

KERALA HIGH COURT

Cochin University

Vs

V. Panikulangara

Writ Appeal No. 421 of 1975

(Balakrishana Eradi and Viswanatha Iyer, JJ.)

20.07.1976

JUDGEMENT

Balakrishna Eradi, J.

1. The appellant before us is the Registrar, University of Cochin. The first respondent herein Sri. Vincent Panikulangara had applied to the Cochin University for registration as a research student and as a candidate for the Degree of Doctor of Philosophy in the Faculty of Social Sciences. That application was rejected on the ground that Sri. Vincent was not eligible to apply for registration as research student and as a candidate for Ph. D. Degree in the Faculty of Social Sciences. Ext. P-1 is a copy of the communication issued by the Registrar of the University of Cochin to Sri Vincent intimating him about the rejection of his application. Sri. Vincent thereupon came up to this Court and filed O. P. No. 928 of 1975 out of which this appeal has arisen, seeking to quash Ext. P-1 and praying for a writ of mandamus directing the Syndicate of the University of Cochin to consider the petitioner as a research student duly registered as a candidate for the Degree of Ph. D. in the Faculty of Social Sciences with effect from 24-1-1974. That writ petition was allowed by a learned single Judge who quashed Ext. P-1 and issued a direction to the Syndicate of the Cochin University to consider and dispose of the application of Sri. Vincent in accordance with Statute 9 (1) (a) of Chapter XIII of the First Statutes of the Kerala University as it stood on the day when the Cochin University Act, 1971 (hereinafter referred to as the Act) came into force without being in any way fettered by the provisions of the Regulations framed by the Academic Council of the Cochin University regarding admission to Research Degrees with effect from 10-4-1974 as per the notification Ext. P-3 dated 12th September, 1974. It is against the said decision of the learned single Judge that the Registrar of the University has preferred this appeal.

2. It will be convenient to refer to the parties in accordance with the position occupied by them in the array of parties in the original petition. Hence Sri. Vincent who was the writ petitioner will hereinafter be referred to as the petitioner, the Registrar of the University (appellant) will be

referred to as the first respondent and the Syndicate of the University as the 2nd respondent.

3. The Act (Cochin University Act) whereunder the University of Cochin was established, came into force on 24th August, 1971. Section 62 of the Act lays down that all Statutes, Ordinances, Rules and Regulations in force in the Kerala University on the date of the commencement of the Act, in so far as they are not inconsistent with the Act, shall continue to be in force in the area of the Cochin University until they are replaced by Statutes, Ordinances, Rules and Regulations made under the Act. The Statutes of the Kerala University which were in force on the date of commencement of the Act were the First Statutes issued under the Kerala University Act, 1957. Chapter XIII thereof dealt with the Faculty of Articles Statute 7 (i) to (iv) (this original numbering seems to have been subsequently altered as Statute 9 (i) to (iv)) in that Chapter was in the following terms :-

"7. (i). Degree of Doctor of Philosophy (Ph. D.) may be awarded:

(a) to persons holding the Degree of Master of Arts of this University or of another recognised University, on the results of research work extending over a period of not less than three years after passing the examination qualifying them for the Degree of Master of Arts, as embodied in a thesis relating to a subject coming within the purview of the Faculty;

(b) to persons holding the Degree of Master of Letters of this University or of another recognised University, on the results of research work extending over a period of not less than two years after qualifying for the Degree of Master of Letters, as embodied in a thesis relating to a subject coming within the purview of the Faculty.

The research shall be undertaken under the guidance of a Supervising Teacher in an institution of this University or of another University or an Institute approved by the Syndicate.

(ii) A candidate shall be required to register himself as a research student and as a candidate for the Degree of Doctor of Philosophy, before the commencement of his course of research.

Provided, however, that a candidate who possesses the Degree of Master of Letters by Research may register at any time during the further period of his two years' research work.

