

**(2013) 10 KL CK 0023**  
**In the High Court Of Kerala**  
**Case No : W.P. (C) No. 331 of 2012**

Aziz

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

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**Date of Decision :** 10-10-2013

**Acts Referred:**

**Citation :** (2014) 1 KLT 854

**Hon'ble Judges :** A.M. Shaffique, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

A.M. Shaffique, J.—This Writ Petition is filed for a declaration that the petitioner continues to be a member of the Finance Committee of Mahatma Gandhi University, the first respondent herein and for a direction to respondents 1 and 2 not to conduct any election to the membership of Finance Committee of the University under the guise that the petitioner has ceased to be a member of the said Finance Committee and consequently there is a vacancy in the Finance Committee. The facts involved in the Writ Petition would disclose that the petitioner is nominated to the Syndicate of the University by virtue of the provisions under the Mahatma Gandhi University Act, 1985 (hereinafter referred to as "MGU Act"). Ext. P1 is the said nomination. Under S. 22 of the MGU Act the term of office of members of the Syndicate is four years from the date of their nomination. Petitioner, being a member of the Syndicate, was elected to the Finance Committee of the University in its meeting held on 30.6.2011. Ext. P2 is the said minutes. The term of office of the members of the Finance Committee is for a period of four years from the date of their election.

2. The Government introduced Ordinance 58 of 2011 amending the MGU Act. Ext. P3 is the said Ordinance. As per S. 7 of Ext. P3 Ordinance, the membership of the petitioner in the Syndicate ceased with effect from the date of Ext. P3 i.e. 01/12/2011. The petitioner has challenged the said Ordinance and the matter is pending in W.P.C. No. 33341 of 2011.

3. The contention of the petitioner is that even though he ceased to be a member of the Syndicate, since he is elected as a member of the Finance Committee, he does not cease to be a member of the Finance Committee. It is pointed out that the 3rd respondent by letter dated 22.12.2011 had intimated the petitioner regarding the meeting of the Finance Committee even after the Ordinance has come into force and he had attended the meeting on 28.12.2011 in terms of Ext. P4. Petitioner had approached this Court since respondents 1 and 2 are taking a stand that the petitioner has ceased to be a member of the Finance Committee and there is a vacancy in the Finance Committee.

4. It is inter alia contended that as per S. 16 of the MGU Act, Finance Committee is one of the statutory authorities of the University like that of the Senate or the Syndicate and the mere fact that the petitioner has ceased to be the member of the Syndicate cannot be a ground to take a stand that he has ceased to be the member of the Finance Committee, as he is an elected member for a period of four years in terms of Ext. P2. Hence the petitioner has sought for the reliefs as prayed for in the Writ Petition.

5. Respondents 1 to 3 has filed counter affidavit contending that the membership of the petitioner in the Finance Committee would cease with the cessation as a member of the Syndicate. As per S. 16 of the MGU Act, authorities of the University are enlisted. The Syndicate and Finance Committee are listed as (ii) and (vii) respectively. The Syndicate is constituted under S. 21 and the Finance Committee is constituted under S. 31 of the MGU Act. The petitioner is nominated to the Syndicate of the University under the capacity of jurist as per the erstwhile S. 21(g) of the MGU Act. S. 22 of the Act provides that the term of office of the member of the Syndicate will be four years from the date of their nomination. By virtue of S. 7 of Ext. P3 Ordinance, membership of the petitioner in the Syndicate of the University ceased with effect from the date of issuance of the said ordinance. It is contended that the petitioner was elected to the Finance Committee of the University by the Syndicate in its meeting held on 30.6.2011 only on account of the fact that he is a member of the Syndicate. Even though the Syndicate and Finance Committee are separate authorities the election of the petitioner to the Finance Committee was from among the members of the Syndicate. As such it is contended that his entitlement to remain as a member of the Finance Committee is only upto his continuance as a member of the Syndicate.

6. Heard Sri. Ranjith Thampan, the learned senior counsel appearing for the petitioner, Sri Jacob Varghese, the learned senior counsel appearing for the University, Sri. Alexander Thomas, learned counsel appearing on behalf of the 4th respondent and the learned Government Pleader.

7. It is not in dispute that the term of office of the members of the Syndicate is four years. It is also not in dispute that when Ext. P3 Ordinance came into force with effect from 1.12.2011 the petitioner ceased to be a member of the Syndicate. But in between by virtue of an election conducted in terms with S.

31(d) of the MGU Act, the petitioner was elected as a member of the Finance Committee. S. 31 of MGU Act reads as under:

31. Finance Committee -- (1) There shall be a Finance Committee to give advice to the University on any question affecting its finances.

(2) the Finance Committee shall consist of the following members, namely:-

(a) the Vice Chancellor, who shall be the Chairman;

(b) the Pro-Vice-Chancellor, if any

(c) One member elected by the members of the Senate from among themselves;

[(d) three members elected by the members of the syndicate from among themselves of whom two shall be Deans of Faculties.]

(e) one member elected by the members of the Academic council from among themselves.

(f) the Finance Secretary to Government or an officer not below the rank of Joint Secretary nominated by him.

(g) the Secretary to Government, Higher Education Department or an officer not below the rank of Joint Secretary nominated by him.

(3) The Finance Officer shall be the Secretary of the Finance Committee.

(4) The powers and functions of the Finance Committee and its procedure in financial matters including the delegation of its powers, shall be prescribed by the Statutes.

