.

3.Dr.K.Baskar
The Vice Chancellor
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli.

.. Respondents

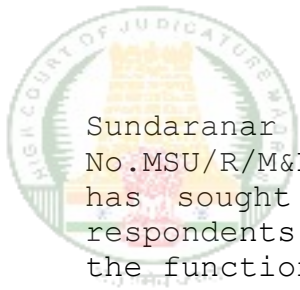
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned circular of the 2nd respondent/ Registrar of the Manonmaniam Sundaranar University, Tirunelveli, vide proceedings No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016, quash the same and further direct the respondents to act in accordance with the Acts and Statutes in relation to the functioning of the University Syndicate.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for
Mr.T.Cibi Chakraborty

For Respondents : Mr.M.Ajmal Khan
Senior Counsel
for
Mr.M.Mahaboob Athiff

O R D E R

The Petitioner has filed the present writ petition praying for passing of an order by this Court in calling for the records relating to the impugned circular of the 2nd respondent/ Registrar of the Manonmaniam



Sundaranar University, Tirunelveli, in proceedings No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016, quash the same. Further, he has sought for passing of an order by this Court in directing the respondents to act in accordance with the Acts and Statutes relating to the functioning of the University Syndicate.

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2. According to the Petitioner, the Second Respondent/University Syndicate is the highest executive body of the respondent University and further that the Syndicate has the power to appoint sub committees for the purpose of granting affiliation to the colleges within the area of the University and to approve any college within the territorial jurisdiction of the University providing courses of study for admission. It is also represented that the University Syndicate appoints inspection committee for verification of infrastructural facilities and the qualification of teaching staff in the college.

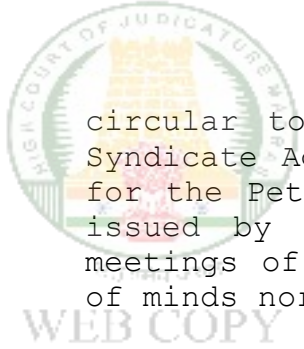
3. It is projected on the side of the Petitioner that after being satisfied with the reports of the recommendations of the Inspection Committee and their report, the Syndicate of the University resolves to affiliate such college or any additional course in a college provisionally. When that be the practice, in vogue, it is the stand of the Petitioner that to his shock and surprise, the Second Respondent/Registrar of the University issued the impugned Circular instructing him to approve a draft Resolution (Syndicate Agenda annexed with the impugned order) and to return the same by post or e-mail or fax. Also, it was stated that it would be construed that the minutes are approved if any suggestion or modification is not received within 10 days from the date of communication.

4. The Learned Senior Counsel for the Petitioner submits that the impugned circular, dated 27.05.2016 of the Second Respondent/University was issued only at the instance of the third respondent/Vice-Chancellor for the reason the Syndicate did not (and could not) oblige to some of his unlawful instructions.

5. The Learned Senior Counsel for the Petitioner urges before this Court that the third respondent/Vice Chancellor had appointed a Committee and Inspection Commission of his choice in a clandestine manner in the absence of any statutory powers and the same is wholly illegal, arbitrary and void. In this connection, a plea is taken on behalf of the Petitioner that only the Syndicate has the power to appoint sub committees and constitute inspection Commission for the purpose of granting affiliation to the colleges and for that purpose, the Syndicate appointed Affiliation and Qualification Approval Committee consisting of 6 members, as per Resolution dated 09.10.2015.

6. The Grievance of the Petitioner is that the Committee constituted for the aforesaid purpose by the Syndicate neither met on 10.05.2016 and 27.05.2015 nor consulted in connection with granting affiliation of new colleges/new courses based on the recommendation of the inspection commission as stated by the Second Respondent/Registrar of the University.

7. The Learned Senior Counsel for the Petitioner takes a stand that the Second Respondent/Registrar of the University issued the impugned



circular to the syndicate members for obtaining their approval of the Syndicate Agenda by Syndicate in circulation. The Learned Senior Counsel for the Petitioner advanced his arguments that the said Syndicate Agenda issued by the respondent University was never mooted in any of the meetings of the Syndicate Members. As such, there is neither any meeting of minds nor any application of mind.

8.The Learned Senior Counsel for the Petitioner proceeds to emphatically contend that the the approval for grant of any affiliation to a college or any additional course in a college involves larger public interest and the same cannot be decided without any collective discussion or consideration of the Syndicate members. That apart, it is the categorical version of the Petitioner that the Inspection Commissions, which inspected the college for grant of affiliation for the Academic year 2016-17 and reported to the Committee appointed by the third respondent/Vice Chancellor, were not approved by the Syndicate.

9.The Learned Senior Counsel for the Petitioner submits that the Second Respondent/Registrar has no statutory authority to issue Syndicate in Circulation in the absence of any statutory powers. Furthermore, it is contended on behalf of the Petitioner that 'Syndicate in circulation' is neither contemplated under the Act nor the Statute of the respondent/University.

