

(2004) 05 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 791 of 2004

Adv. C.S. Vidyasagar

APPELLANT

Vs

Kerala Agri. University and Others

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Kerala Agricultural University Act, 1971 — Section 11(3), 15(1)

Citation : AIR 2005 Ker 35 : (2004) 3 ILR (Ker) 561 : (2004) 2 KLJ 876 : (2004) 3 KLT 838

Hon'ble Judges : K.N. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Murali Purushothaman, for the Appellant; N.D. Premachandran (SC), P.V. Lonachan, S.P. Aravindakshan Pillay and N. Santha, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This writ appeal is filed against the judgment dated 15.03.2004 in W.P. (C) No. 634 of 2004. The appellant is the petitioner in the writ petition and the respondents herein are the respondents in the writ petition. The appellant is a member of Vithura Grama Panchayat (hereinafter referred to as "the Panchayat"). He was elected as President of the said Panchayat on 5.10.2000. As per Ext. P1 notification dated 06.09.2002 the Chancellor of the Kerala Agricultural University (hereinafter referred to as "the University") in exercise of his power u/s 10 of the Kerala Agricultural University Act, 1971 (hereinafter referred to as "the Act") nominated the appellant as a member of the General Council of the University was in his capacity as the President of the Panchayat. u/s 10 of the Act, the Chancellor is competent to nominate two Presidents of Grama Panchayats to the General Council. Later the appellant was elected as a member of the Executive Committee- of the University he was removed from the office of the President of the Panchayat through a no-confidence motion on 17.10.2003. Thus he ceased to be the President of the Panchayat. Thereafter he was not invited or allowed to participate in the

meetings of the Executive Committee of the University. Hence he filed the writ petition praying for the following reliefs: -

- (i) To issue a writ of mandamus or other appropriate writ, order or direction, declaring that the petitioner is entitled to continue as a member of the Executive Committee of the Kerala Agricultural University till 17.06.2005 by virtue of Section 15(1) of the Kerala Agricultural University Act,
- (ii) To issue a writ of mandamus or other appropriate writ, order or direction, restraining the respondents from terminating the membership of the petitioner from the Executive Committee before 17.06.2005 otherwise than in accordance with 15(1) of the Kerala Agricultural University Act,
- (iii) To issue such other and further reliefs as may be prayed for from time to time.

The learned single judge dismissed the writ petition and rejected the claim of the writ petitioner to continue as a member of the Executive Committee of the University. Aggrieved by the judgment of the learned single judge, the writ petitioner has filed this appeal.

2. The only contention urged by the learned counsel for the appellant is that in view of Section 15(1) of the Act, the appellant is entitled to continue as member of the Executive Committee till the day immediately preceding the date of reconstitution of the General Council which elected him. It is also contended that the learned Single Judge erred in rejecting the appellant's right to continue as member of the Executive Committee relying on the provisions contained in Section 11 of the Act.

3. Having considered the relevant statutory provisions and the submissions made by the learned counsel for the appellant, we do not find any merit in this writ appeal.

4. Section 11 of the Kerala Agricultural University Act is extracted hereunder:

11. Reconstitution of the General Council

- (1) The General Council shall be reconstituted every three years.
- (2) Every member of the General Council other than an ex-officio member shall, subject to the provisions of this Act and the Statutes, hold office until the next reconstitution of the General Council;

Provided that no member nominated or elected in his capacity as member of a particular body or as the holder of a particular office shall hold office for a longer period than three months after he has ceased to be such member or holder of such office unless in the meanwhile he again becomes a member of the body or the holder of that office.

Provided further that where an elected or nominated member of the General Council is appointed temporarily to any office by virtue of which he is entitled to

be a member of the General Council ex-officio, he shall cease to be such elected or nominated member, as the case may be.

(3) When a person ceases to be a member of the General Council he shall cease to be a member of any of the authorities of the University of which he may happen to be a member by virtue, of his membership of the General Council.

As per the First Proviso to sub-section (2), of Section 11, no member nominated or elected in his capacity as a member of a particular body or as the holder of a particular office shall hold office for a longer period than three months after he has ceased to be such member or holder of such office unless in the meanwhile he again becomes a member of the body or the holder of that office. Admittedly the appellant was nominated as a member of the General Council in his capacity as President of the Vithura Grama Panchayat. Therefore he can hold office as member of the General Council only for a maximum period of three months after he ceased to be the President of the Vithura Grama Panchayat, unless in the meanwhile he again becomes the President of the Grama Panchayat. It is not disputed that at the time of filing the writ petition the period of three months had expired and the appellant had not again become the President of the Grama Panchayat in the meanwhile. Therefore, in view of the provisions contained in sub-section (2) of Section 11 of the Act, the appellant was not entitled to continue as member of the General Council of the University for a longer period than three months after he ceased to be the President of the Vithura Grama Panchayat. Consequently the appellant ceased to be a member of the General Council of the University with effect from 17-1-2004 (i.e., the date of expiry of the period of three months after he ceased to be the President of the Panchayat).

