



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 25TH DAY OF AUGUST 2021 / 3RD BHADRA, 1943

WP (C) NO. 5362 OF 2021

PETITIONER:

MALABAR COLLEGE OF ADVANCED STUDIES
VENGARA, MALAPPURAM-676519., REPRESENTED BY ITS
PRINCIPAL.

BY ADVS.
BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SHRI.P.U.VINOD KUMAR
SMT.ARYA RAGHUNATH
SMT.VAISAKHI V.
SRI.T.M.MUHAMMED MUSTHAQ
SHRI.MOHAMED HISHAM P

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 UNIVERSITY OF CALICUT
CALICUT UNIVERSITY P.O., THENHIPALAM,

MALAPPURAM-673635., REPRESENTED BY ITS REGISTRAR.
- 3 THE REGISTRAR
UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY P.O., THENHIPALAM, MALAPPURAM-
673635.

SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY

SRI K.B RAMANAND SR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



“CR”

JUDGMENT

Malabar College of Advanced Studies, Vengara, has approached this Court being aggrieved by the refusal of the State to accord sanction to the Institution to conduct Post Graduate courses for M.Com and M.A. (English) with an intake of 15 each despite being recommended by the University of Calicut to conduct the said programme.

2. A sketch of the facts leading to the filing of this Writ Petition are as under:

a) The petitioner herein, is an aided Arts and Science College affiliated to the University of Calicut, the 2nd respondent herein. The College is established and run by the Malabar Educational and Charitable Trust. The institution commenced its functioning in the year 2013 and presently offers 9 undergraduate programmes. Some of the programmes are aided and some are unaided. It is contended that about 1068 students are studying in the institution out of which, 75% are women students.

b) The College is situated in a rural area. The predominantly women students, who completed their graduation, find it extremely difficult to pursue post-graduate courses as institutions conducting such courses are few and far off. Based on requests from the students and parents, the institution has developed infrastructure facilities and amenities to start postgraduate courses.



c) An application for affiliation for M.Com and M.A. (English) for the academic year 2020-2021 was submitted before the 3rd respondent as mandated under Chapter 23 of the Calicut University First Statutes, 1977. The requisite fee was also remitted.

d) An inspection was conducted by respondents 2 and 3 to assess the suitability and other factors. On being satisfied that the institution satisfies all the criteria, the 2nd respondent, as per Ext.P1 intimation, addressed to the 1st respondent, forwarded the list of innovative-interdisciplinary programmes duly recommended in Government/Aided Arts and Science Colleges affiliated to the University of Calicut for the academic years 2020-2021 and 2021-2022 for further action. The Government was requested to communicate the views in sanctioning the additional programmes. From Exhibit P1, it is evident that the petitioner institution has been included in the list of Colleges in Malappuram District.

e) Later, the 1st respondent by Ext.P2 order dated 5.11.2020 granted administrative sanction to numerous colleges in the Government/Aided and Unaided sector for new courses but refused to grant sanction for the conduct of PG courses in the petitioner institution. Though Ext.P3 representation was made by the Principal to reconsider the decision, the same was not heeded to.

f) The petitioner contends that the non-inclusion of the petitioner institution is arbitrary and illegal.

g) Reliance is placed on Ext.P6 intimation, and it is pointed out that the



Government had taken a stand that the National Assessment and Accreditation Council (NAAC) score and National Institutional Ranking Framework (NIRF) ranking are not insisted in Colleges which in the opinion of the University have the necessary infrastructure to start appropriate programmes. While taking a liberal stand by the State, there was no justification in not recommending the petitioner institution particularly when the University had given their recommendation.

3. A counter affidavit has been filed by the 1st respondent. It is stated that the scheme evolved by the Government was to grant new courses to colleges that had 'A' grade NAAC accreditation with a prescribed score and a NIRF rating. It is further stated that while granting a new programme in an existing college, 3 to 5 new faculty posts are required to be created. In the light of the financial constraints, the proposal of the Government was such that for the initial 5 years of the commencement of the new courses, the faculty will be paid Guest Lecturer salary and thereafter, at the UGC scale. Since the financial commitment involved in implementing the new policy involves a huge financial burden, the Government has to plan the entire scheme based on the financial capability of the State. It is further stated that while ensuring benchmark standards, it is also necessary for the Government to maintain parity between Universities while sanctioning new courses in the existing institutions. Regional imbalances of the Government/aided institutions in the State are considered to ensure equitable distribution of new courses.