(iii) The application for registration as a research student and as a candidate for the Ph. D. Degree shall be made to the Registrar on or before the 1st of July of the year in the prescribed form, and shall be accompanied by -

(a) a diploma or certificate showing the academic qualifications of the applicant and such other evidence of attainments as will show his fitness to pursue the proposed course of research;

(b) the written consent of a teacher of the University or of another supervisor recognised for the purpose by the Syndicate, agreeing to supervise the work of the applicant; and

(c) a Registration fee of Rs. 15.

(iv) The application for registration as a research student and as a candidate for the

Degree shall be considered and disposed of by the Syndicate, provided however, that the opinion of the Board of Studies concerned shall be obtained with regard to the suitability of the institution, (if outside Kerala State) for the purpose of any particular course of research."

Under the scheme of the Kerala University Act, 1957 the authorities of the University were mainly only the Senate and the Syndicate. There were, no doubt, various Faculties which were to act only as Advisory Committees to the Senate and the Syndicate in all academic matters. This scheme underwent a material alteration when the Kerala University Act, 1969 was brought into force which provided also for an Academic Council. Section 22 of that Act laid down that the Academic Council shall be the Academic Body of the University having control and general regulation over the maintenance of standards of instruction, education and examinations within the University and that it was to exercise the powers specified in that behalf subject to the provisions of the Act and the Statutes. The First Statutes under the Kerala University Act, 1969 were, however, issued only in March, 1972 and till then the First Statutes framed under the Act of 1957 continued to be in force. It was during that interim period that the Act (Cochin University Act) came into force.

4. Just as in the Kerala University Act, 1969 the Act also provides that there shall be an Academic Council for the University vested with the power of control and general regulation over academic matters and that it shall be responsible for the maintenance of standards of instruction, education and examinations within the University. Section 24 of the Act which enumerates the powers and duties of the Academic Council, states *inter alia* that the Academic Council shall have the power to prescribe the qualifications for admission of students to the various courses of studies and to the examinations and the conditions under which exemptions may be granted. Section 34 of the Act lays down that the Academic Council, may, subject to the approval of the Syndicate, make regulations consistent with the Act and the Statutes and Ordinances of the University and that such regulations may provide among other things for the admission of students to the University (Clause (a)) and conditions on which the students of the University shall be admitted to examinations, degrees, diplomas and certificates of University (Clause (c)).

5. In the exercise of the aforementioned powers conferred by the Act the Academic Council of the Cochin University framed regulations regarding the principles to be observed for admission of students as candidates for Research Degrees. Those Regulations were brought into force with effect from 10-4-1974, that being the date on which the Academic Council approved the same. Ext. P-3 is the copy of those Regulations. Paragraph 1 (i) (b) of Ext. P-3 states that a candidate to be eligible for registration for Ph. D. shall be the holder of a Masters Degree in second class with at least 50% of marks in the subject or allied subject concerned or an equivalent qualification recognized by the University. It is now common ground that the reason for rejecting the petitioner's application for registration as a candidate for the Ph. D. Degree in Sociology is that the petitioner does not satisfy the condition stipulated in paragraph 1 (i) (b) referred to above

inasmuch as he is the holder of only a Masters Degree in third class.

6. The main contention urged by the petitioner before the learned single Judge was that the Regulations framed by the Academic Council as per Ext. P-3 are invalid since they are inconsistent with the provisions contained in Statute 9 (1) of Chapter XIII of the First Statutes issued under the Kerala University Act, 1957 which were in force in the Kerala University on the date of commencement of the Act and are therefore applicable to the Cochin University until they are replaced by the Statutes framed under the Act. According to the petitioner, under Statute 7 (1) [renumbered as 9 (1)] of Chapter XIII of those First Statutes the only condition of eligibility that is required to be satisfied by a person seeking registration as a research student and as a candidate for the Degree of Doctor of Philosophy is that the applicant must hold either a Degree of Master of Arts or of Master of Letters. The petitioner contends that since the power vested in the Academic Council under Section 34 of the Act is to make regulations which are consistent with the Statutes it was not competent for the Academic Council to prescribe by Ext. P-3 Regulations that in order that a person should be eligible for registration as a research student and as a candidate for the Degree of Doctor of Philosophy he should hold a Masters Degree in second class with at least 50 % of marks in the concerned subject or allied subject. It is urged by the petitioner that the said provision in Ext. P-3 is inconsistent with the provision contained in the First Statutes and is therefore *ultra vires* and void. This contention was upheld by the learned single Judge and it was held that in view of the provision contained in Statute 9 (1) (a) of Chapter XIII of the First Statutes it was not competent for the Academic Council to make a regulation super adding a further condition that a candidate for registration for the Ph. D. Degree should have taken the Masters Degree in the concerned subject or allied subject with not less than 50% of marks. It is on the basis of the said conclusion reached by the learned Judge that the writ petition was allowed and a writ of mandamus was issued to the Syndicate of the University on the terms already referred to.