10.The Learned Senior Counsel for the Petitioner contends that the impugned circulation was passed in violation of the Principals of Natural Justice and in fact, no notice or opportunity of hearing was provided to the Petitioner before issuing the circular.

It is the submission of the Learned Senior Counsel for the Petitioner that every member of the Syndicate is interested in seeing that the University Regulations are carried out in a proper manner and when the officers of the University endeavour to defeat the express ingredients of the Act and the Statutes, every member including the Syndicate members, in law, have a right to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution to ensure that the officers of the University function as per the University Laws. As such, the writ petition filed by the Petitioner is maintainable in Law.

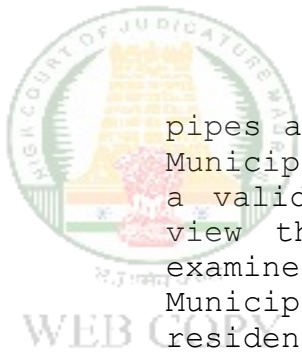
11.To lend support to the contention that as a Syndicate Member, the writ filed by the Petitioner is maintainable in Law, the Learned Senior Counsel for the Petitioner cites a decision in R.VARADARAJAN v. SALEM MUNICIPAL COUNCIL BY ITS COMMISSIONER, SALEM reported in AIR 1973 MADRAS 55, wherein it is observed and held as follows:-

"(G)Constitution of India, Art. 226 - Where the Municipal Council by an illegal Resolution permits the erection of a statue in violation of the Municipal Act and undertakes to maintain it from the municipal funds a tax payer has a right to file a writ petition for quashing the Resolution and preventing the Council from wasting the municipal funds."

12.The Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in S.P.GUPTA v. UNION OF INDIA reported in 1981 (Supp) SCC 87, wherein at special page Nos.205 and 206, at paragraph No.15, it is observed as follows:-



"In the first place a rate payer of a local authority is accorded standing to challenge an illegal action of the local authority. Thus, a rate payer can question the action of the municipality in granting a cinema licence to a person, vide : K.R. Shenoy v. Udipi Municipality . Similarly, the right of a rate payer to challenge misuse of funds by a municipality has also been recognised by the Courts vide : Varadarajan v. Salem Municipality. The reason for this liberalisation of the rule in the case of a tax payer of a municipality is that his interest in the application of the money of the municipality is direct and immediate and he has a close relationship with the municipality. The Courts in India have, in taking this view, followed the decisions of the English Courts. Secondly, if a person is entitled to participate in the proceedings relating to the decision making process culminating in the impugned decision he would have locus standi to maintain an action challenging the impugned decision. Vide : Queen v. Bowman (1898) 1 QB 663 where it was held that any member of the public had a right to be heard in opposition to an application for a licence and having such right, the applicant was entitled to ask for mandamus directing the licensing Justices to hear and determine the application for licence according to law. Thirdly, the statute itself may expressly recognise the locus standi of an applicant, even though no legal right or legally protected interest of the applicant has been violated resulting in legal injury to him. For example, in J.M. Desai v. Roshan Kumar , this Court noticed that the Bombay Cinematograph Act. 1918 and the Bombay Cinema Rules, 1954 made under that Act, recognised a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc, located within a distance of 200 yards of the site on which the cinema house is proposed to be constructed and held that as the Petitioner, a rival cinema owner, did not fall within the category of such persons having a special interest in the locality, he had no locus standi to maintain the petition for a writ of certiorari to quash the No Objection Certificate granted by the District Magistrate, to respondents Nos. 1 and 2. It is obvious from the observations made at page 72 (of SCR) : (at p. 586 of AIR of the Report that if the Petitioner had been a person falling within this category of persons having a special interest in the locality, he would have been held entitled to maintain the petition. There is also another decision of this Court illustrating the situation where a statute expressly gives locus standi to persons to complain against a public wrong and that is the decision in Ratlam Municipality v. Vardhi Chand . The statutory provision which came up for consideration in this case was Section 133 of Criminal P. C. which empowers a Magistrate on receiving the report of a police officer or other information to make an order for remedying a public nuisance. What happened in this case was that the Ratlam Municipality filed to carry out its statutory duty of constructing a drain pipe to carry the filth etc. on a particular road. The local residents decided to invoke Section 133 of Criminal P. C. against the Municipality. The Magistrate made an order requiring the Municipality to construct drain



pipes and this order was confirmed in appeal by this Court. The Municipality pleaded lack of funds but this was not accepted as a valid defence. However, to have a viable scheme keeping in view the financial position of the Municipality, this Court examined the three schemes submitted to it and directed the Municipality to implement one of them. The standing of the local residents to move the Magistrate was recognised since Section 133 of Criminal P. C. expressly conferred such right on them."