Prominence is given to educationally backward areas in the State and such other socio-economic criteria. The Government is to ensure that the policy of granting sanctions is equitable and satisfies the needs of the society as a whole. It is further stated that the insistence of NAAC accreditation and other benchmarks was liberalised by the Government at a later stage taking into account the maintenance of equitable distribution and the upliftment of the educationally backward area. It was in the said circumstances that the Government had issued Ext.P6 directing the Universities to consider institutions that do not have NAAC score and NIRF ranking, provided they have the necessary infrastructure and keeping in mind the recommendations made by the Kerala State Higher Education Council. It is further stated that unlike in the early years, Malappuram District is educationally well served especially in higher education. Besides numerous professional educational institutions, there are 91 affiliated Arts and Science Colleges in Malappuram District alone. Out of the 91 affiliated Colleges, 27 (29.67%) are Government/Aided Colleges. It is further stated that the Vergara Town wherein the petitioner college is situated, is in the periphery of places like Kottakkal, Thirurangady, Malappuram, Parappanangadi, Tirur, Puthanathani, Kondotty and Tanur. All these places are within a distance of 7 to 15 km from Vengara. In these neighbouring places, there are 40 affiliated Arts and Science Colleges and therefore, there is no pressing need to grant new programmes in the petitioner institution during this academic year without them fulfilling the eligibility



criteria.

4. It is further stated that as far as sanctioning new programmes in aided colleges are concerned, the recommendations made by the University is not the only criteria to grant sanction by the Government. Since the Government is the paymaster and the public exchequer has to bear the financial implications of post creation due to sanctioning new programs, the Government has to consider the budgetary allocation before undertaking new liabilities. The public funds are to be utilised in a judicious and equitable manner so as to maintain a balance and to ensure the upliftment of educationally and socially backward areas. It was taking note of all these aspects that the Government had sanctioned new courses as per Exhibits P2, P4 and P5 based on broader principles. It is further stated that the Government is not in a position to sanction courses to all the institutions recommended by the universities unmindful of the financial implications. It is stated that the petitioner is not having any NAAC accreditation or NIRF ranking. The case of the petitioner can only be considered as and when the petitioner improves its standards by acquiring the required ranking and score. It is further stated that the application submitted by the applicant has not been rejected by the Government and can be considered in the future years.

5. In the counter affidavit filed by respondents 2 and 3, it is stated that being an aided college, the sanctioning of the course needs Governmental permission since the salary to the teachers is to be met by the Government. It



is in the said circumstances that NOC for granting affiliation to of course in unaided college is insisted upon. It is further stated that the views of the Government are to be ascertained before granting Affiliation and that in aided colleges, Courses cannot be sanctioned merely at the request of the management.

6. A reply affidavit has been filed by the petitioner wherein it is stated that the inspection team appointed by the University had visited the college and had conducted a detailed inspection in tune with Ext.P6 issued by the 1st respondent and it was thereafter that the petitioner institution was recommended for affiliation to conduct M.Com and M.A (English) with an intake of 15 students each. It is contended that though a specific contention was taken by the petitioner in the writ petition that there is a paucity of PG seats in the Malappuram District for students in general and women students in particular, this fact is not controverted in the counter filed by the 1st respondent. It is stated that the college is situated in a rural area and 75% of the students are girls who find it extremely difficult to pursue PG courses. No details are furnished in the counter as to the number of institutions running postgraduate courses, opportunities offered to girl students and other aspects. It is further stated that the petitioner institution is situated in Kannamangalam Grama Panchayat in Malappuram District which is one of the most backward areas as identified by the Central Government. The number of women in the area is greater than the number of men even as per the records issued by the