7. On behalf of the appellant it was submitted before us that Chapter XIII of the First Statutes relied on by the petitioner dealt only with the Faculty of Arts which is not one of the Faculties existing in the University of Cochin and that hence no reliance can be placed by the petitioner on the provisions contained in the said Chapter for basing a claim for registration as a candidate to the Faculty of Social Sciences. Counsel for the appellant further argued that under Section 62 of the Act the Statutes which were in force in the Kerala University at the time of commencement of the Act are made applicable to the University of Cochin only in so far as they are not inconsistent with the provisions of the Act. The First Statutes of the Kerala University relied on by the petitioner were framed under the Kerala University Act, 1957 which did not provide for the constitution of an Academic Council as one of the Authorities of the University. Under that enactment the general power of control and regulation in respect of academic and other matters concerning the University were to be exercised only by the Senate and the Syndicate in accordance with the provisions contained in Sections 15 and 19 of that Act. Counsel for the appellant points out that the scheme of the Act (Cochin University Act) is wholly different in as much as it vests in the Academic Council the general power of control and regulation over

academic matters and also the responsibility for the maintenance of standards of instruction, education and examinations within the University. It is argued that the provision contained in Statute 9 (1) of the First Statutes of the Kerala University being inconsistent with the scheme of the Act the saving provision in Section 62 does not get attracted and the said Statute is not in force in the area of the University of Cochin. Alternatively, it is contended that, in any event, the said provision became superseded when the Academic Council which is the corresponding body invested by the Act with competence to deal with the subject, passed the Regulations evidenced by Ext. P-3.

8. Another point urged on behalf of the appellant is that what has been done under Statute 9 (1) (a) relied on by the petitioner is only to provide for the award of the Degree of Doctor of Philosophy in the exercise of the power conferred by Section 24 (d) of the Kerala University Act, 1957 and it did not deal with the subject of prescription of qualifications for the admission of students to the courses of studies in the University. It is pointed out that the power to deal with the latter subject was vested in the Syndicate under Clauses (a) and (b) of Section 26 of that enactment whereunder the Syndicate was authorized to make suitable provisions regarding those matters by framing Ordinances. On this basis it is urged by the appellant's counsel that the Regulations evidenced by Ext. P-3 prescribing the qualifications for registration of persons as research students and as candidates for the Degree of Doctor of Philosophy cannot be regarded as inconsistent with Statute 9 (1) (a) of the First Statutes since they deal with totally distinct and different topics.

9. On the basis of these arguments counsel for the appellant submits that the view taken by the learned single Judge that Ext. P-3 is invalid on the ground of its being inconsistent with Statute 9 (1) (a) of Chapter XIII of the First Statutes of the Kerala University is not correct and sound.

10. After hearing both sides we have come to the conclusion that this appeal has to be allowed. In order to determine the scope of Statute 9 (1) (a) of the First Statutes of the Kerala University framed under the Kerala University Act, 1957 it is necessary to examine the provisions of the said enactment dealing with the powers of the Senate with respect to the making of Statutes. Section 15 (2) (i) of that Act conferred power on the Senate to determine what Degrees, Diplomas and other academic distinctions shall be granted by the University. Sub-clause (ii) of the said sub-section empowered the Senate to make, amend or repeal Statutes either on its own motion or on the motion of the Syndicate. The matters which could be provided for by Statutes were enumerated in Clauses (a) to (k) of Section 24 of that Act. Amongst them only Clause (d) is relevant for our present purpose and it reads :

"the degrees, diplomas, titles, certificates and other academic distinctions to be awarded by the University."