13. Furthermore, the Learned Senior Counsel for the Petitioner cites the decision in K.SUNDARALINGAM v. THE DISTRICT COLLECTOR reported in CDJ 2014 MHC 5910, wherein it is held that the petition filed by the Petitioner in his capacity as Vice Chancellor of the Second Respondent/University is very much maintainable in Law.

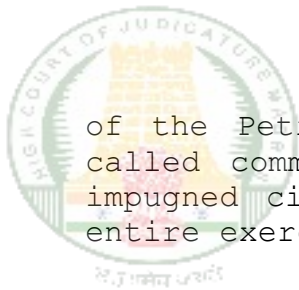
14. Advancing his arguments, the Learned Senior Counsel for the Petitioner contends that as per Section 25(2) of the Manonmaniam Sundaranar University Act, 1990, the meeting of a Syndicate of an University to conduct his business is mentioned and in view of the fact that the First Respondent/University is a statutory/body corporate legal entity, it can function through the various authorities constituted under the Act and Statutes. Therefore, it is projected on the side of the Petitioner that every member of the Body is entitled to take part in a meeting, so that, the members had views, where the meeting of minds took place possible through discussions and ultimate decisions could be taken. As such, it is the contention of the Petitioner that individual assents given separately cannot be considered to be equivalent to the assent at a meeting because the Syndicate as an authority of the University is different from the persons/members, who constitute it.

15. At this stage, Learned Senior Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in BABU VERGHESE v. BAR COUNCIL OF KERALA reported in 1999 (3) SCC 422, at special page 423, wherein it is observed and held as follows:-

"Though 'action' under Rule 6 was initiated on 13.01.1997 yet it was not completed before 27.01.1997. Out of 8 members of BCI, only four gave their opinion before 27.01.1997. Remaining four gave their opinion after this date but even then total eight members who gave opinion, were less than the majority. The opinion of four members was insufficient for 'action' being taken. On that basis, no extension could be considered to have been granted.

If Rule 6 was intended to be applied, then all of its requirements should have been fulfilled. It is a basic principle of law that if the manner of doing a particular action is prescribed under any statute, the act must be done in that manner or not at all."

16. The Learned Senior Counsel for the Petitioner contends that the third respondent/Vice Chancellor contrary to the Manonmaniam Sundaranar University Statutes 25(b) and 25(c), had appointed Sub Committees and Inspection Commissions of his choice in a manner known to him without any Syndicate Resolutions and further, no post-facto ratification or approval is taken from the University Syndicate for the appointment of such committees and commissions. In this regard, it is represented on behalf



of the Petitioner that even the reports and recommendations of the so called committees and commissions were not enclosed together with the impugned circular sent to the members of the Syndicate. Therefore, the entire exercise is without jurisdiction and a void one.

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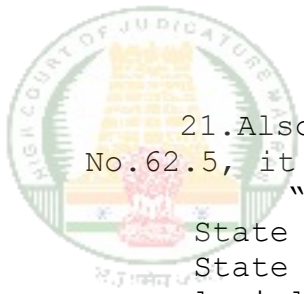
17. Expatiating his submission, the Learned Senior Counsel for the Petitioner comes out with a strenuous plea that even assuming that the Syndicate appointed Affiliation and Qualification Approval Committee consisting of 6 Syndicate members as early as on 09.10.2015 and although, the said Committee is non-operational (due to the expiry of the tenure of the 5 Syndicate Members), it is the utmost duty of the Vice-Chancellor of the University to convene the Syndicate for constituting Sub-Committees for affiliation. But in the instant case, such a course was not resorted to and in reality, the third respondent/Vice-Chancellor himself had chosen to appoint ad-hoc Committees.

18. The Learned Senior Counsel for the Petitioner contends that the instant case is not against draft Resolution or Syndicate Resolution or granting affiliation to new colleges or to new courses, but the manner in which it is sought to be granted viz., in complete violation of the laws of the University. Furthermore, on the side of the Petitioner, it is brought to the notice of this Court that only after the Resolutions are validly passed by the University Syndicate, the Colleges can gain the privilege of affiliation. Till then, the Colleges do not get any right of affiliation. Moreover, it is clear cut stand of the Petitioner that the writ petition was filed by the Petitioner even before the affiliations were granted through Resolutions of the Syndicate.

19. The Learned Senior Counsel for the Petitioner submits that the UGC Regulation, 2009, was not adopted in the State of Tamil Nadu and unless the said Unless the said UGC Regulation is adopted by the State Government and suitable amendments brought forth into the University Act and Statutes, the said Regulation will not be binding on the University. In short, it is specifically pleaded on behalf of the Petitioner that Mere passing of Resolution by the Syndicate adopting the said Regulation would have no legal consequence unless the relevant provisions of Legislative Act are amended.

