
(2024) 03 KL CK 0157
In the High Court Of Kerala
Case No : Writ Appeal No. 396 Of 2024

Dr. Mohamed Haneefa. K

APPELLANT

Vs

University Of Calicut

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Calicut University Act, 1975 — Section 7, 7(3), 17(1), 17(2), 17(3), 17(13), 21, 21(a)
(iii)

Citation : (2024) 03 KL CK 0157

Hon'ble Judges : Amit Rawal, J;C.S.Sudha, J

Bench : Division Bench

Advocate : A.Jani, Nisa Fasil, P.K.Khaleemudheen, S.Sreekumar, S.Prasanth,
S.Gopakumaran Nair, P.Sreekumar, George Poonthottam

Final Decision : Disposed Of

Judgement

Amit Rawal, J.

1. Present writ appeal on behalf of the writ petitioner is directed against the judgment of the learned Single Bench, who has not been successful in laying challenge to the order of the Chancellor dated 02/02/2024.

2. Preface to the litigation in brief is as under:

Appellant is a Professor in the Department of Library and Information and also a member of the Senate of the University of Calicut. Name being included in the electoral rolls, intended to contest the election of the Senate members. Respondent Nos.6 and 7 are none else but the nominated members of the Senate as per the provisions of Section 7 of the Calicut University Act, 1975 (the Act, for short). University of Calicut vide notification dated 15/01/2024 notified the election to reconstitute the Syndicate of the University with the following programme.

Date of notification

15-01-24

Last date of receipt of Nominations

30.01.2024, 03.00 p.m.

Date & Hour for scrutiny of Nominations and publication of the list of validly nominated candidates.

31.01.2024, 10.30 a.m. (Scrutiny) &

05.00 p.m (Publication).

Last date and hour for withdrawal of candidature.

05.02.2024, 11.00 a.m.

Date of publication of the final list of candidates

05.02.2024, 04.00 p.m.

Date & Hour fixed for the poll

17.02.2024, 10.00 a.m to 01.00 p.m.

Date & Hour fixed for scrutiny and counting of votes.

17.02.2024, 02.30 p.m.

3. Respondents 6, a nominated member and respondent no.7 a nominated ex-officio member as provided under Section 7 of the Act also submitted nominations. The nominations were rejected by the Returning Officer on the ground that 6th and 7th respondents are not elected to the Senate or not representing in the Senate. Respondent Nos.6 and 7 on rejection of the nomination, approached the Vice Chancellor, who did not intervene and thereafter by invoking the provisions of Section 21 (a) (iii) of the Act, invoked the jurisdiction of the appeal before the Chancellor. Vide speaking order dated 02/02/2024, noticing the balance of convenience, cognizance of the appeal was taken and vide interim order stayed the elections of the Syndicate during the pendency of the appeal. The said action was assailed before the Single Bench. Learned Single Judge rejected the writ petitions by holding that the proceedings is qua election and therefore the Chancellor had the power.

4. Mr. S.Sreekumar, the learned Senior Counsel for the appellant and Mr.P.C.Sasidharan, the learned counsel representing the University assailed the order of the learned Single Bench on various grounds which are enumerated herein below-

(i) The writ petitioner is working as a professor in the Department of Library and Information and a member of the Senate of the University whereas 6th and the 7th respondents are ex-officio as well as other members nominated and therefore are not eligible for contesting the elections to the Syndicate. The

elected members are elected from various categories giving representation to various fields as provided under Section 17(1) (2) and (3).

(ii) Respondent No.6 was nominated to the center under the heading of 'other members' from the category as representative of the 'recognized research institutions' even though he is a professor in the University College. Similarly, respondent No.7 is an ex-officio member nominated to the Senate under Section 17 (13) of the Act, who is also professor at the University of Calicut.

(iii) Learned Single Judge did not notice the fact that 6th and 7th respondents were not eligible to contest the election, this point could not be decided by the Chancellor and the Chancellor did not have any jurisdiction to entertain the appeal as the proceedings of the Returning Officer, which relate to the election to the Syndicate, cannot be stretched to mean the actual proceedings defined under Section 21 of the Act for entertaining the appeal.

5. The power of the Chancellor under Section 7(3) can be invoked against any proceedings contemplated thereunder. Section 29 deals with the election disputes. Respondents against the rejection of nomination had a remedy to file election petition after the election process is over.