Statute 9 (1) (a) of the First Statutes which must be taken to have been framed by the Senate only in the exercise of the power conferred by Clause (d) set out above embodies only a provision

dealing with the subject of the award of the Ph. D. Degree, which is quite distinct from the topic of admission of students to any particular course of study as is clearly seen from Section 26 of the said Act which has conferred power on the Syndicate to make Ordinances concerning the latter subject. The appellant is, therefore, well-founded in his contention that Ext. P-3 Regulations framed by the Academic Council prescribing the qualifications for registration as a research student and as a candidate for the Degree of Doctor of Philosophy before the commencement of his course of research cannot be regarded as inconsistent with Statute 9 (1) (a) of Chapter XIII of the First Statutes since the two provisions deal with distinct and different topics. What Statute 9 (1) (a) deals with is only the subject of the award of Ph. D. Degree whereas Ext. P-3 Regulations relate to the subject of admission of students to the course of research for the Ph. D. Degree.

11. Under the scheme of the Act the Academic Council is the body invested with the general power of control and regulation in respect of academic matters and with the responsibility for the maintenance of standards of instruction, education and examinations within the University (Section 23). As already noticed, the Kerala University Act, 1957 did not contain any provision for the constitution of the Academic Council and the powers of the University were vested mainly in the two authorities, namely, the Senate and the Syndicate. In the scheme of distribution of powers contained in that Act (1957 Act) it was the Syndicate that was vested with the power to prescribe the qualifications for admission of students to the various courses of study. In the University of Kerala Ordinances issued in 1964 Part A of Chapter V dealt with the registration of research students and candidates for research degrees. But, except for stating that persons who desire to register themselves as research students and candidates for research degrees "shall be required to have passed the qualifying examination or have taken the research degree prescribed by the laws of the University" there was no prescription of such qualifications either in that Chapter or anywhere else in those Ordinances. As already observed, Statute 9 (1) (a) deals only with the subject of award of research degree of Doctor of Philosophy and it was not intended as a provision prescribing qualifications for admission to any course of study or for registration as a candidate undergoing a course of research for the Ph. D. Degree. Such being the position that obtained on the date of commencement of the Act, it was perfectly open to the Academic Council to make regulations prescribing the qualifications for eligibility for registration as a research student and as a candidate for the Degree of Doctor of Philosophy in the exercise of the power conferred by Section 24 (4) of the Act.

12. We are also inclined to uphold the contention of the appellant that in case Statute 9 (1) (a) of the First Statutes is to be regarded as a provision prescribing the qualifications for admission of candidates to the course of research for Ph. D. the said Statute which was promulgated at a time when the parent enactment did not provide for the constitution of the Academic Council, is manifestly inconsistent with the scheme of the provisions contained in Sections 23 and 24 of the Act which vest in the Academic Council the general power of control and regulation in respect of academic matters as well as specific power of prescribing the qualifications for admission of students to the various courses of studies. Hence the provisions of Statute 9 (1) (a) cannot,

therefore, be regarded as continuing in force in the area of the Cochin University after the commencement of the Act.

13. The conclusion that emerges from the foregoing discussion is that it was fully within the competence of the Academic Council of the University of Cochin to frame the Regulations evidenced by Ext. P-3. Since the petitioner holds only a third class Masters Degree he does not satisfy the first condition mentioned in paragraph 1 (i) of Ext. P-3 and is therefore not eligible for registration as a research student and as a candidate for the Degree of Doctor of Philosophy. The rejection of his application as per the communication evidenced by Ext. P-1 cannot, therefore, be said to be illegal.

14. The writ appeal is therefore, allowed, the judgment of the learned single Judge is set aside and the original petition - O. P. No. 928 of 1975 - is dismissed. We direct the parties to bear their respective costs in this appeal.

Appeal allowed.