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**(2013) 01 KL CK 0181**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 29673 of 2012**

Abdul Salam

APPELLANT

Vs

University of Calicut

RESPONDENT

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**Date of Decision : 18-01-2013**

**Acts Referred:**

**Citation : (2013) 3 KLT 747**

**Hon'ble Judges : P.R. Ramachandra Menon, J**

**Bench : Single Bench**

**Advocate : Babu Karukapadath, M.A. Vaheeda Babu, Jagan Abraham, M. George, K.A. Noushad, P.G. Pramod, C.P. Koshy and Rahul Kandapully, for the Appellant; Santhosh Mathew, for the Respondent**

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## **Judgement**

P.R. Ramachandra Menon, J.—The rights and liberties of the petitioner to be included in the Electoral roll for participating in the election and voting in respect of the constituency of "Principals" to have representation in the "Senate" of the respondent University is the subject matter of challenge. The petitioner is the "Principal" of MES College of Engineering, Kuttippuram, which is a Self Financing Institution affiliated to the respondent University. The third respondent, who is the Returning Officer to conduct election had issued Ext.P1 notification dated 5.10.2012 for conducting the election.

2. The petitioner was however not given any nomination form, for the reason that his name was not there in the Electoral roll. On enquiry, the petitioner was given to understand that, non-inclusion was for the reason that, he happened to be the Principal of a "Self Financing College" whose appointment was approved by the University, as there was no need, necessity or occasion for the University to have the appointment approved. Reference is made to definition of the term "Teacher" as given under S. 2(27) of the Calicut University Act, 1975, to contend that, it very much takes in "Principal" as well, as defined under S. 2(15) of the Act. Met with the situation, the petitioner preferred Exts.P2 and P3 representations pointing out that, the Statute does not draw any distinction

between the Principals of "Aided" colleges and "Unaided" colleges and that the petitioner was having every right to be included in the Electoral roll and to contest the election in respect of the particular constituency of "Principals".

3. The representations preferred by the petitioner were not considered, which made the petitioner to approach this Court by filing W.P.(C) No. 25199/2012. It was disposed of, vide Ext.P4 judgment, observing that, the election was already postponed as submitted across the Bar and in the said circumstance, the petitioner's representations also could be caused to be considered. The operative portion of the judgment reads as follows:

In the light of the above, it is obvious that the schedule has been refixed and, therefore, the petitioner's objections Exts.P2 and P3 also will be considered by the Returning Officer, namely, the Registrar of the University. The Writ Petition is accordingly, disposed of. No costs.

Pursuant to the above verdict, the representations preferred by the petitioner were considered, but the same came to be rejected as per Ext.P5 order dated 4.12.2012; which in turn is under challenge.

4. The respondent University has filed a statement, seeking to sustain Ext.P5 mainly asserting that, the persons like the petitioner, who happen to be the "Principal" of an unaided college/Self Financing Institution do not require any approval from the part of the University and hence they cannot be included in the "Constituency of Principal". The definition of the said term "Teacher" under S. 2(27) of the Act as mentioned herein before, takes in, a "Principal" as well and hence the relief sought for cannot be acceded to. The case of the petitioner is that, the petitioner stands on a different footing, being a "Principal" as separately defined under S. 2(15). Even though Principal is included in the definition of the term "Teacher" under S. 2(27), "Teacher" as dealt with under S. 2(27) and "Principal" dealt with under S. 2(15) are considered as two separate streams and hence separate quota have been provided in the Statute, to have representation in the Senate. If the proposition of the respondent University is to be accepted, there may not be any need for a separate channel or inclusion for "Principal" dealt with under S. 2(15), submits the learned counsel.