20. The Learned Senior Counsel for the Petitioner to fortify his contention that 'UGC Regulations' are not applicable to the 'University', unless the 'State Government' adopts and minds the 'University Act' seeks in aid of the decision of the Hon'ble Supreme Court in KALYANI MATHIVANAN v. K.V.JEYARAJ reported in 2015 (6) SCC 363, wherein at special page 394, at paragraph No.56, it is observed as under:-

"We have noticed and held that the UGC Regulations, 2010 are not applicable to the Universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p)(v) of Appendix I dated 31.12.2008 and Regulation 7.4.0 of the UGC Regulations, 2010."



21.Also, in the aforesaid decision, at page No.396, in paragraph No.62.5, it is observed as follows:-

"The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are adopted by the State Government, the State legislation to be amended appropriately. In such case also there shall be no conflict between the State legislation and the Central legislation."

22. The Learned Senior Counsel for the Petitioner contends that although the Petitioner was a 'Beneficiary' to the earlier Syndicate in circulation, the settled legal position is that there cannot be a estoppel against Statute and in this connection, he relies on the decision of the Hon'ble Supreme Court in

P.R.DESHPANDE v. MARUTI BALARAM HAIBATTI reported in 1998 (6) SCC 507 and in JAGDISH LAL v. PARMA NAND reported in 2000 (5) SCC 44.

23.The Learned Senior Counsel for the Petitioner submits that in the present case, the Petitioner challenges the impugned circular of the Second Respondent and not the 'Resolution' and therefore, the decision in SHANTHA SRINIVASAN v. THE SECRETARY TO GOVERNMENT, HOUSING AND URBAN DEVELOPMENT DEPARTMENT reported in 2015 (2) CWC 366 and the decision in P.NATARAJAN v. DISTRICT COLLECTOR reported in AIR 2013 (NOC) MAD, cannot be pressed into service in this case.

24.Moreover, it is represented on behalf of the Petitioner that the decision of Full Bench of this Court in THE UNION OF INDIA v. MEMBER SECRETARY, CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY, reported in 2006 (4) CTC 460; the decision in GEORGE C.KAPPAN v. STATE OF KERALA reported in 2006 (3) KLT 801; and the decision in B.P.SC v. Dr.SHIV JATAN THAKUR reported in 1994 Supp 3 SCC 220, cannot be applied to the present case, because of the reason that in the present case, the Petitioner is not a dissenting member as he was not given an opportunity to even participate in the Syndicate meeting as per the Manonmaniam Sundaranar University Act.

25.Per contra, it is the submission of the Learned Senior Counsel for the respondents that the writ petition filed by the writ Petitioner is not maintainable because of the reason that the impugned proceeding is nothing, but a proceeding circulating an agenda and draft Resolution of the Syndicate for approval. Furthermore, the said proceeding cannot be considered as an order nor it can be taken into account as one, where decision was arrived at by the University. As such, the writ petition challenging the agenda and the draft Resolution is not maintainable.

26.The Learned Senior Counsel for the respondents projects and argument that in the Division Bench decision of this Court in SHANTHA SRINIVASAN v. THE SECRETARY TO GOVERNMENT, HOUSING AND URBAN DEVELOPMENT DEPARTMENT reported in 2015 (2) CWC 366, (where Justice M.VENUGOPAL is a member), wherein it is observed that 'Resolution by itself is not an order and the same can be given effect to only by passing formal order by competent authority' and further that 'Resolution' cannot be subjected to judicial review, as it is only simply minutes of the proceedings.



27. Further, on the same line, the Learned Senior Counsel for the respondents, cites the decision of the Hon'ble Supreme Court in G.SARANA v. UNIVERSITY OF LUCKNOW reported in 1976 (3) SCC 585, wherein it is observed and laid down as follows:-

"The recommendation of the selection committee has still to be scrutinised by the Executive Council of the University and either accepted or rejected by and other remedies by way of representation to the executive council and an application for reference of the matter under s. 68 of the Uttar Pradesh Universities (Reenactment and Amendment) Act, 1974, are still open to the appellant and have not been exhausted. The writ petition or the present appeal before us is not maintainable."

28. Apart from that, the Learned Senior Counsel for the respondents relies the decision in P.NATARAJAN v. DISTRICT COLLECTOR, NAGERCOIL reported in AIR 2003 (NOC) 227 (MAD.), wherein it is held that '... a mere Resolution cannot be challenged in a writ petition under Article 226 of the Constitution of India. If an order is passed by the competent authority, then the same has to be challenged in the manner known to law.'