5. As per sub-section (3) of Section 11, when a person ceases to be a member of the General Council he shall cease to be a member of any of the authorities of the University of which he may happen to be a member of the University of which he may happen; to be a member by virtue of his membership of the General Council. Admittedly the appellant was elected as a member of the Executive Committee of the University by virtue of his membership of the General Council. Therefore, in view of sub-section (3) of Section 11, when the appellant ceased to be a member of the General Council he ceased to be a member of the Executive Committee also. Hence he is not entitled to continue as member of the executive Committee of the University.

6. However, Sri. Murali Purushothaman, learned counsel for the appellant contended that as per sub-section (1) of Section 15 of the Act, an elected or nominated member of the Executive Committee is entitled to hold office till the day immediately preceding the date of reconstruction of the General Council which elected him. According to the learned counsel, since the appellant was elected as a member of the Executive Committee by the General Council, he is entitled to continue as member of the executive Committee till the reconstitution of the General Council which elected him. As the General Council has not been reconstituted, the appellant claims the right to continue as a member of the

Executive Committee despite his removal from the office of the President of the Vithura Grama Panchayat and the consequent cessation of his membership of the General Council. Learned counsel pointed out that prior to 7-8-1980, Section 15(1) of the Kerala Agricultural University Act read as follows:

15. The term of office of members of the Executive Committee- (1) Elected members of the Executive Committee shall hold office for a term of three years from the date of their election.

Provided that no person elected in his capacity as a member of a particular body or as a holder of a particular office shall be a member of the Executive Committee for a longer period than three months after he has ceased to be such member or holder of such office unless in the meanwhile he again becomes a member of that body or the holder of that office.

The Proviso to sub-section (1) of Section 15 was deleted with effect from 7-8-1980. Section 15(1) now reads as follows:

"An elected or nominated member of the Executive Committee shall cease to hold office on the day immediately preceding the date of reconstitution of the General Council which elected him.

According to the learned counsel, the deletion of the Proviso to sub-section (1) of Section 15 reflects the intention of the Legislature to permit an elected or nominated member of the Executive Committee to hold office till the day immediately preceding the date of reconstitution of the General Council which elected him, irrespective of other developments. It is contended that with the deletion of the Proviso to sub-section (1) of Section 15, subsection (3) of Section 11 has become superfluous. We do not find any merit in the above contention. It is not disputed that the elected members of the Executive Committee are elected by the General Council from among the members of the General Council. In view of Sub-section (3) of Section 11, a person elected as a member of the Executive Committee by virtue of his membership of the General Council cannot continue as member of the Executive Committee after he ceased to be a member of the General Council which elected him. In other words, sub-section (3) of Section 11, envisages an ineligibility or disqualification for a person to continue as member of the Executive Committee if he had been elected as member of the Executive Committee by virtue of his membership of the General Council and if he has ceased to be a member of the said General Council. This disqualification or ineligibility operates irrespective of the provisions contained in Section 15 which prescribes the term of office of members of the Executive Committee. The amendment to Section 15(1) or the deletion of the Proviso to sub-section (1) of Section 15 does not nullify or dilute the effect of Section 11(3) which interdicts a person from continuing as a member of any of the Authorities of the University after he ceases to be a member of the General Council. Deletion of the Proviso was probably necessitated by the apparent conflict between the Proviso and the provisions in Section 11(3). Having regard to the Scheme of the Act, Section

11(3) is not subject to Section 15(1). Section 15(1) enables a member of the Executive Committee to continue as such till the day immediately preceding the date of reconstitution of the General Council only if he does not, in the meanwhile acquire the disqualification u/s 11(3) due to the cessation, of his membership of the General Council. Hence there is no merit in the appellant's contention that on account of the deletion of the proviso to sub-section (1) of Section 15, sub-section (3) of Section 11 of the Act has become superfluous and that it should not be applied in the case of the appellant. For the reasons stated above, we hold that the learned Single Judge was right in dismissing the writ petition. There is no merit in this writ appeal and hence the writ appeal is dismissed.