

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY  
WEDNESDAY, THE 7<sup>TH</sup> DAY OF JULY 2021 / 16TH ASHADHA, 1943  
WP(C) NO. 24876 OF 2017

PETITIONER:

THE KERALA PRIVATE COLLEGE MANagements' ASSOCIATION  
(REG.NO.S.NO.TR.12 OF 1960, DATED 3-5-1960),  
REPRESENTED BY ITS GENERAL SECRETARY,  
REV.DR.VINCENT NEDUNGATTU, PRINCIPAL,  
NEWMAN COLLEGE, THODUPUZZHA-685 585.

BY ADVS.  
SRI.BABY ISSAC ILLICKAL  
SRI.ISAAC KURUVILLA ILLIKAL

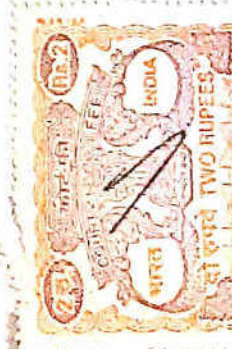
RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 PRINCIPAL SECRETARY TO GOVERNMENT  
HIGHER EDUCATION DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 KANNUR UNIVERSITY  
REPRESENTED BY ITS REGISTRAR, THAVAKARA,  
CIVIL STATION P.O., KANNUR-670 002.

BY ADVS.  
SRI.M.SASINDRAN, SC, KANNUR UNIVERSITY  
SR. GOVERNMENT PLEADER SRI.SURIN GEORGE IPE

SRI. SURIN GEORGE IPE, SR. GP FOR R1 AND R2  
SRI. M.SASINDRAN, SC FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
07.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**JUDGMENT**

Dated this the 7<sup>th</sup> day of July, 2021

**S.Manikumar, C.J.**

The Kerala Private College Managements' Association has filed instant public interest litigation to quash Exhibit P7 order dated 25.3.2017 issued by the Kannur University wherein the various student organisations are given freedom to carry out their organisational activities in the colleges including private colleges affiliated to the Kannur University.

2. On this day, when the matter came up for hearing, Mr.Isaac Kuruvilla Illikal, learned counsel appearing for the petitioner made submissions. Responding to the same, Mr.M.Sasindran, learned standing counsel appearing for the Kannur University (respondent No.3) fairly submitted that the issues are covered by the decisions of this court. Added further, he submitted that the decision in **Raju Kuruvilla v. State of Kerala** reported in **2020 (2) KLT 507** also squarely applicable to the facts of this case.

3. It is pertinent to consider the decision reported in **Raju Kuruvilla's** case wherein a learned single Judge, after taking note of a catena of decisions on the issue regarding participation of the student organisation in a college or University as the case may be, passed orders,

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relevant paragraphs are extracted:

"12. Question(i): It is established in these proceedings beyond doubt that organizations of students functioning on political lines in the State used to disrupt the academic and other activities in schools and in some colleges, the students of which do not owe allegiance to them, with a view to compel them to partake in their agitations and strikes by foregoing their academic and other activities in the campuses. In the light of the decision of the Apex court in Unni Krishnan, J.P. v. State of A.P., (1993) 1 SCC 645, there cannot be any doubt that right to education is part of the right to life guaranteed under Article 21 of the Constitution. Further, Article 21A of the Constitution also guarantees to children of the age 6 to 14 a right for free and compulsory education. There cannot be any doubt that excellence in education can be achieved only when the teaching faculty in the educational institutions are able to discharge their duties in the manner in which they are required to do so. If the process of imparting education is obstructed or disturbed, the excellence in education cannot be achieved. In other words, if the process of imparting education is obstructed, the same would affect the right to education guaranteed to the students. In Vijayakumar v. State of Kerala 2004 (2) KLT 627, it was held by a Division Bench of this Court that students on strike have no right to cause any obstructions and disturbances to the conduct of classes or to prevent other students from attending classes, for such conducts would affect the right of the students who are not on strike to attend classes without being prevented or disturbed by others, which is part of their fundamental rights. Further, in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, the Apex court has held that right to establish and run an educational institution is an activity which is to be regarded as an occupation falling under Article 19(1)(g) of the Constitution. In other words, disruption of the activities in an educational institution would violate the fundamental right of the



management to run the institution as well. It is therefore clear that organizations of students will not have any right to disrupt or disturb the academic and other activities of students who do not want to partake in their strikes and agitations or any right to compel such students to forego the academic activities in their campuses. The question is answered accordingly.