29. The Learned Senior Counsel for the respondents invites the attention of this Court to the averments made by the Petitioner at paragraph No.18 of the writ affidavit to the effect that 'it is humbly submitted that the impugned circular together with the Syndicate Agenda issued by the 2nd respondent registrar of the University vide proceedings No. MSU/R/M&E/SYN.CIRL/2016 dated 27.05.2016 is wholly arbitrary, illegal, void, unreasonable, without jurisdiction and liable to be set aside..' and submits that it is not open to the Petitioner side to project a plea that only he had challenged the impugned circular.

30. Besides this, in reality, the writ Petitioner at paragraph No.10 of the writ affidavit had stated that the impugned circular was issued instructing him to approve the 'Draft Resolution' (Syndicate Agenda Annexed etc.). Therefore, it is the stand of the respondents that the pleadings set out by the Petitioner, as stated in the above said paragraphs of the writ petition, are quite contrary to the oral arguments advanced on the side of the Petitioner.

31. The Learned Senior Counsel for the respondents submits that the Petitioner being a member of the Syndicate of the Second Respondent/University is part and parcel of the University and as such, he cannot file the present writ petition, because of the simple fact that he has no locus standi to maintain the writ petition. In this regard, the Learned Senior Counsel for the Respondents cites the decision of the Hon'ble Supreme Court in B.P.S.C. v. DR SHIV JATAN THAKUR reported in 1994 (Supp) (3) SCC 220, wherein at special page Nos.230 and 231, at paragraph No.28, it is observed as follows:-

"Shri R.K. Garg, Senior Advocate, who appeared for Dr. Thakur, the Petitioner in the writ petition, since did not make any submission in support of the reliefs sought in paragraphs (B) and (C) of the prayer in the writ petition, we do not feel the need to consider them. Shri Garg, we are inclined to think, did not make any submission in support of the reliefs sought in paragraphs (B) and (C) obviously realising that the allegations



on which those reliefs were founded, related to functions of the BPSC, which could not have been disowned by the BPSC's sitting member. Whatever that be, no member of a Public Service Commission, in our considered view, could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought be so for the simple reason that, such member must be regarded to be a party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged. Discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a member of the Public Service Commission to question the correctness or validity of functions performed or duties discharged by the Public Service Commission as a body or institution, according to well established procedures."

32. Apart from the above, the Learned Senior Counsel for the respondents cites the following decisions;

(i) In R. EAKAMPARAM & OTHERS v. GOVERNMENT OF TAMIL NADU & OTHERS, reported in 2014-4-L.W.562;

(ii) In GEORGE C KAPPAN v. STATE OF KERALA reported in 2006 3 KLT 801; and

(iii) In VANARAJ v. SANTHANPARA GRAM PANCHAYAT reported in 2014 1 ILR Kerala 1067,

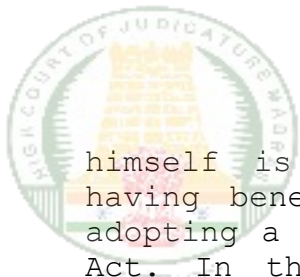
pertaining to the lack of locus standi of a member of Municipality/Collective Body to assail the decision of the said body.

33. The Learned Senior Counsel for the respondents submits that when the Petitioner filed the present writ petition and at that time, when it came up before this Court for admission on 07.06.2016, by then, the draft Resolution and Agenda circulated to all the members were acted upon, i.e. out of 13 members, 8 members by means of majority had approved the said draft Resolution as early as on 06.06.2016. In fact, the Petitioner, as early as on 31.05.2016 itself had dissented and further one Dr. P. Arockia Jansi Rani, also dissented on 06.06.2016. In short, when the Petitioner had submitted a dissenting letter, dated 31.05.2016, he had acted on the impugned proceedings dated 27.05.2016 and resultantly he cannot maintain the writ petition before this Court, in the Eye of Law.

34. The Learned Senior Counsel for the respondents contends that there is no express provision either under Section 24 or 25 of the Manonmaniam Sundaranar University Act, 1990, stating that the Syndicate can exercise its powers refer to under Section 24 only by a meeting. In fact, there is no bar under the Act for the University/Syndicate to exercise or perform any of its function by any other mode/means. As such, that the contra plea taken on behalf of the Petitioner that Syndicate can only operate by meeting and that the Syndicate cannot operate by way of circulation is not legally sustainable.

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35. At this stage, the Learned Senior Counsel for the respondents brings it to the notice of this Court that the Petitioner

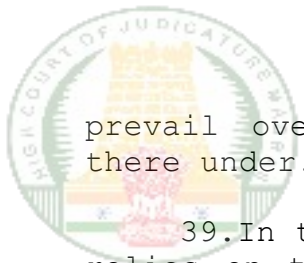


himself is a beneficiary of Syndicate Resolution by circulation and having benefited there from, cannot stand to assail the practice of adopting a circulation method, in the absence of any restraint under the Act. In this regard, the Learned Senior Counsel for the respondents proceeds to add that even in the dissenting letter/note of the Petitioner, dated 31.05.2016, the Petitioner had only prayed for the Agenda to be placed before the regular Syndicate meeting. To put precisely, it is represented on behalf of the respondents that the Petitioner had not stated that the Syndicate Resolution by circulation to be bad in law.