Election Commission. It is further stated that Malappuram District is the most populated District in Kerala as per the 2011 census with as many as 41.13 lakhs of individuals residing in the District. As per the Rashtreeya Uchadhar Siksha Abhiyan (RUSA) report, the Gross Enrolment Rate (GER) of students in Malappuram is the lowest at 8.4% when compared to other districts in Kerala. There is a clear imbalance and discrimination in the matter of sanctioning the courses by the Government. Though in the counter affidavit, it is stated that the petitioner college was not recommended due to lack of NAAC Score and NIRF ranking, numerous colleges without any NAAC accreditation or NIRF ranking have been recommended by the 1st respondent. According to the petitioner, the stand of the Government is clearly discriminatory.

7. The petitioner states that the averment in the counter affidavit that the Government is not in a position to sanction courses to all the recommended institutions due to financial implications is clearly incorrect as it has been specifically mentioned in Exts.P2, P4 and P5 Government orders that no post creation shall be allowed for the courses till 2025 and that classes will have to be conducted with Guest faculties.

8. I have heard Smt.M.A.Vaheeda Babu, the learned counsel appearing for the petitioner, Sri. Ramanand K.B., the learned Senior Government Pleader who appeared for the 1st respondent and Sri. P.C.Sasidharan, the learned standing counsel appearing for respondents 2 and 3.



9. Smt. Vaheeda Babu, relied on the judgment of the Apex Court in **T.M.A.Pai Foundation v. State of Karnataka** [(2002) 8 SCC 481], and it was argued that the expression 'Education' in the Articles of the Constitution means and includes education at all levels, from the primary school level upto the postgraduate level. According to the learned counsel, the right to establish and administer educational institutions is guaranteed under the constitution to all citizens under Article 19(1)(g) and 26 and to minorities specifically under Article 13. The right is intended to be effective and is not to be whittled down by speculative measures. Reliance is placed on the judgment of the Apex Court in **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trusts v. State of T.N.** [(1996) 3 SCC 15] and it is argued that the State Government could not refuse essentiality certificate on policy considerations. Reliance is also placed on **Jayagokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department** [(2000) 5 SCC 231], and it is argued that the provisions of the Calicut University Act, 1956 and the statutes only required the University to obtain the views of the Government and the same cannot be characterized as requiring the approval of the State Government. Much reliance is placed on the judgment of this Court in **State of Kerala v. MGM college of Arts and Science** [2017 (3) KLT 779] and it is argued that once the University approves of the standards that are to be met, the Government would have no say to advise the University to reject affiliation.



The learned counsel would contend that once power has been conferred on the authorities under the University Statute to grant affiliation after ascertaining the amenities and facilities, the Government cannot override the discretion of the University. It is contended that this Court had occasion to hold that education being an integral part of life and liberty, it cannot be restricted by a policy decision but only by law and law made by the competent legislature and not by executive fiat.

10. Sri. Ramanand K.B., the learned Senior Government Pleader, submitted that as per the University Statutes, the University is bound to obtain the views of the Government. The Government is required to take note of the entire scenario in the educational sector in the State while considering whether the recommendation is to be granted. The Government is required to prevent the mushrooming of colleges in an area and also commercialisation of education. It is further submitted that the creation of new posts by sanctioning new programmes has financial implications and all these aspects were taken note of while considering the request of the University. It is submitted that the application submitted by the petitioner has not so far been rejected but they have only been asked to upgrade their NAAC score and NIRF ranking so that the request can be considered at a later stage.

11. Sri.P.C.Sasidharan, the learned standing counsel appearing for the University, submitted that the University cannot ignore the views of the Government. In the case on hand, the Government has not recommended the



petitioner institution for the programmes recommended by the University. The University is bound to take note of the views and act accordingly.