8. The provision clearly indicates that there shall be a Finance Committee to give advice to the University on any question affecting its finances. The Finance Committee shall consist of the Vice Chancellor as the Chairman, the Pro-Vice Chancellor if any, and one member elected by the members of the Senate among themselves, three members elected by the members of the Syndicate from among themselves of whom two shall be Deans of the Faculties. Sub-s. (4) indicates that the powers and functions of the Finance Committee and its procedure in financial matters including delegation of its powers shall be prescribed by the Statute. Clause 3 of Chapter IX of the 1st Statute of the M.G. University clearly indicates that the term of office of the members of Finance Committee elected under S. 31(d) of the MGU Act shall be four years from the date of their election. Clause 3 of Chapter IX of University First Statute reads as under:

3. Term of office: Members of the Finance Committee other than the members specified in clauses (a), (b), (f) and (g) of sub-s. (2) of S. 31 shall hold office for a term of four years from the date of their election.

9. Therefore, under normal circumstances, in the absence of any other statutory

provision, a person elected as a member of the Finance Committee could remain as a member for a period of four years.

10. But it is relevant to note that the membership in the Finance Committee is routed through a different form. It is not an election directly to the Finance Committee. It is an election conducted from among persons within the Syndicate by which they elect a person among themselves to be a member of the Finance Committee. The question is when such a person ceases to be a member of the Syndicate, can he continue as a member of the Finance Committee. As already indicated, there is no specific provision under the Act or the Statutes framed thereunder which provides that on a person ceasing to be a member of the Syndicate, he shall cease to be a member in the other elected bodies or other functional bodies of the University. Syndicate, Senate, Finance Committee etc. are treated as independent and separate bodies of the University which have their own separate functions. But, the manner in which a person becomes a member of such authorities is relevant. For example, in the case of a person being nominated to the Syndicate, though the period prescribed is four years, when the nomination is withdrawn by the Chancellor, definitely he would cease to be a member of the Syndicate. Likewise, a person who is elected from the Syndicate as a member of the Finance Committee on his ceasing to be a member of the Syndicate, can he continue as a member of the Finance Committee as well. A nominated member in the Syndicate ceases to be a member on account of various factors. To say that after such vacating the office he continues to be a member of the Finance Committee will lead to a situation that is not contemplated by the provisions of the Act.

11. Learned senior counsel appearing for the petitioner relies upon various other statutory provisions in order to indicate that several Statutes provide for such a situation. True that in various Statutes, such eventualities are taken care of. But the question is whether even in the absence of such provisions, such a person can continue to be a member of Finance Committee.

12. Reference is made to the judgment in *Kamaruddin v. State of Kerala* (2000 (1) KLT 722) to indicate that a provision for vacating office in almost similar circumstances is available in the CUSAT Act. Another judgment relied upon is *John, P.J. Vs. Joint Registrar of Co-Operative Societies and Others*. Paragraph 9 is relevant which reads as under:

9. The fact that the term of office of the managing committee of the primary societies expired by virtue of the decision of this Court in O.P. 19338/1995 is not in controversy. In such a situation, R. 46(f) must come into operation. A delegate sent by the primary, society to the central society will cease to be a member of the general body of the central society by the cessation of his membership in the managing committee of the primary society (vide *K. N. Gangadharan Nair and others Vs. George O. Thettayil and others*, .

13. Another judgment relied upon is *Rohitash Kumar and Others Vs. Om Prakash*

Sharma and Others, . Paragraphs relied upon are paragraphs 18 and 19 which reads as under:

18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigour. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the Legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide: Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, ; and Col. D.D. Joshi and Others Vs. Union of India (UOI) and Others, .

19. In The Bengal Immunity Company Limited Vs. The State of Bihar and Others, it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the Legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, "dura lex sed lex" which mean "the law is hard but it is the law", may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

14. In Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, , Supreme Court held as under:

The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in S. 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

12. In our view, such provision neither offends any Article of the Constitution nor

the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to S. 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations.

Further in *B.P. Singhal Vs. Union of India (UOI) and Another*, the Supreme Court held as under:

33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set-up, when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons.

Having regard to the aforesaid factual situation, I am of the view that once a person's nomination to the Syndicate is cancelled or he ceases to be a member of the Syndicate, as far as he is concerned, the door to the University had been closed. If he is appointed as a member of any other body like the Finance Committee by virtue of his being a member of the Syndicate, the moment he ceases to be a member of the Syndicate will preclude him from continuing as member of other authorities. Though such a provision is not incorporated in the Statute, what is to be verified is whether the petitioner has a legal right to continue as a member of Finance Committee under the above circumstances. His membership in the Syndicate is only as a nominee which could be withdrawn at any point of time. His election to the Finance Committee is on account of his

nomination as member of the Syndicate. When the nomination in the primary authority of the University is withdrawn, there could be an automatic cessation of office in respect of other bodies as well, unless the said appointment is by other direct means. Of course there is a lacuna in the statutory provisions. But the intention of the Legislature in providing a full term to the members of the Finance Committee or that of the Syndicate for a specified period is the term specified without any intervening factors. If any factor intervenes, the persons who are either nominated or elected cannot rely upon the full term of office specified under the Statute and membership can be withdrawn by the University. That being the position, I do not think that the petitioner has any legal right to continue for the entire term, if it is interdicted by the University. Accordingly, this Writ Petition is dismissed.