A ALL KERALA PRIVATE COLLEGE TEACHERS ASSOCIATION

v.

THE NAIR SERVICE SOCIETY AND ORS.

JULY 12, 1994

B [KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Universities—Kerala University Act, 1974/Calicut University Act, 1975/Mahatma Gandhi University Act, 1985—Sections 83/83/100—Power of State Government to make First Statutes—Scope and limitation of.

C

The three Universities in the State of Kerala, were incorporated by the Kerala University Act, 1974, Calicut University Act, 1975 and Mahatma Gandhi University Act, 1985. The provisions of the Kerala University Act and Calicut University are identical. The State Government issued the Kerala University (intra University transfer of teachers of Colleges under D **Corporate meanagement having colleges affiliated to the Kerala University) First Statutes 1990. Similarly it issued First Statutes in respect of Calicut University and Mahatma Gandhi University.**

Respondent No. 1 challenged the validity of these three Statutes by E **way of a Writ Petition before the High Court *inter alia* on the ground that the State Government having already framed First Statutes in respect of the three universities, had become *functus officio* and as such had no authority to issue the First Statues once over again. The Writ Petition was dismissed by a Single Judge. On appeal, the Division Bench struck down the three statutes on the ground that the State Government had no** F **jurisdiction to frame and issue the statutes. Hence this appeal.**

Dismissing the appeal, this Court

HELD : 1.1. It is obvious from the various provisions of the Kerala G **University Act, 1974 and Calicut University Act, 1975 that the conditions of service of the private college teachers are to be prescribed by the statutes. The power to frame and issue the statutes is vested in the Senate. The State Government has, however, a limited power to make and issue the "First Statutes" under Section 83 of the two Acts. [440-H, 441-A]**

H **1.2. The universities were incorporated and brought into existence**

on the date the two Acts were enforced, but the Senate and other bodies of the universities were yet to be constituted. The provisions of the two Acts are not exhaustive The fields which are left to be covered by the statutes have been enumerated under Section 34 of the two Acts. The universities could not have started functioning unless there were statutes in existence immediately after the enforcement of the Acts providing for the constitution of the Senate/other bodies of the universities and other regulatory provisions necessary for the functioning of the universities. To meet this eventuality, the legislature has given 'one time' power to the State Government to frame the "First Statute" under Section 83 of the Two Acts. When the Senate is constituted and becomes functional then it is the only authority under the two Acts to frame the statutes. The State Government can not frame the statutes when the Senate is functioning. There cannot be two parallel authorities to make subordinate legislation on the same subject-matter. The State Govt. does not have the power to keep on making "First Statutes" till it exhausts all the subjects/topics on which statutes could be framed under the two Acts. That would be contrary to the very object and purposes of the two Acts. [442-A-E]

1.3. In view of the interpretation now given to the provisions of Section 83 of the two Acts even the 1979 and the 1988 Statutes framed by the State Government would be invalid but it cannot be so because this judgment has been made to operate prospectively. The 1979 and 1988 Statutes would be, thus, considered to be valid and operative. [442-H]

2. The provisions under the Mahatma Gandhi University Act, 1985 (Gandhi Act) are somewhat different than the provisions under the other two Acts. S.100 of the Gandhi Act confers power on the State Government to issue the First Statutes and ordinances. The Mahatama Gandhi University (Amendment) Act, 1988 came into force on 17 February, 1988. Section 100(1) specifically provides that the First Statutes can be made by the Government in consultation with the University Grants Commission within a period of one year from February 17, 1988. The simple language of the section makes it clear that the power to make the First Statutes is a one time power. The time limit of one year has been prescribed because by that time the Syndicate of the university would have started functioning and would have taken up the matter of framing the statutes under the amended Act. The Single Judge fell into patent error in holding that the period of one year provided under Section 100(1) of the Gandhi Act was

directory. The Division Bench of the High Court rightly reversed the said finding. The State Government could make the "First Statutes" only within a period of one year from February 17, 1988. In this case the First Statutes were issued on September 25, 1990 much beyond the period of one year. The Statutes were on the face of it in violation of the mandatory provisions of Section 100(1) of the Gandhi Act and, as such, have been rightly quashed by the Division Bench of the High Court. [443-B, F-H, 444-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5409/92.