12. I have considered the submissions advanced and have gone through the entire records.

13. The Affiliation of Colleges is regulated by the University of Calicut Act, 1975 enacted by the Kerala State legislature. For grant of affiliation, there are statutes framed under the Act by virtue of Section 34 of the Act. The statutes concerning the University of Calicut are known as Calicut University First Statutes, 1975 ('The First Statutes', for short). Chapter 23 of the First Statutes deals with the affiliation of colleges. Section 56 of the Calicut University Act, 1956 provides for affiliation of Colleges. The relevant provisions of the Act, as well as the Statute, reads as follows :

S. 56. Affiliation of colleges:

- (1) An application for affiliation to the University of any college or for affiliation in new courses in any affiliated college shall be sent by the educational agency to the Registrar within such time and in such manner as may be prescribed by the Statutes.
- (2) The terms and conditions of affiliation of a college or of affiliation in new courses in an affiliated college and the procedure to be followed by the Syndicate in granting such affiliation, including the period within which the Syndicate shall consider an application under subsection (1) shall be prescribed by the Statutes:

Provided that the Chancellor may, by notification in the Gazette for reasons to be specified in the notification, extend the period within which the Syndicate shall consider any application under sub-section (1), whether such period has already expired or not, by such further period not exceeding one year, as may be specified in such notification.

- (3) Without prejudice to the generality of the provisions of sub-section (2) such Statutes may provide for the pattern of staff, scales of pay and



terms and conditions of service of members of the staff and admission and selection of students for courses and examinations.

14. Chapter 23 of the First Statutes deals with the procedure for affiliation. The relevant provisions are as follows.

CHAPTER 23 Affiliation of Colleges Procedure to be adopted in granting affiliation of new college and in new courses

1. Date of application: Application for affiliation of a college or for affiliation in additional subjects shall be addressed to the Registrar and shall be forwarded to him not later than the 30th June in the case of Professional Colleges other than Law and Training Colleges and the 31st of October in the case of all other colleges preceding the academic year in which the courses are proposed to be started. Provided that late applications received upto 31st December of the concerned year which are accompanied by a fine of Rs.1,000 (Rupees one thousand only) for additional courses in existing colleges and of Rs.2,000 (Rupees two thousand only) for new colleges shall also be considered. Further provided that notwithstanding anything contained in Statute I and application for affiliation of colleges and courses received in the office within the time prescribed and found in order shall be valid for two academic years.
2. Form of application: An application for affiliation of a new college shall be furnished in Form 2.
3. Application for additional affiliation etc.: The application for affiliation in additional subjects or for upgrading a college shall be made in Form 3. Application for starting post-graduate courses and for seeking of additional seats in existing courses shall respectively be made in Form 4 or 5 as the case may be.
4. Application to be made by whom: The applications for affiliation shall be made in the case of Government Colleges by the Head of the Department and in the case of Private Colleges by the Educational Agency.
5. Application fee: The college management shall pay to the University as application fee at the rate of Rs.2,500 (Rupees two thousand and five hundred only) for affiliation of new courses in existing colleges and for permanent increase of seats in existing courses and Rs.5,000 (Rupees five thousand only) for affiliation of new colleges for the Inspection



appointed by the Syndicate. In all other cases of commissions appointed to inspect the colleges consisting of the members of the University bodies and subject experts following an application made by the respective colleges fee calculated at the rate of Rs.500 (Rupees five hundred only) per member of the Inspection Commission shall be remitted.

Procedure to be adopted by the Syndicate on receipt of application for affiliation etc.

6. Power of the Syndicate to grant affiliation etc:- (1) All applications seeking affiliation shall be considered by the Syndicate not later than 31st March preceding the Academic year in which the college/courses are proposed to be started
- (2) The Syndicate shall have power to affiliate any college within the territorial jurisdiction of the University preparing students for degrees, titles or diplomas of the University which satisfy the conditions prescribed in the laws of University.
7. Procedure on receipt of application: The Syndicate may call for any further information which it may deem necessary before proceeding with an application, or may advise the management that the application is premature or may decline to proceed with the application if it is satisfied that the arrangements made or likely to be made before the beginning of an academic year in which the courses are to be started or the conduct of the courses are not sufficient or suitable, or if the college has failed to observe the conditions laid down in respect of any previous affiliation.
8. Local Enquiry : If the Syndicate decides to proceed with the application, it shall direct a local enquiry to be made by the competent person or persons appointed by it in this behalf provided that it shall be competent for the Syndicate to dispense with the enquiry above mentioned in the case of any subject or group of subjects in which it does not, for special reasons to be recorded, consider a local enquiry necessary.
9. Grant of Affiliation:
 - (a) The University may appoint a Commission to inspect the proposed site of a new college/or to make a physical verification of the facilities that may exist for starting the new college/ course, if the application is considered favourably by the University. The Commission will inspect the suitability of the proposed site, verify