36.The Learned Senior Counsel for the respondents vehemently contends that because of the exigency in granting affiliation to about 32 colleges under the University (since the temporary affiliation already granted expires), the Syndicate Resolutions were sought to be approved by Circulation, by taking note of the interest of students in all the colleges. Furthermore, out real strength of 21 Syndicate members, the present strength of the Syndicate is reduced to 13 members (because of the vacancies) and out of the same 7 members are ex officio members/officers of the State Government placed at Chennai and since most of the members wanted the said agendas to be circulated for approval, the impugned proceedings were issued for approval of the draft Resolution by circulation.

37.Coming to the plea of the writ Petitioner that as per Statute 25 of the Statutes framed under the Act , the syndicate is empowered to cause an inspection to be made by a person or persons and to thereafter consider the issue as to grant of affiliation and that in the present case the action of the vice chancellor appointing inspection committees by himself is without the authority of law, it is the stand of the respondents that right from the inception of the University, it is a practice that the college seeking temporary affiliation shall be subjected to inspection by the University through a Inspection Commission to be nominated by the Vice Chancellor and after obtaining the report, the same is to be placed before the affiliation committee and then to Syndicate to decide as to grant of affiliation. In fact, it is brought to the notice of this Court on behalf of the respondents that only the inspection reports (based on the recommendations of the affiliation committee), are later placed before the syndicate for approval and not the composition of the inspection commission members. Hence, it is clear that the inspection commissions have been constituted only by the Vice-chancellor, or Convener Committee in the absence of the Vice-Chancellor till date. However, the final decision is taken by the Syndicate as regards the 'grant of affiliation', as projected on the side of the respondents.

38.The Learned Senior Counsel for the respondents contends that Regulation 4.6 of the UGC (Affiliation of Colleges by Universities) Regulation, 2009, the college seeking a temporary affiliation shall be subjected to an inspection by the University through a committee of experts nominated by the Vice Chancellor and on receipt of the report of expert committee, the same is to be placed before the appropriate body (Syndicate) to decide as to the grant of affiliation. Also, it is represented on behalf of the respondents that UGC Regulation would



prevail over any state enactment or any subordinate regulations made there under.

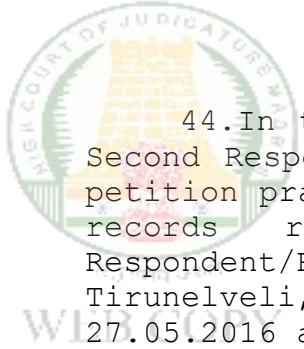
39. In this connection, the Learned Senior Counsel for the respondents relies on the decision of the Hon'ble Supreme Court in *State of TN v. Adiyaman Education and Research Institute* reported in 1995 (4) SCC 104 and also the decision in *Dr.D. Radha Krishnan Pillai Vs. The University of Kerala* reported in 2016 (2) KLT 245. In effect, the stand of the respondents is that it is the Vice Chancellor who is empowered to appoint a committee of experts as provided under the regulations for the purpose of grant of affiliation and in this connection, a reliance is placed on to the decision of the Hon'ble Supreme Court in *Kalyani mathivanan Vs Jeyaraj*, reported in 2015 (6) SCC 363, wherein it is held that 'the UGC regulations though a subordinate legislation will prevail over the State Enactment by application of Article 246 of the Constitution of India.'

40. Likewise, on behalf of the respondents, a decision of the Hon'ble Supreme Court in *Sudhir .N Vs State of Kerala*, reported in 2015 (6) SCC 685, is relied on, wherein it is held that 'the regulations framed under the Medical Council of India Act, will prevail over the enactment made by the State of Kerala.'

41. The Learned Senior Counsel for the respondents submits that the Petitioner or other members of the Syndicate are not experts as mentioned in the Regulation and they cannot cause to make an inspection of the colleges and moreso, they cannot even claim that for the purpose of affiliation as per UGC Regulation, 2009, they can make inspection. Further, as on date, other than ex officio members, among the 4 members, 3 members (i) Dr.P.P.Chelladurai; (ii) Dr.S.Cletus Babu; and (iii) Dr.K.Subburam, are Director, Chairman and Principal of Institutions and they cannot be considered to be experts. In fact, Dr.P.Arokiya Jansi Rani (Assistant Professore) does not satisfy the requirement of the Regulation which stipulates that subject experts must be a Professor. Likewise, it is represented on behalf of the respondents that the Petitioner is not fulfilling the norms prescribed for being part of an inspection Committee. As such, it is not possible to continue the previously appointed Committee and because of that, the Vice Chancellor had appointed Inspection Committes for conducting inspections in the colleges and on the basis of report furnished by such expert committees, the impugned draft Agenda and Resolution were placed for being approved by the Syndicate and the same was approved by the majority of the Syndicate members.