From the Judgment and Order dated 7-4-92 of the High Court of Kerala at Ernakulam in Writ Appeal No. 380 of 1991.

P.S. Poti and EMS Anam for the Appellants.

A.S. Naimbiar, R. Sasiprabhu, R.F. Nariman and K.V. Mohan for the Respondents.

The Judgment of the court was delivered by

KULDIP SINGH, J. The three universities in the State of Kerala, namely, Kerala University, Calicut University and Mahatma Gandhi University, have been incorporated by the Kerala University Act, 1974. Calicut University Act, 1975 and Mahatma Gandhi University Act, 1985 (the 1985 Act). The provisions of Kerala University Act 1974 and the Calicut University Act 1975 (the Two Acts) are identical. The Kerala Government, purporting to exercise the powers under Section 83 of the Two Acts and under Section 100 of the 1985 Act issued the Kerala University (intra university transfer of teachers of colleges under corporate management having colleges affiliated to the Kerala University) First Statutes 1990 (the Kerala Statute), the Calicut University (intra university transfer of teacher of colleges under corporate management having colleges affiliated to the Calicut University) First Statutes 1990 (the Calicut Statutes) and Mahatma Gandhi University (intra university transfer of teacher of colleges under corporate management having colleges affiliated to the Mahatma Gandhi University)First Statutes 1990 (Gandhi Statutes). The Nair Service Society, respondent 1 in the appeal herein, challenged the validity of the Kerala Statutes, Calicut Statutes and the Gandhi Statutes by way of a writ petition before the Kerala High Court, *inter alia*, on the ground that the State Government, having already framed First Statutes in

respect of the three universities, it had become *functus officio* and, as such, had no authority to issue the First Statutes once over again. A learned single Judge of the High Court dismissed the writ petition. A Division Bench of the High Court, however, allowed the appeal of the Nair Service Society, set aside the judgment of the learned single Judge and struck down the three statutes on the short ground that the State Government had no juriadiction to frame and issue the impugned statutes. This appeal by way of special leave by the Kerala Private College Teachers - Association is against the judgment of the Division Bench of the High Court.

We may briefly examine the relevant provisions of the Two Acts. The primary object, of establishing a university by an Act of the State Legislature, is to make the institution an independent autonomous authority with a view to minimise the outside interference in its functioning. Dr. S. Radhakrishnan, in the University Education Commission's Report 1950 observed as under:-

> "....We must resist, in the interest of our democracy, the trend towards the Governmental domination of the educational process..... Higher education is undoubtedly an obligation of the State but State aid is not to be confused with State control over academic policy and practices. Our Universities should be released from the control of politics....."

The avowed object with which the Two Acts and the Gandhi Act have been enacted by the Kerela Legislature, is to leave the pursuit of higher education under the control and management of various academic bodies of the universities. Even the framing of the statutes and the ordinances - which have the force of law - are left to the Senate and the Syndicate of the respective universities.

We may have a look at the scheme of the two Acts. Section 5 enumerates various powers of the university. Clause (xiii) of Section 5 specifically empowers the university to regulate the emoluments and prescribe the duties and conditions of service of the teaching and non-teaching staff in the private colleges with the previous sanction of the Government. Section 16 names various authorities of the university including the Senate, Syndicate, Academic Council and other bodies. Section 19 provides for the powers and functions of the Senate. Sub-Section (2) of Section 19, to the extent it is relevant, is reproduced hereunder:-

A "Save as otherwise expressly provided in this Act, the Senate shall have following powers, namely,

(a) .....

(b) to make, amend or repeal statutes either of its own motion or
B on the motion of the Syndicate:

(c) .....

(d) .....