6. On the other hand, Mr.George Poonthottam, learned counsel appearing on behalf of the sixth and seventh respondents submitted that the petitioner/appellant had produced the documents which ought to have been in the custody of the Returning Officer, which would reveal certain bungling at the level of the University. There is no provision anywhere in the Act or Statute which would restrict the contest of the senate members like respondents 6 to 7 in the Syndicate. Continuance of the members of the Senate is also based on the fact that they are Teachers or Head of the Departments at the relevant point of time. Respondents 6 and 7 complained to the Vice Chancellor about the illegal rejection which is reflected in the grounds of appeal preferred, but the same was not acknowledged. All these points can be agitated and raised before the Chancellor in the pending appeal which is listed for tomorrow.

7. Mr.P.Sreekumar learned senior counsel appearing for the Chancellor submitted that the matter before the Chancellor is listed for tomorrow. Attention was drawn to the provisions of Statute (5) under the Calicut University (Conduct of Election to Various Authorities or Bodies) First Statutes, 1975 which deals with the decision of the Vice Chancellor and also sub-section (2) of the Statute which provides that in case the Vice Chancellor fails to adjudicate, required to refer the matter to the Chancellor. In this case, the Vice Chancellor did not entertain the objections of respondents 6 and 7 and therefore they had no other option but to invoke the jurisdiction of the Chancellor. The provisions of Section 90 of the Statute provides for election petitions on various grounds. Therefore the contention that the remedy for respondents 6 and 7 lies elsewhere cannot be accepted for, it would be appropriate for the Chancellor to decide on the decision taken by the Returning Officer for rejection of the nomination.

8. We have heard the learned counsel for the parties and appraised the paper book.

9. There is no dispute to the provisions of the Act as well as the election process for the post of Syndicate member. The only question which had arisen in the writ petition was as to whether the proceedings of the Returning Officer rejecting the nomination of respondents 6 and 7 would be construed to be the actual proceedings enabling the Chancellor to entertain the appeal as provided under Section 21(a)(iii) of the Act. We would be failing in our duty in not extracting the order of the Chancellor impugned before the Single Bench and the same reads as under -

"Inviting attention to the references cited, I am directed to convey the orders of the Hon'ble Chancellor, University of Calicut as follows:

"In terms of Section 21(a)(iii) of the Calicut University Act, there is no legal embargo for a University Teacher from contesting to the Syndicate of the University irrespective of the fact as to whether the said teacher is an elected member or nominated member in the Senate.

Since the proceedings of the Returning Officer is not issued assigning the reason for rejection of nominations of the Complainant, the averments in the complaint have to be taken on its face value.

In order to maintain the balance of convenience and fairness of election to the Syndicate of the University will stand stayed.

Call for the records Immediately from the University".

2. Copy of the petitions under reference along with enclosures are also enclosed for reference and urgent compliance as above."

10. On a perusal of the grounds of appeals, Ext.P8 & P10 it is evident that on rejection of the nomination, respondents 6 and 7 had approached the Vice Chancellor but he did not interfere with the decision of the Returning Officer, in a sense that, he did not exercise the power provided under sub-section (2) of the Statute 5 *ibid*. Vice Chancellor is responsible for conduct of election subject to other provisions of the Statute and shall be responsible for all the elections held by the University and have power to fix date, place or time of the election, prescribe the form of notice and various other necessary decisions much less the receipt of the nominations. The Vice Chancellor, in a case of emergency, can also assume the powers of the Returning Officer. In our considered view, whether the proceedings of the Returning Officer rejecting the nomination of respondents 6 and 7, would be construed to be the proceedings as provided under the Act, namely, the Chancellor to exercise the jurisdiction and entertain the appeal, is the subject matter of consideration before the Chancellor. We do not deem it appropriate to interfere in the order as has done by the Single Bench, for, parties to the lis would have right to agitate all the questions regarding jurisdiction and points raised before the writ court as well as in the writ appeal.

11. Sri.S.Sreekumar, learned Senior counsel representing the appellant submitted that the proceeding before the Chancellor can be deferred to Friday enabling the parties to reach Thiruvananthapuram from Calicut or to make arrangements. However, Sri.P.Sreekumar, learned senior counsel representing the Chancellor submitted that the itinerary of Chancellor has already fixed in advance and does not know whether he will be available on Friday or not. In this view of the matter, we do not accept the request of Mr.S.Sreekumar for adjourning the appeal for Friday and dispose of this appeal listed for tomorrow by requesting the Chancellor to decide the appeal in accordance with law, leaving open all the questions regarding the maintainability to the parties to agitate in the pending appeal preferably by tomorrow and convey the decision to all the affected parties or their representatives.