42. In fact, the syndicate had approved the action of the Vice Chancellor and had also approved the grant of affiliation to new colleges/courses for the Academic Year 2016-2017 and for continuation of affiliation of the colleges under the university. In short, the action of the Second Respondent and the University is perfectly valid in Law and also for the action of the Vice Chancellor in appointing appointing inspection committees and placing its report for consideration of the Syndicate is valid by means Doctrine of necessity.

43. This Court has heard the Learned Senior Counsel for the Petitioner and the Learned Senior Counsel for the respondents 1 to 3.



44. In the instant case, the Petitioner is a Syndicate member of the Second Respondent/University, Tirunelveli. He has filed the present writ petition praying for passing of an order by this Court in calling for the records relating to the impugned circular of the Second Respondent/Registrar of the Manonmaniam Sundaranar University, Tirunelveli, vide proceedings No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016 and to quash the same etc.

45. As a matter of fact, the Petitioner in the writ affidavit at paragraph No.18, had averred the following:-

'It is humbly submitted that the impugned circular together with the Syndicate Agenda issued by the 2nd respondent registrar of the University vide proceedings No. MSU/R/M&E/SYN.CIRL/2016 dated 27.05.2016 is wholly arbitrary, illegal, void, unreasonable, without jurisdiction and liable to be set aside etc."

46. In this connection, this Court pertinently points out that on perusal of the grounds raised by the Petitioner in the writ petition, it is candidly quite clear that the Petitioner has assailed the impugned circular in reference No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016. In reality, in the said circular under the caption 'Sub: Agenda Item and Draft Resolution - Syndicate in Circulation - sending - reg', it was mentioned that two copies of Syndicate agenda item with draft Resolution in circulation for the approval of the Petitioner was sent herewith and further, a request was made to the Petitioner, to kindly approve the enclosed draft Resolution and send one of the same to the Second Respondent/Registrar/University, by name after duly signing the same etc. Besides this, in the said circular, it was also stated that any suggestion or modification, if not received within 10 days from the date of communication, it would be construed that the minutes were approved and also the matter was treated to be as most urgent.

47. The Petitioner by responding to the impugned circular of the Second Respondent/University, dated 27.05.2016 had submitted a detail representation dated 31.05.2016 expressing his dissent and desire that the circulation be withdrawn and requested for placing the same in the regular Syndicate following the due process of fresh and further affiliation, as per Act and Statutes. Also, another Syndicate member of the Second Respondent/University one Professor P.P.Chellapandi had also submitted his representation dated 31.05.2016 and stated that serial Nos.1 to 32 of the Agenda items and draft Resolutions thereon, do not want approval and therefore, they shall be placed in the regular Syndicate with recommendations and remarks of the Syndicate sub committee on affiliation and qualification approval so as to ensure lawful action in the interest of students and society.

48. On behalf of the Petitioner, it is represented before this Court that one Dr.P. Arockia Jansi Rani, Syndicate Member had submitted a representation dated 06.06.2016 to the Second Respondent/Registrar of the University placing her protest to the impugned circular dated 27.05.2016.

49. It is to be noted that Chapter IV of the Second Respondent/Manonmaniam Sundaranar University Act, 1990, deals with the Syndicate. In fact, Section 23(b) deals with the composition of the



Syndicate. Section 25 of the Act refers to the meeting of the Syndicate. Statute 21 of Chapter XVIII of the Statutes of the Second Respondent/University deals with the procedure to be adopted in granting Affiliation or Approval. Statute 25(b) of the University deals with an appointment of Inspection Committee for the purpose of granting 'Approval or Affiliation'.

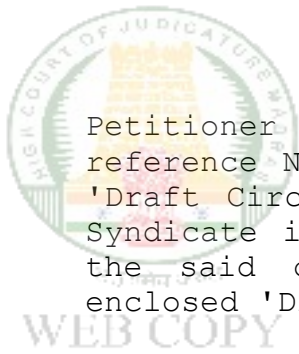
50. It is to be pointed out that in the present case, the Third Respondent/Vice Chancellor of the University has not filed counter to the writ petition. Even the vacate stay petition in WMP(MD)No.8256 of 2016 in W.P.(MD)No.10045 of 2016, was filed by the Manonmaniam Sundaranar University through its Registrar and the Registrar by name of the University. It is to be remembered that in Law, a party to the proceedings/litigation must take each fact, which is alleged against him separately and to state whether he admits it or denies it or even does not admit it. More specifically, a denial must be made by a party and not an evasive denial as opined by this Court.