the title deeds as regards the proprietary right of the Management over the land (and buildings, if any) offered, building accommodation provided if any, assets of the Management, constitution of the registered body and all other relevant matters. Further action on the application shall be taken on receipt of the report of this commission.

- (b) The grant of affiliation shall depend upon the fulfillment by the Management of all the conditions that are specified here or that may be specified later for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports of inspection by the Commission or Commissions which the University may appoint for the purpose.
- (c) Unless all the conditions are fulfilled, before the commencement of the academic year, no new college/or additional courses shall be permitted to be started during that year.
- (d) Educational agency/Management, the Principal or any other person or persons on their behalf shall neither demand nor accept donations from candidates for appointment to the staff and from students for admission to the college.
- (e) The Management shall be prepared to abide by such conditions and instructions as regards staff, equipment, library, reading room, play-grounds, hostels, etc., as the University may, from time to time impose or issue in relation to the college.
- (f) The Educational Agency/Management shall give an undertaking to the University to carry out faithfully, the provisions of the University Act, Statutes, Ordinances, and Regulations and the directions issued by the University from time to time, in so far as they are related to the college. The undertaking shall be endorsed by the Principal of the college.
- (g) After considering the report of the local enquiry, if any, and after making such further enquiry as it may deem necessary, the Syndicate shall decide after considering the report of the local enquiry and also after ascertaining the views of the Government, whether the affiliation be granted or refused, either in whole or in part. In case the affiliation is granted, the fact shall be reported to the Senate at its next meeting.

15. A perusal of the Act as well as the Statute reveal that a detailed



procedure is prescribed prior to the grant of affiliation. The views of the Government have also to be ascertained before deciding whether affiliation is to be granted or refused, either in whole or in part. From the counter affidavit as well as the submissions of the learned Senior Government pleader, it appears that the petitioner institution was not accorded administrative sanction by the Government for two reasons. The first reason being that the institution has not secured the optimum NAAC score and NIRF ranking and the second reason being the financial implications due to post creation.

16. Ext.P6 is the communication dated 18.9.2020 issued by the 1st respondent to the Registrars of various Universities calling for applications for new courses. In Ext.P6, it is stated that in the light of the discussions in the meeting held on 16.9.2020, the instructions in the Government letter dated 9.9.2020 is amended to the following extent.

- i) NAAC score and NIRF ranking are not insisted in colleges which in the opinion of the University have the necessary infrastructure to start 4 year and 5 year programme.
- ii) Proposals of colleges of Scheduled Castes Community Trust can also be recommended even if unaccredited.
- iii) The recommendations of KSHEC may also be considered by the University.

17. It is in pursuance to Ext.P6 that an inspection was conducted as mandated in the relevant statutes and Ext.P1 was issued by the 3rd respondent



to the 1st respondent recommending the petitioner institution for commencing two PG courses. In that view of the matter, there is no justification in refusing administrative sanction on the ground that the petitioner is not having NAAC score or NIRF ranking. Furthermore, in the reply affidavit, the petitioner has listed the colleges affiliated with the various Universities in the State for which sanction was accorded by the Government despite the fact that those colleges did not have a valid NAAC accreditation. The said assertion of the petitioner has not been controverted by the 1st respondent in any manner. The 1st respondent is required to adopt the very same standards for all the institutions in the State and act in a fair and reasonable manner. In that view of the matter, the sanction could not have been refused on the ground that the petitioner did not have NAAC score or NIRF ranking.