13. Question(ii): As observed by the Apex court in Harpal Singh v. Devinder Singh, (1997) 6 SCC 660, it is a malady in our country that political parties allure students, particularly in the adolescent age, who are susceptible to easy persuasiveness and who are easily swayable through their student wings for enlisting support and participation of student population in their political programmes. It is common knowledge that organizations of students functioning in the State on political lines are student wings formed by the political parties functioning in the State, though the political parties would proclaim that they have no formal connection with the organizations of students. The materials on record reveal that organizations of students functioning on political lines have their presence in their respective names in most of the school and college campuses in the State. It is also common knowledge that it is with the active support and assistance of the political parties that their student wings function in the campuses. It is also common knowledge that wherever there exists resistance for the organizations of students to function, the political parties would extend moral as well as physical support to get over the resistances. It has come out that organizations of students functioning on political lines in the campuses used to convene meetings of their members in the campuses itself, contest school and college union elections in their respective names and resort to the modes of agitations like Strike, Dharna, Gherao, processions, etc. in the campuses for expressing their protests or dissent on political issues as also issues within the campus and for enforcement of the rights of



students in general and also in particular as applicable to the students in the campus. It has also come out that strikes are performed by organisation of students functioning on political lines by boycotting classes, for the success of which, the organizations would compel even the students who want to attend classes to forgo their classes and to join hands with them. It has also come out that clashes of the students in the campuses are mostly between the students belonging to different organizations functioning on political lines. Newspapers have reported in recent times even recovery of deadly weapons stored by organizations of students in the campuses. Similarly, there have been even instances of murder of students in the campuses due to inter organisation rivalry. Various instances of destructive activities resorted to by organizations of students and their supporters in the campuses with the active support of external political forces for reinforcing their strength and support in the campus affecting adversely the academic and other activities in the campus are part of the pleadings in these matters. Many instances of violence resorted by organizations of students for enforcing illegitimate demands are also disclosed in the pleadings. It has also come out when untoward incidents take place in the campuses, classes are suspended indefinitely and classes are resumed only when an atmosphere conducive for conducting classes is resumed. The question formulated has to be answered in the aforesaid background.

14. No doubt, Article 19(1)(a) of the Constitution guarantees to students, freedom of speech and expression. Similarly, Article 19(1)(b) guarantees to them freedom to assemble peacefully and Article 19(1)(c) guarantees to them freedom to form associations. Freedom of speech and expression, freedom to assemble peacefully and freedom to form associations are basic ethos of a democratic system. Students should therefore, certainly have a right to raise their voice against the decisions and actions of the authorities or even to express their resentment over



the actions of the authorities on any subject of social or national importance. Further, the right to dissent without fear of victimisation is also implied in a democratic polity, for, it is only through debate, discussion, dialogue and constructive criticism, diversity of perceptions and ideas would emerge, which are necessary for the development of the society. It is beyond dispute that it is on the basis of the aforesaid rights that organizations of students function and resort to the modes of agitations like Strike, Dharna, Gherao, Processions etc. in the campuses for expressing their protests or for enforcement of their rights. The pointed question therefore, is as to whether the rights aforesaid confer on organizations of students a corresponding right to function in school and college campuses and resort to the modes of agitations like Strike, Dharna, Gherao, Processions etc.

15. In *M.E.S. Ponnani College v. Debashish Kumar Behra*, 2017(5) KHC 13, a Division Bench of this court observed that political activities like dharna, hunger strike and other practices like Satyagraha have no place in academic institutions. It was also observed in the said case that anyone indulging in such activities in an educational institution would make himself liable to be expelled and/or rusticated, for, educational institutions are meant for imparting education and not for politics. Earlier, in *Kerala Students Union v. Sojan Francis*, 2004 (2) KLT 378, a Division Bench of this court has observed that students have to voice their opinion on political issues and redress their grievances by recourse to the various forums meant for the same under the University statutes and not through organizations. Paragraph 22 of the judgment which is relevant in the context reads thus :

22. We have gone through the various University Acts, Statutes and Ordinances dealing with affiliated colleges, government colleges etc. University legislations confer considerable powers to students to exercise their freedom of speech and expression and to assemble peacefully in the various statutory bodies established under the University



Statutes. The University laws are highly democratic and it permits organisational activities within the campus, through recognised forums like Students Council, College Council, University Senate, Syndicate, University Union, Cultural and Debating Solution, Students Advisory Bureau etc. Students could ventilate their grievances and express their views on any political issue as a co-curricular activity through these forums within the campus, thereby the rights of the students have been effectively safeguarded by the University laws and statutes. Apex court in University of Delhi v. Anand Vardhan Chandal (2000) 10 SCC 648 held that right to education is a fundamental right but to participate in the Students Union activities at best is only a statutory right and not a fundamental right guaranteed under Arts.21, 19(1)(a) or (c) of the Constitution of India. Students could exercise only those statutory rights permitted by the University laws within the campus of the institutions.

The right of private managements and educational agencies to prohibit the interference of organizations of students within the campus, either directly or through their member students and their right to prohibit modes of agitations like strikes, gherao, dharna, bandh, hartal etc was also upheld by the Division Bench in the said case. As noted, in Vijayakumar v. State of Kerala, 2004 (2) KLT 627, it has been held by this court that students who are not on strike have a right to attend classes without being prevented or disturbed by others and students on strike have no right to cause obstruction and disturbance to the conduct of classes or to prevent other students from attending classes and that demonstrations, 'dharna' and similar activities inside the college campus would definitely cause obstruction and disturbance to the conduct of classes and will prevent the teachers from conducting classes and other students from attending classes. It was also held by this court in the said case that if the students on strike want to hold agitation, demonstration, 'dharna', etc., they may hold it only outside the college campus so that no sort of obstruction or disturbance is caused to the smooth functioning

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of the college and the conduct of classes and on the rights of the other students .