51. It is also represented on behalf of the Petitioner that the Director of Legal Studies (one of the Ex-officio members of the Syndicate) had forwarded the Petitioner's dissenting note to the Syndicate in Circulation dated 31.05.2016 to the Third Respondent/Vice Chancellor of the University through his letter dated 06.06.2016 asking him to consider the same. Further, it is stated on behalf of the petitioner that the Director, Legal Studies himself had marked his signature in the single sheet approving the Agenda in Circulation.

52. As a matter of fact, the term 'Discussion' is a generic term meaning taking together. The term 'Discussion' ordinarily implies that the participants are not adversarial or competing in 'Debate'. To put it precisely, in 'Deliberative Dialogue', there is every possibility to appreciate the differences and ways to act of those differences. Indeed, that 'Collective Decisions' are superior to individual one, because more information can be brought to bear. It cannot be gainsaid that at the time of taking part in a 'Meeting/Discussion/Deliberation', the minority members can have the benefit of the contra opinion and get an opportunity to hear others views and marshal more counter views with a view to present the same for healthy discussion, in the considered opinion of this Court.

53. Furthermore, in a 'Meeting/Discussion/Deliberation', there is undoubtedly 'free speech', Great Deal of Participation of different members with divergent views on the subject to be discussed in a meeting by taking part and finally, taking a decision either by 'Consensus' or by 'Majority'. Moreover, in meetings, collective decision can be arrived at through open, fair and frank discussion and it would definitely satisfy the participants in a substantial and in a procedural manner, as opined by this Court. That apart, the 'meeting' provides a platform for dissenting members/opposition members to voice their grievances/views and take them earnestly and seriously.

54. Dealing with the aspect of maintainability of the writ petition filed by the Petitioner, this Court pertinently points out that the



Petitioner as a Syndicate member has assailed the 'Draft Circular' in reference No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016. A perusal of the 'Draft Circular' on the subject of 'Agenda Item and Draft Resolution - Syndicate in Circulation', this Court is of the considered view that in the said circular itself, it was clearly requested to approve the enclosed 'Draft Resolution'.

55.Be that as it may, inasmuch as the Petitioner in the writ petition at paragraph No.20, has sought for quashing of the impugned draft circular in reference No.MSU/R/M&E/SYN.CIRL/2016, dated 27.05.2016 issued by the Registrar of the Second Respondent/University, this Court comes to an irresistible and inevitable conclusion that the writ petition filed by the writ Petitioner is per se not maintainable, because of the simple reason that the 'draft circular' cannot be construed as an order and also it is not a final expression of opinion in the subject matter in issue. Furthermore, the draft circular, dated 27.05.2016 of the Second Respondent/University together with the Agenda item are only materials praying for approval of the concerned members and they are not out come of a final opinion Deliberation/Discussion in the subject matter in issue.

56.After all, the 'Draft Circular' dated 27.05.20106, together with the Agenda item can either be accorded approval or even rejected by the members of the Syndicate on verification and scrutiny. Looking at from any angle that the impugned draft circular dated 27.05.2016 in reference No.MSU/R/M&E/SYN.CIRL/2016 together with the Agenda item of the Second Respondent/University in Law cannot be assailed by the Petitioner before this Court in the present writ petition. Viewed in that perspective, the writ petition filed by the writ Petitioner is per se not maintainable and consequently, the writ petition fails.

57.In fine, the writ petition is dismissed leaving the parties to bear their own costs. At this stage, this Court makes it quite clear that since the writ petition is not maintainable, it has not gone into the merits of the controversies centring around the writ petition. Furthermore, since it is brought to the notice of this Court that the majority of the members of the Syndicate had accorded their assent to the Resolution, and the same being approved in circulation, on 06.06.2016, it is open to the Petitioner to challenge the validity of the Resolution approved by the majority members in circulation, ofcourse, in the manner known to Law and in accordance with Law. Liberty is granted to the Petitioner to raise all factual and legal pleas, if he so desires/advised. Before parting with case, this Court fervently opines that it is quite palatable/desirable for the Third Respondent/Vice Chancellor of the Manonmaniam Sundaranar University to follow the ingredients of Manonmaniam Sundaranar University Act, 1990 and Statutes, as far as Practicable/Possible/Feasible so as to avoid cropping up of unnecessary litigation. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar(AE)

/True Copy/



To:

1. The Registrar,
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli.

2. The Vice Chancellor,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli.

+1CC to M/S.Ajmal Associates, Advocate, SR.No. 35630

+1CC to M/S.T.Cibi Chakraborty, Advocate, SR.No.35678

ORDER MADE IN
W.P. (MD) No.10045 of 2016
and
W.M.P. (MD) Nos.7888, 8256 & 8921 of 2016
11.07.2016

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AM/NGM.MP/SAR-I/12.07.2016/15P/5C