C (e) .....

(f) .....

(g) .....

D (h) with the previous concurrence of the Government, to regulate the emoluments and prescribe the duties and conditions of service of teachers and non teaching staff in private colleges;

(i) ....."

E Section 34 enumerates various subjects in relation to which statutes can be framed by the Senate. Clause (k) of Section 34 further provides that statutes can be made for all other matters which, under the Two Acts, are to be or may be prescribed by the statutes. Section 35 specifically provides that the statutes have to be framed and passed by the Senate. Section 57 provides that the appointments/promotions in a private college shall be
F made by the educational agency. Section 60 provides that the conditions of service of private college teachers shall be such as may be prescribed by the statutes. Section 64 provides for inter university transfers of the private college teachers where an educational agency has colleges under the jurisdication of more than one university/universities. Section 83 of the Two
G Acts with which we are primarily concerned in this appeal is as under :-

"Notwithstanding anything contained in this Act, the first statutes and the first ordinances of the University shall be made by the Government."

H It is thus obvious from the various provisions of the Two Acts referred to

above that the conditions of service of the private college - teachers are to be prescribed by the statutes. The power to frame and issue the statutes is vested in the Senate. The State Government has, however, a limited power to make and issue the "First Statutes" under Section 83 of the Two Acts.

The State Government had already issued statutes in the years 1976, 1979 and 1988 regulating the conditions of service of the teachers. The 1976 Statutes provide for pension etc. of the teachers of private colleges. The 1979 Statutes are in respect of conditions of service other than pension etc. relating to the teaching and non-teaching staff of the private colleges. The 1988 Statutes are in respect of transfer of teachers to other universities. All these three statutes have been termed as "First Statutes" by the State Government and have been framed under Section 83 of the Two Acts.

What is meant by the expression "First Statutes" under Section 83 of the Two Acts is the crucial question to be determined. According to the appellant every time the State Government frames statutes in respect of a subject on which there are no statutes in existence, it makes "First Statutes" under Section 83 of the Two Acts. The precise argument is that the expression "First Statutes" does not mean the one which are first in point of time but it means every statutes framed in relation to a subject on which there are no statutes in existence. It was contended that on different subjects pertaining to conditions of service of teachers the State Government framed statutes in 1976, 1979 and 1988 and all the three statutes were the "First Statutes" because they were made to operate in different virgin - fields.

Learned counsel for respondent 1 on the other hand contended that the Legislature has delegated the power to frame statutes to the Senate of the university. The Senate consists of elected as well as nominated members. The constitution of the Senate by holding elections and by making nominations from various sources is a time consuming process. The argument is that till the time the Senate, the Syndicate and other authorities of the university are constituted, a 'one time' power has been given to the State Government under Section 83 of the Two Acts to make the "First Statutes" to regulate the process of bringing into existence the various university authorities and also for other necessary purposes. It is argued that once the Senate comes into existence, it is only the Senate which can frame the statutes and make necessary amendments thereto.

A We have given our thoughtful consideration to the rival contentions raised by the parties. We are inclined to agree with the contentions raised by the learned counsel for respondent 1. The universities were incorporated and brought into existence on the date the Two Acts were enforced, but the Senate and other bodies of the universities were yet to be
B constituted. The provisions of the Two Acts are not exhaustive. The fields which are left to be covered by the statutes have been enumerated under Section 34 of the Two Acts. The universities could not have started functioning unless there were statutes in existence immediately after the enforcement of the Two Acts providing for the constitution of the Senate/other bodies of the universities and other regulatory provisions
C necessary for the functioning of the universities. To meet this eventuality, the legislature has given 'one time' power to the State Government to frame the "First Statute" under Section 83 of the Two Acts. When the Senate is constituted and becomes functional then it is the only authority under the Two Acts to frame the statutes. We fail to understand how the State
D Government can frame the statutes when the Senate is functioning. There cannot be two parallel authorities to make subordinate legislation on the same subject-matter. In view of the scheme of the Two Acts it is not possible to contend that the Senate has no power to make statutes on a subject for the first time. We do not agree with the learned counsel for the appellant that the State Government has the power to keep on making
E "First Statutes" till it exhausts all the subjects/topics on which statutes could be framed under the Two Acts. This Argument goes contrary to the very object and purposes of the Two Acts.

