

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 29TH DAY OF MAY 2020 / 8TH JYAISHTA, 1942

WA.No.1964 OF 2017

AGAINST THE ORDER/JUDGMENT IN WPC 27618/2016 DATED 21-12-2016 OF  
HIGH COURT OF KERALA

APPELLANT/2ND RESPONDENT:

STATE OF KERALA  
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,  
HIGHER EDUCATION DEPARTMENT,  
THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI.VIJAYAMOHANAN.P.K.

RESPONDENTS/PETITIONER AND 1ST RESPONDENT:

- 1 VINIL VARGHESE  
MANAGER, S.E.S COLLEGE, SREEKANDAPURAM,  
KANNUR DISTRICT, PIN-670 631.
- 2 THE KANNUR UNIVERSITY  
MANGATTUPARAMBA P.O, KANNUR DISTRICT-670 002,  
REPRESENTED BY ITS REGISTRAR.

SRI.M.SASINDRAN, STANDING COUNSEL FOR R2,  
SRI.GEORGE MECHERIL FOR R1

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29.05.2020, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

**S.MANIKUMAR, CJ.**

Instant writ appeal is filed by the 2<sup>nd</sup> respondent in W.P.(C) No.27618 of 2016 against the judgment dated 21<sup>st</sup> December, 2016 which was disposed of along with other connected writ petitions, by which, the writ court, after considering the common challenge to the Government Order dated 22.8.2016, not to permit new Arts and Science Colleges or Courses, declared the said Government Order as unconstitutional and void.

2. After summarising the rival contentions on the validity of Government Order under challenge, writ court vide common judgment in W.P.(C) No.24872 of 2016 and batch of writ petitions dated 21<sup>st</sup> December, 2016, at paragraphs 23 to 27, discussed and ordered thus:

*"23. I am of the view that there cannot be a blanket restriction being imposed by the Government. It is argued on behalf of the State that the University Act itself amounts to a Law, which imposes restriction in starting new colleges/ courses and therefore when the views of the Government is sought for, Government can formulate a policy, which is reflected in the impugned order. Of course, the University Act and the Statutes framed thereunder apparently is a "law" in which the role of the Government is only to express its views. The expression of view cannot hinder the right of citizens fundamental right under*

*Article 19(1)(g) of the Constitution of India. If the Government has a case that, there is no necessity for a college in a particular area, definitely Government can frame a law in that regard. The Government can also frame a law to indicate that the number of colleges can be restricted or the number of courses can be restricted. But there is no such law as matters stand today. By expressing a view and giving a blanket direction that no colleges could be started and when it is acted upon by the University, it clearly amounts to infringement of fundamental right of a citizen.*

*24. What exactly should be the view to be expressed by the Government in such situations may also arise for consideration. The view of the Government apparently is only an opinion. It is defined in the Oxford Advanced Learners Dictionary as a personal opinion or an attitude towards or to have different/conflicting/ opposing views. Definitely, when the views of the Government are sought for, it is open for the Government to inform their view about either starting of a College or additional courses in a college etc. But the said view cannot be an absolute restriction like the one stated in the impugned order. It has to be on the basis of a case to case basis depending upon various factors and if the view is not to permit a new College or a Course in an existing college, the reasons for the same is also to be reflected in such views. Therefore, I am of the view that the expression of view by the Government as required under the University Statutes has to be made on a case to case basis and not on the basis of an order which virtually affects the fundamental right of a citizen to start a college.*

*25. It is also argued that the University Statute which requires the University in obtaining the views of the Government is ultra vires the UGC Act. Even going by the judgment in Jaya*

*Gokul (supra) and other Apex Court judgments, it is not found that obtaining the views of the Government is ultra vires the Statute. It is only held that if the meaning of the word "view" is given as a policy of the Government, or by getting an approval from the Government, such a reasoning would be void. Further, UGC Act virtually permits the University to conduct necessary enquiry in regard to the grant of affiliation to the College and there is no conflict between the UGC Act as well as the University statute. As already held by the Apex Court, requiring the view of the Government as per the University Statutes by itself does not amount to interference with the provisions of the AICTE Act. Hence, I do not think that the University statute in any case is ultra vires the UGC Act.*

*26. Yet another contention urged is that the impugned order is not placed before the Cabinet in terms with the business rules of the Government. I do not think it necessary to go into such details especially on my finding that the Government Order is liable to be set aside for other reasons.*

*27. In the light of the above discussions, I am of the view the Government order dated 22/8/2016 is unconstitutional, affecting the fundamental right of the petitioners under Article 19 (1)(g) of the Constitution and infringing Article 30(1) as far as minority managements are concerned. Hence the respective Universities shall consider the application of the petitioners, in the light of the respective University statutes, in accordance with law.*

*In the result, these writ petitions are allowed. The impugned Government Order dated 22/8/2016 is declared as unconstitutional and void. The respective Universities shall reconsider the applications submitted by the petitioners and pass*

*appropriate orders within a period of one month from the date of receipt of a copy of this judgment.”*

3. Challenging the above said decision in W.P.(C) No.24872/2016 instant appeal has been filed basically contending that the judgment results in the management of unaided colleges being given a free hand to establish and run the institutions at their whims and fancies, which is against the interest of the State and public. It is further submitted the University Act enables the Government to regulate the establishment and functioning of the self financing institutions and only after obtaining the views of the Government affiliation to new colleges and courses would be given and it is not an empty formality. Therefore, according to the appellant, the findings rendered by the learned single Judge that in the guise of expressing the view the State Government is not at liberty to decline the affiliation sought for cannot be sustained under law. It is also submitted that the Statues of the University in question clearly prescribes that the views of the Government are to be ascertained before grant of affiliation to the applicant colleges. Looking from that angle the role and power of the Government cannot be brushed aside lightly. Therefore, seeks interference with the judgment of the learned single Judge.

4. Though, Mr.Surin George Ipe, learned Senior Government Pleader, made submissions on the grounds of challenge, going through the material

on record, we are of the view that, there is no infirmity in the impugned judgment warranting interference in the appeal filed under section 5 of the Kerala High Court Act. That apart we are also informed that no appeals are pending against the judgment in the connected writ petitions other than the instant writ appeal. It is also brought to the notice of this Court that, the view taken by the learned single Judge has been affirmed by a Hon'ble Division Bench of this Court.

Taking note of the above, instant appeal has no sustenance and therefore, dismissed.

Sd/-

**S .MANIKUMAR**

**CHIEF JUSTICE**

Sd/-

**SHAJI P.CHALY**

**JUDGE**