18. The second ground on which sanction was refused was that a grant of sanction may entail creation of new posts and it would have financial implications. In this context, it would be relevant to note that in Exts.P2, P3 and P4 orders, as per which administrative sanction was accorded to various colleges, it has been specifically stated that no post creation shall be allowed for the courses till 2025 and classes should be run with guest faculties only. For reasons best known to the 1st respondent, this aspect of the matter has not been stated in the counter. If the grant of affiliation and sanction for recommendation is being granted on the condition that no new posts shall be created, there cannot be any justification in refusing recognition on that



ground. In that view of the matter, non-grant of administrative sanction on the ground that it would entail in the creation of new posts also cannot be sustained.

19. In **T.M.A. Pai Foundation** (supra), it was held by the Apex Court that the expression "education" in the articles of the Constitution means and includes education at all levels, from the primary school level up to the postgraduate level. It includes professional education. The expression "educational institutions" was held to mean institutions that impart education, where "education" is as understood hereinabove. The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and to minorities specifically under Article 30. All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right will be subject to the provisions of Articles 19(6) and 26(a).

20. In **P.A.Inamdar & Ors. v. State of Maharashtra & Ors.** [(2005) 6 SCC 537], it was held that Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration.

21. In **Thirumuruga Kirupananda Variyar Thavathiru Sundara**

**Swamigal Medical Educational & Charitable Trusts v. State of T.N.**

[(1996) 3 SCC 15], it was held that the State Government could not refuse Essentiality Certificate on policy considerations.

22. In **State of Maharashtra v. Sant Buvneshwar Shikshan Shastra Mahavidyalaya** [(2006) 9 SCC 1], it was held that the right to education covers primary as well as secondary education under Art.21A of the Constitution of India and that the Government cannot refuse permission on policy consideration.

23. In **Jayagokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department** [(2000) 5 SCC 231], it was held when the particular Statute merely required the University to obtain the "views" of the State Government, the same could not be characterised as requiring the "approval" of the State Government. If indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void.

24. In **State of Kerala v. M.G.M. College of Arts and Science** [2017 (3) KHC 965], a Division Bench was confronted with the question as to whether the policy of the State that no new colleges and courses would be allowed in the self-financing sector in the higher education field in the State could be sustained. A learned Single Judge of this Court had set aside the Government Order and it is in the said circumstances that the matter had come



up before the Division Bench in an appeal filed by the State. It would be illuminating to refer to paragraphs Nos.5 to 11 of the judgment.

5. We are not dealing with higher education given by technical institutions. We are dealing with Arts and Science Colleges in general. The establishment of such colleges is regulated by various State University Acts and one of them is Mahatma Gandhi University Act, 1985 (the 'Act', for short) enacted by the Kerala State legislature. This is an enactment pursuant to Entry 25 List III of the Constitution, in relation to Education and Universities. If we refer to the scheme of the Act, the Act clearly provides that no college or institution can impart any education for the purpose of grant of degree except upon due affiliation granted by a University within the jurisdiction of which, such institution falls.

6. For grant of affiliation, there are statutes framed under the Act by virtue of Section 35. The statutes concerning the Mahatma Gandhi University are known as Mahatma Gandhi University Statutes, 1997 (the 'First Statutes', for short). Chapter 23 of the First Statutes deals with affiliation of colleges. If we refer to this chapter, we would see that any institution that requires affiliation, would have to first set up the institution, then make an application to the University for grant of affiliation. The University, after scrutinizing the application, may call for further information and then, may appoint a commission to inspect the new college, after physical verification, and submit a report. Clause 9 of the Statutes in Chapter 23 reads as follows:

"9. Grant of Affiliation:

- (1) The University may appoint a Commission to inspect the proposed site of a new college or to make a physical verification of the facilities that may exist for starting the new college/course, if the application is considered favourably by the University. The Commission shall inspect the suitability of the proposed site, verify the title deeds as regards the proprietary right of the management over the land (and buildings, if any) offered, building accommodation provided, if any, assets of the Management, constitution of the registered body and all other relevant matters. Further action on the application shall be taken on receipt of the report of the Commission.