16. The bounds of the freedom that an individual enjoys in a democratic polity has been succinctly stated by the British Philosopher John Stuart Mill thus :

*"My right to swing my arms in any direction ends where your nose begins."*

Similar is the statement made by Abraham Lincoln in this context. The bounds of the freedom has been defined by Abraham Lincoln thus:

*"My right to swing my fist ends where your nose begins"*

In other words, the freedom of speech and expression, the freedom to assemble peacefully and the freedom to form associations as available to the students shall not harm others in any manner. It shall not also cause any injury, disorder or nuisance to others. As observed by Justice Holmes of the U.S. Supreme Court as early as in 1919, in *Schenck v. United States*, 249 U.S. 47(1919), the character of every act depends upon the circumstances in which it is done and even the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.

17. It is relevant in this context to refer to a passage from the decision of the Apex Court in *Dr.D.C. Saxena v. Hon'ble the Chief Justice of India*, (1996) 5 SCC 216 which reads thus:

*"If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz, that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has legitimate*



interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation. Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libellous, so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market-place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.

18. Education plays a key role in social and economic development of humanity. In so far as the students in the campus have a fundamental right to education, it can be safely held that anything that causes an impediment to the said right would be unconstitutional. The materials on record demonstrate beyond doubt that activities of organizations of students in convening meetings of their members and supporters and their conduct in resorting to the modes of agitations like Strike, Dharna, Gherao, Processions etc. in school and college campuses, are affecting directly and indirectly the academic and other activities of students who do not belong to the organizations and thus violating the fundamental right of such students. I have, therefore, no doubt that organizations of students, or for that matter the students, have no right whatsoever to convene meetings other than official meetings and resort to the modes of agitations like Strike, Dharna, Gherao, Processions etc. in school and college campuses for expressing their protests or dissent on any issues, political or otherwise, or for enforcement of their rights. The issue is answered accordingly."

4. Though Mr.Surin George Ipe, learned Senior Government Pleader made submissions as to the maintainability of the writ petition on





the grounds inter alia that it is filed by an Association of Kerala Private College Managements; that adequate court fee is not paid and for the reason that the list of all the colleges has not been furnished, at this juncture, we are not inclined to advert to the said submission for the reason that the issue is covered by the decision in **Raju Kuruvilla's** case.

Placing on record the submissions of the parties, instant writ petition is allowed and Exhibit P7 order dated 25.3.2017 issued by the Kannur University is set aside.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar  
Chief Justice**

Sd/-

**Shaji P.Chaly  
Judge**

vpv



APPENDIX OF WP(C) 24876/2017

PETITIONER ANNEXURES

- EXHIBIT P1 PHOTOCOPY OF THE JUDGMENT REPORTED IN KERALA STUDENTS UNION .V. SOJAN FRANCIS 2004(2) KLT 378.
- EXHIBIT P2 PHOTOCOPY OF THE PROFORMA OF THE RULES AND REGULATIONS TO BE FOLLOWED BY THE STUDENTS INCORPORATED IN THE COLLEGE CALENDARS OF THE MEMBER OF THE PETITIONER ASSOCIATION.
- EXHIBIT P3 PHOTOCOPY OF THE JUDGMENT IN PRAKASH N. V. PRINCIPAL, GOVERNMENT LAW COLLEGE, EKM & ORS 2014(1) KHC 129.
- EXHIBIT P4 PHOTOCOPIES OF THE REPORTS IN THE VARIOUS NEWSPAPERS OF KERALA SHOWING THE INSTANCES OF VIOLENCE UNLEASHED BY THE STUDENT ORGANIZATIONS.
- EXHIBIT P5 PHOTOCOPIES OF THE ORDERS OF THIS HON'BLE COURT GRANTING POLICE PROTECTION TO SOME OF THE COLLEGES IN KERALA.
- EXHIBIT P6 PHOTOCOPY OF THE MAHATMA GANDHI UNIVERSITY STUDENTS' CODE OF CONDUCT RULES, 2005.
- EXHIBIT P7 PHOTOCOPY OF THE ORDER OF THE KANNUR UNIVERSITY DT.25-03-2017 WITH ENGLISH TRANSLATION.
- EXHIBIT P8 PHOTOGRAPHS OF ATTACK CARRIED OUT BY A STUDENT ORGANIZATION IN ST.PIUS X COLLEGE ON 27-10-2016.
- EXHIBIT P9 PHOTOGRAPHS OF ATTACK CARRIED OUT BY A STUDENT ORGANIZATION IN NEWMAN COLLEGE ON 04-04-2017.
- EXHIBIT P10 PHOTOGRAPHS OF ATTACK CARRIED OUT BY A STUDENT ORGANIZATION IN DON BOSCO COLLEGE ON 11-07-2017.

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P.A. TO JUDGE







HIGH COURT OF KERALA  
AT ERNAKULAM

Year and Number  
of Suit or other  
Proceedings : WP(C) 24876 / 2017

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Applicant/Advocate : BABY ISSAC ILLICKAL

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