5. It is also brought to the notice of this Court that, the issue which is sought to be highlighted in this Writ Petition as to the rights and liberties of the "Principal" of a Self Financing Institution, to be included in the Electoral roll and to contest the election, had come up for consideration before this Court and as per decision reported in University of Kerala Vs. Sankaran Nampoothiry, it stands answered in favour of the petitioner. The learned standing counsel for the University however seeks to draw a distinction, stating that, the said decision was considered by another Division Bench in Rajendran Vs. University of Calicut, and it has been held that the Teachers of an "Unaided" college are not liable to be included in the Electoral roll or to contest the election in the constituency of "Teacher", as their appointment is not approved by the University, in terms of the relevant

provisions of law.

6. True, a reference has been made in the aforesaid decision to the verdict passed by the Division Bench reported in *University of Kerala Vs. Sankaran Nampoothiry*, But the scope of the said decision *University of Kerala Vs. Sankaran Nampoothiry*, with reference to the term "Principal", as in the instant case, was never discussed in detail, presumably for the reason that, the disputed question was more with reference to the right of a Teacher" whose case has been separately dealt with as defined under S. 2(27) of the Act. Further, in respect of the claim of the first petitioner in W.P.(C) No. 36201/2004 who was a "Principal" of a Self Financing College, it was observed in paragraph 3 that no contentions had been urged; followed by the specific observation in paragraph 6, as to the vested right of such person, in the light of the decision rendered by this Court in *University of Kerala Vs. Sankaran Nampoothiry*, ; holding that such claim normally could not have been ignored.

7. Coming to the case in hand, there is no dispute that, the petitioner stands on a different footing than "Teacher" defined under S. 2(27) of the Act, he being the "Principal", separately dealt with under S. 2(15). The claim of such a person has already been considered by the Division Bench of this Court, declaring the right and eligibility in favour of such person as per the decision in *University of Kerala Vs. Sankaran Nampoothiry*, True, the said decision was in respect of the Kerala University Act 1974. But there is no dispute that the provisions of said Statute are in "pari materia" with the provisions of the Calicut University Act, which is applicable to the present case. When there is a verdict which is squarely applicable to the case in hand as above, this Court finds that the petitioner is entitled to have the benefit flowing therefrom. The Division Bench has specifically observed that Principals of the Unaided Private Colleges/Self Financing Colleges are eligible to participate in the election to the Senate and other organs of the University and this being the position, there cannot be any distinction or discrimination in so far as the present petitioner is concerned.

8. It is also pertinent to note that the petitioner being conscious of his rights, was pursuing the remedy right from the beginning. It was accordingly, that Exts. P2 and P3 were preferred before the concerned authority, which however did not turn to be fruitful. Initially the same was not dealt with, necessitating a Writ Petition filed by the petitioner, which finally culminated in Ext.P4 judgment. It was conceded by the University in the said case, that the election had already been adjourned and it was accordingly, that Ext.P4 verdict was passed, directing the third respondent to consider Exts.P2 and P3 as well. The third respondent however passed Ext.P5 order, simply rejecting the same in spite of the law declared by a Division Bench of this Court, as per the decision cited supra. This Court finds that the logic and reasoning given by the third respondent cannot be sustained any more.

9. The learned Standing Counsel for the University however submits that there is an alternate remedy to the petitioner and as such interference need not be made

in this Writ Petition. Alternate remedy is of course a matter to be considered at the time of "Admission" and it cannot be an absolute bar in view of the settled position of law. That apart; the legal position has already been made clear by the Division Bench of this Court as per the judgment reported in *University of Kerala Vs. Sankaran Nampoothiry*, and the rest is only the application of the same to the given set of facts and circumstances. This being the position, this Court does not find it necessary to relegate the petitioner to avail the alternate remedy, which even otherwise can only protract the litigation. In the above circumstances, Ext.P5 is hereby set aside and it is declared that the petitioner is entitled to be included in the Electoral roll, with liberty to participate in the process of election, including by way of voting and by submitting nomination as well. This Court however finds considerable force in the submission made by the learned standing counsel for the University that the relief has to be confined to the present petitioner alone as nobody else has sought to challenge the proceedings. It is made clear that the benefit will stand confined to the petitioner.

Writ Petition is allowed to the said extent. No costs.