- (2) The grant of affiliation shall depend upon the fulfillment by the Management of all the conditions for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports on inspection by the commission or commissions which the University may appoint for the purpose.



- (3) Unless all the conditions are fulfilled, before the commencement of the academic year, no new college/or additional courses shall be permitted to be started during that year.
- (4) Educational agency/Management, the Principal or any other person or persons on their behalf shall neither demand nor accept donations from candidates for appointment to the staff and from students for admission to the college.
- (5) The management shall be prepared to abide by such conditions and instructions as regards staff, equipment, library, reading room, playgrounds, hostels etc., as the University may, from time to time, impose or issue in relation to the college.
- (6) The educational agency/Management shall give an undertaking to the University to carry out faithfully, the provisions of the Act, Statutes, Ordinances and Regulations and the directions issued by the University, from time to time, in so far as they are related to the college. The undertaking shall be endorsed by the Principal of the College.
- (7) After considering the report of the Commission and the report of the local enquiry, if any, and after making such further enquiry as it may deem necessary, the Syndicate shall decide, after ascertaining the views of the Government also, whether the affiliation be granted or refused, either in whole or part. In case affiliation is granted, the fact shall be reported to the Senate at its next meeting."

7. If we refer to the scheme as contained in the Statutes and then to Clause 9(7), we will find that Government's interference is only at the end. Why we have referred to the scheme is that an institution decides to set up a college. Having taken that decision, they create the infrastructure, both in terms of building and in terms of manpower. They then apply to the University for affiliation. University conducts rounds of enquiries and inspections. When it finds everything in order and the condition right for grant of affiliation, it has, at that stage, to "ascertain the views of the Government". Can it be expected of the Government to advise the University to refuse grant affiliation. We think not unless there are some cogent deficiencies in the institution, for, it will be travesty of justice to give the power to the Government, at this stage, where a person may have invested crores of rupees, spent several years in establishing an institution, in recruiting people, construction of building, only to be told no by the Government. Surely, that is not the power of the Government as contemplated under Clause 9(7) of the Statutes. The power is for the Government to recommend proper compliance of the Statutes, and in so far as



improvement of infrastructure is concerned, it is for the University to see, whether the standards are met. Now, once the University approves of the standards that are to be met, in our view, the Government would have no say to advise the University to reject affiliation. If it does, it would be arbitrary unless good reason is shown by the State.

8. Now, we come to the facts of the present case where, after the institutions were set up and inspections were conducted and change of Government, suddenly the Government order was issued on 22.08.2016 putting a complete ban on self-financing colleges. All colleges that had already been set up and were awaiting affiliation thus, virtually became redundant. All investments went down the drain. Rightly, the learned single Judge has disapproved of such a policy decision.

9. Once power has been conferred on the authorities under the University Statute and the Statutes as such, the Government cannot override the discretion of the University, because such a policy makes the entire statute dealing with affiliation redundant. This takes away the right of parties to establish institutions even in the unaided sector. Surely, this right is not exercised by the Government in terms of Clause 9(7) of the Statutes. A policy decision of this nature cannot be valid, even otherwise.

10. Even otherwise, for, it affects the fundamental rights of parties to receive education and to impart education. Education, as noticed in the beginning, is an integral part of life and liberty. Such a right can be restricted not by a policy decision, but only by a law and law means law made by the competent legislature and not by an executive fiat. Further, a policy decision like this fetters future discretion. Such fetters cannot be put. This policy puts a complete embargo for all times that no such self financing institution can be allowed to be established. Such policy restricting future discretion is not reasonable, in any manner.

11. Learned standing counsel for the University vehemently argued that there is likelihood of mushrooming growth of such educational institutions. We see no wrong in such growth, for, we are of the view that the system works on the principle of demand and supply. No person will sink crores of rupees to establish an institution, if there is no demand for it. If there is no demand for it, then an institution which is already set up would diversify to other activities or other courses. They being unaided institutions, they have to look out for their own finances. They know what is best for them. Creating or continuing with the scarcity situation only undermines education and deprives the people of their needs. It is the students and their parents and also their guardians, who would decide where to go, which course they would follow, and which college is ideally suited for the student. In such matter, the Government



should have a restrained approach. Leave the matter to the University to decide.