We, therefore, hold that the State Government has only one time
F power to frame "First Statutes" under Section 83 of the Two Acts. The statutes framed by the State Government may be in respect of one subject or various subjects but once the State Government has framed the statutes its power under Section 83 gets exhausted and it cannot frame the statutes for the second time. We make it clear that the interpretation given by us to Section 83 of the Two Acts is prospective, except in relation to the
G impugned statutes, and will be operative from the date of this judgment.

In view of the interpretation given by us to the provisions of Section 83 of the Two Acts even the 1979 and the 1988 Statutes framed by the State Government would be invalid but we do not hold so because this judgment
H has been made to operate prospectively. The 1979 and 1988 Statutes would

be, thus, considered to be valid and operative. A

We may now deal with the provisions of the Gandhi Act. The provisions under this Act are somewhat different than the provisions under the Two Acts. Under Section 5 (xiii) of the Gandhi Act, the power to lay down the conditions of service of teaching and non-teaching staff vests in the university. Under Section 23 (ii) the power to make statutes and ordinances and to amend and repeal the same vests in the Syndicate of the university. The Syndicate, under Section 23 (xxviii) has the powers to frame the statutes laying down the duties and the conditions of service of the teachers in the private colleges. Section 36 provides for the procedure for making statutes by the Senate and Section 59 gives powers of appointment of teachers to the management. Section 62 provides that the conditions of service of private college teachers shall be prescribed by the statutes and Section 68 deals with the inter university transfers. Section 99(2) of the Gandhi Act provides that all the statutes and ordinances made under the Kerala Act and in force on the date of commencement of the Gandhi Act shall continue to be in force in respect of the area which comes under the operation of the university under the Gandhi Act. Section 100 confers power on the State Government to issue the First Statutes and ordinances. The said section is reproduced hereunder:- B C D

> "Notwithstanding anything contained in this Act, the first statutes and the first ordinances of the University shall be made by Government in consultation with the University Grants Commission within a *period of one year* from the date of commencement of the Mahatma Gandhi University (Amendment) Act. 1988." E

F

The Mahatma Gandhi University (Amendment) Act, 1988 came into force on February 17, 1988. Section 100(1) reproduced above specifically provides that the First Statutes can be made by the Government in consultation with the University Grants Commission within period of one year from February 17, 1988. The simple language of the section makes it clear that the power to make the First Statutes is a one time power. The time limit of one year has been prescribed because by that time the Syndicate of the university would have started functioning and would have taken up the matter of framing the statutes under the amended Act. The learned single Judge fell into patent error in holding that the period of one year provided under Section 100(1) of the Gandhi Act was directory. The G H

A Division Bench of the High Court rightly reversed the finding of the learned single Judge. For the reasons given by us while interpreting Section 83 of the Two Acts and also agreeing with the reasoning of the Division Bench of the High Court, we hold that the State Government could make the "First Statutes" only within a period of one year from February 17, 1988. In this case the First Statutes were issued on September 25, 1990 much B beyond the period of one year. The statutes were on the face of it in violation of the mandatory provisions of Section 100(1) of the Gandhi Act and, as such, have been rightly quashed by the Division Bench of the High Court. While upholding the judgment of the Division Bench of the High Court, we make it clear that the judgment of the Division Bench of the C High Court shall be read in the light of the interpretation given by us to Section 83 of the Two Acts.

It would be open to the Senate/Syndicate of the respective universities to take up the matter of intra university transfers of teachers of colleges under corporate managements and frame the necessary statutes in D case they wish to do so.

The appeal is, therefore, dismissed. No costs.

G.N. Appeal dismissed.