25. This Court in **M.G.M College of Arts and Sciences** (supra) had held that as per the scheme of the Statutory provisions, the Government's interference is only at the end. As in the said case, the University has conducted rounds of enquiries and inspections and they had found that everything is in order and the college can be granted affiliation. It is thereafter that Ext.P1 recommendation was issued. Unless there are some clear deficiencies in the infrastructure or facilities, it will only result in a travesty of justice to refuse sanction on unsustainable grounds. This Court has already held that the reasons accorded for refusal to accord administrative sanction cannot be sustained. As held by this Court, the Government can well recommend proper compliance of the Statutes but it is for the University to ensure that the standards are met. If the University thinks that the facilities in the institution are such that affiliation can be granted then the Government cannot, for unjustifiable and arbitrary reasons, refuse sanction. Unless good cause is shown, it would have to be termed as arbitrary and a colourable exercise of power. As reiterated by this Court, once power has been conferred on the authorities under the University Statutes, the Government cannot override the discretion of the University, because such a policy makes the entire statute dealing with affiliation redundant. Such an action would affect the fundamental rights of parties to receive education and to impart education. Education, as



noticed in the beginning, is an integral part of life and liberty. Such a right can be restricted not by a policy decision, but only by law and law means law made by the competent legislature and not by executive fiat. It is the students and their parents and also their guardians, who would decide where to go, which course they would follow, and which college is ideally suited for the student. In such matters, the Government should have a restrained approach.

26. In view of the discussion above, I am of the considered opinion that the petitioner is entitled to succeed. There will be a direction to the 1st respondent to grant sanction/NOC for affiliation to the petitioner institution for commencing M.Com and M.A.(English) for the Academic year 2021-2022 with an intake of 15 seats each as recommended by the 2nd respondent as per Exhibit P1. The sanction shall be accorded with a period of three weeks. On receipt of sanction, the 2nd respondent shall grant affiliation for commencing M.Com and M.A. (English) Course for the academic year 2021-2022 with an intake of 15 seats each.

This writ petition will stand disposed of.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

ps/25/8/2021



APPENDIX OF WP (C) 5362/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE INTIMATION DATED 25/09/2020 FROM THE UNIVERSITY INTIMATING THAT, M.COM AND M.A ENGLISH FOR THE ACADEMIC YEAR 2020-2021 AND 2021-2022 IN THE COLLEGE WITH AN INTAKE OF 15 EACH HAS BEEN RECOMMENDED TO THE GOVERNMENT FOR VIEWS/NOC FOR GRANTING AFFILIATION.
- EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 05/11/2020 ISSUED BY THE 1ST RESPONDENT, ACCORDING ADMINISTRATIVE SANCTION FOR STARTING NEW COURSES IN THE COLLEGES AFFILIATED TO THE UNIVERSITIES IN KERALA.
- EXHIBIT P3 A TRUE COPY OF THE REPRESENTATION DATED 26/11/2020, SUBMITTED BY THE PRINCIPAL OF PETITIONER COLLEGE BEFORE THE 1ST RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 17/02/2021 ISSUED BY THE 1ST RESPONDENT, ACCORDING ADMINISTRATIVE SANCTION FOR STARTING NEW COURSES IN THE COLLEGES AFFILIATED TO THE UNIVERSITIES IN KERALA.
- EXHIBIT P5 A TRUE COPY OF THE ORDER DATED 25/02/2021 ISSUED BY THE 1ST RESPONDENT, ACCORDING ADMINISTRATIVE SANCTION FOR STARTING NEW COURSES IN THE COLLEGES AFFILIATED TO THE UNIVERSITIES IN KERALA.
- EXHIBIT P6 A TRUE COPY OF THE INTIMATION DATED 18/09/2020 GIVEN BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL