

(2024) 03 KL CK 0040

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6169 Of 2024

Dr. Mohamed Haneefa. K

APPELLANT

Vs

University Of Calicut

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Calicut University Act, 1975 — Section 5(2), 7, 7(3), 16(3), 17(1), 17(2), 17(3), 21, 21(a), 21(a)(i), 21(a)(ii), 21(a)(iii), 21(b)

Citation : (2024) 03 KL CK 0040

Hon'ble Judges : Mohammed Nias C.P, J

Bench : Single Bench

Advocate : A.Jani, P.K.Khaleemudheen, Nisa Fasil, S.Sreekumar, S.Prasanth, Nisha George, S.Gopakumaran Nair, George Poonthottam, A.L.Navaneeth Krishnan, P.C.Sasidharan

Final Decision : Dismissed

Judgement

Mohammed Nias C.P., J

1. The writ petitioner, a Professor in the Department of Library and Information Science, University of Calicut, is also a member of the Senate of the University of Calicut, whose name is included in the Electoral Roll of the Senate members published by the Returning Officer for the election to the Syndicate. The challenge is against the orders passed by the Chancellor insofar as it permitted the 6th and 7th respondents, nominated members of the Senate, whose nominations were rejected by the 5th respondent returning officer. Earlier, this Court had, by Ext.P3 judgment dated 06.12.2023 in W.P(C) No.31993/2023, directed the University, including its Chancellor and Vice-Chancellor, to complete all procedural formalities for the conduct of the election to the Syndicate. The petitioner submits that the election was delayed as the Chancellor delayed the nomination of "other members" to the Senate under Section 17(1) to (3) of the Calicut University Act, 1975 (for short, 'the Act') and the nominations made by

the Chancellor is under challenge in W.P(C) No.39633/2023. He points out that the procedural formalities for the conduct of the election of members to the Syndicate were completed, and by Ext.P4, the Returning Officer published notification for the election of 12 members (out of 13 members under Section 21(a) and one member under sub-section (b) of Section 21 under "Other Members") of the Act, by members of the Senate from among themselves to the Syndicate of the University of Calicut. He submits that pursuant to Ext.P4 election notification, the 5th respondent had published the proceedings of the scrutiny of nominations, which is marked as Ext.P5. The nominations of respondents 6 and 7 were rejected.

2. The petitioner contends that the same had to be challenged by filing an election petition as per Statute 29 of the Calicut University Act, 1975. Instead, they chose to file petitions before the Chancellor after their complaint against the rejection to the Vice Chancellor evoked no response. The Chancellor, acting on the complaints of respondents 6 and 7, passed Exts.P11 and P12, staying all further proceedings to the election of the Syndicate, holding that respondents 6 and 7 are teachers who are entitled to contest the election and, therefore, to examine the said issue, further proceedings of the election was stayed. The petitioner submits that the said action of the Chancellor is totally without jurisdiction and that once the election has been notified, the same could not have been stalled by the Chancellor. It is also argued that the power under Section 7 of the Act or Statute could not have been invoked in the instant case and thus prayed for an order to quash Exts.P11 and P12.

3. The University has filed a counter affidavit on behalf of respondents 1, 3 and 5, which was sworn to by the Registrar of the University, pointing out that a person nominated/elected can contest the election to the Syndicate only from the source to/from which he was inducted in the Senate and since under Section 21(a)(i), (ii) and (iii) a separate constituency is provided for election to the teachers of the University, only those persons elected as Teacher of the University in the Senate can contest election to the Syndicate. In other words, the nominated members, like respondents 6 and 7, do not have any independent source to contest. In the constituency earmarked for teachers, only those who are elected as teachers can contest. It is also pointed out that as far as a rejection of the nomination of a candidate is concerned, only an election petition will lie in the manner set out in the Statute and that the Chancellor, being only an officer of the University and a creature of the Statute, his powers are those granted by the relevant provisions of the Act or Statutes.

4. A counter affidavit has been filed by the 6th respondent reiterating his right to contest the election and submitting that though he is a nominated member, his status as a teacher is retained. It is also his submission that he figures in Ext.P1 list in which there is no distinction among the voters as teachers or non-teachers or the source from which they were elected, and under such circumstances, the rejection of their nomination which disables them from contesting election to the

Syndicate is illegal. It is under those circumstances they approached the Vice Chancellor with a complaint and since it was not forwarded to the Chancellor, they invoked the power under Section 5(2) of the Statute. It is also pointed out that in the absence of intervention by the Chancellor, the entire election will be affected since the voting pattern is based on proportional representation by means of a single transferrable vote. Since the action of the Returning Officer is arbitrary on the face of it, interference by the Chancellor under the relevant provisions was warranted.

5. The 7th respondent has also filed a counter affidavit more or less on similar lines and also produced the orders passed by the Registrar and the Returning Officer dated 15.02.2024, which gave the reasons for rejection in detail.

6. Heard; Senior Counsel Sri. S.Sreekumar, instructed by Adv. Jani A., for the writ petitioner, Senior Counsel Sri. George Poonthottam, instructed by Sri A.L. Navaneethkrishnan for respondents 6 and 7, Sri. P.C. Sasidharan for the University of Calicut and Sri. P Sreekumar for the Chancellor.

7. The learned Senior Counsel Sri.S.Sreekumar appearing for the petitioner, apart from reiterating the contentions taken in the writ petition, submits that a reading of Section 21 of the Calicut University Act clearly shows that only those teachers elected to the Senate can participate in the election for the Syndicate. He submits that different sources from which members are taken in the Senate would also determine their right to hold or contest in the Syndicate election. Admittedly, the respondents 6 and 7 are nominated members and cannot be allowed to contest from the constituency of the University teachers, and the nominations of respondents 6 and 7 were rightly rejected by the Returning Officer. Since they did not have a right to contest the election to the Syndicate, the entire action of the Chancellor in permitting them is without jurisdiction as the Chancellor does not have any power to interfere with the election process that has started with the notification. Neither Statute 5 nor Section 7 of the Act gives the Chancellor the power to interfere with the election dispute, and it can be entertained only in a properly constituted election petition after the election wherein the improper rejection can be called into question. The provisions of the Statute dealing with the election are almost in pari materia with the provisions of the Representation of Peoples Act, 1951, and the settled law is that after the commencement of the election process, the courts do not normally interfere. There is a dispute as to the entitlement of respondents 6 and 7, and, therefore, the said question can be decided only in an election petition wherein improper rejection is a specified ground. He also argues that for the above reasons, interference of the Chancellor at this point is unwarranted besides being without jurisdiction and prayed for quashing Exts.P11 and P12.

8. The learned counsel appearing for the University also contended, based on the pleadings and counter affidavit and submitted that the nomination of respondents 6 and 7 itself is in challenge in W.P(C) No.39633/2023. The Returning Officer found that respondents 6 and 7 cannot be allowed to contest in

the constituency of teachers as they were nominated in a different capacity. It is also stated that the remedy of respondents 6 and 7 is only by way of an election petition after the election and not before. The learned counsel also cites the judgment of this Court in O.P.No. 14473/2002 for the proposition that only a nomination to contest from the constituency of University Department teachers can be allowed in the election to the Syndicate, and a person elected or nominated from a constituency other than University teachers is not eligible to contest the election to the constituency which is specifically earmarked or reserved for the category. It is also his contention that the election process has started. Therefore, the stay order passed by the Chancellor is against the provisions of the Act or Statute and the law declared by the Supreme Court.

9. The learned Standing Counsel Sri. George Poonthottam, instructed by Sri. Navaneeth Krishnan raises a concern that the petitioner had produced the documents that ought to have been in the custody of the Returning Officer and which could not have been obtained except under the Right to Information Act, and thus, the petitioner was being given a favoured treatment by the Returning Officer. On merits, Sri. George Poonthottam argued that the respondents 6 and 7 figures in Ext.P1 Electoral Roll just as the petitioners and their shows that they are teachers. The source from which they became Senate members is not relevant at all, once they become the Senate members. Once a teacher becomes a member of the Senate, no further categorisation is warranted for any purpose. Section 21 of the Act also makes no distinction between the members of the Senate except defined as to the groups who can be elected. There is no prohibition anywhere in the Act or the Statutes that restricts the contest of Senate members to the Syndicate. Though respondents 6 and 7 are nominated members, they do not lose their character as University teachers and the Returning Officer can only act on the basis of Ext.P1 with no additional or deletions. The continuance of the members of the Senate is also based on the fact that they are teachers or Head of departments at the relevant time. There is no other constituency to which respondents 6 and 7 can contest to the Syndicate, and accepting the argument of the petitioner and the University would mean that despite respondents 6 and 7 being members of the Senate, they do not have a right to contest to the Syndicate. The learned Senior Counsel also argues that in the instant case, on irrelevant considerations, the nominations are rejected, which will pave the way for tilting the scales in the election to the Syndicate.

10. Though respondents 6 and 7 had complained to the Vice Chancellor about the illegal rejection of their nominations, the same was not even acknowledged, and the reason given by the Returning Officer is also belated. Respondents 6 and 7 answer the definition of a teacher under the Act, and the exclusion of the respondents who are members of the electoral body is unjustifiable. The grounds on which the Returning Officer can reject the nominations are stated, and since the respondents 6 and 7 did not have any such ineligibility, the Returning Officer should not have rejected their nominations. In the above circumstances, the

powers of the Chancellor under the Act and the Statutes were invoked to prevent the perpetration of illegality. The Vice-Chancellor willfully did not take any action on their complaint. The learned Senior Counsel justified the impugned orders in the writ petition and argued that the action of the Chancellor has resulted in securing the ends of justice for respondents 6 and 7.

11. The learned counsel, Sri. P. Sreekumar, appearing for the Chancellor, argues that the Chancellor had only invoked the power available to him under the Act and the Statutes to interfere with what he thought to be an illegal act of the Returning Officer in rejecting the nominations of the teachers. What was passed is only an interim order pending resolution of the dispute, and therefore, the power of this Court under Article 226 of the Constitution of India may not be invoked, which will have the effect of upsetting a proper election.

12. After hearing the learned counsel for the parties, I find that the essential question, in this case, is the very right of the respondents 6 and 7, the nominated members of the Senate, to contest the elections to the Syndicate. While the petitioner and the University would assert that respondents 6 and 7 cannot contest being nominated members, respondents 6 and 7, who are nominated members, would stake their claim to contest the election. Section 7(3) of the Calicut University Act, 1975, gives the Chancellor the power to annul any proceedings of any of the authorities or officers of the University which is not in conformity with this Act, the Statutes, the Ordinance, the Regulations, the Rules or the bye-laws. The Senate, as well as the Syndicate are included as authorities under Section 16 of the Act. Like wise, under Section 21, when comes to the constitution of the Syndicate under the head "other members", which specifies thirteen members elected by the Senate from among themselves, does not distinguish between an elected or nominated member, nor can any exclusion of the nominated members being inferred from Section 21. Statute 5(2) of the Calicut University (Conduct of Elections to Various Authorities or Bodies) First Statute, 1975 stipulates that if any question arises as to whether any person has been duly elected or is entitled to be a member of any authority or body of the University, the Vice-Chancellor shall refer it to the Chancellor, whose decisions thereon shall be final. As stated above, in the instant case, it is the entitlement of respondents 6 and 7 to contest the election to the Syndicate that is the question involved and certainly, a question with that kind of ramification ought to have been referred by the Vice-Chancellor to the Chancellor.

13. Statute 12, which deals with the maintenance of Electoral Rolls, stipulates that it is the duty of the Returning Officer to maintain an Electoral Roll for each Electoral Body entitled to elect members at any election conducted by the University. The proviso states that the Ex-officio Members of the authorities of the University representing the Government need be shown in the Electoral Roll only by their designation. Statute 14, which speaks about the eligibility to take part in elections, it states that the names of persons who are on the electoral body 60 days before the date of publication of the roll alone shall be included in

the electoral roll, and such persons alone shall be entitled to participate in the election, provided that any persons who ceases to be a member of an electoral body before the date of issue of the ballot paper from the University office shall not be entitled to participate in the election. Neither in Statute 12 nor in Statute 14 is there any exclusion of the nominated members, which prima facie shows that the contention on behalf of respondents 6 and 7 merits consideration. Statute 34, which speaks about the notification of the election, specifies that the notification shall contain the programme of election from the date of notification of the election, giving the particulars mentioned therein. In this also there is no differentiation made between an elected member or a nominated member. As per Statute 90, it cannot be disputed that an improper rejection of the nominations to contest can be the subject matter of an election petition after the election, just as an improper acceptance which will have to be decided by the Chancellor in terms of the Statute and in the form prescribed.

14. What is called in question in this writ petition are the orders of stay of the election passed by the Chancellor in the application preferred by respondents 6 and 7 challenging the rejection of their nominations for the election to the Syndicate. The effect of the Chancellor's order in the above case is to permit respondents 6 and 7 to participate in the election, which the Returning Officer had rejected. Since the above issue is so seminal, deciding the same at this point is far better than postponing the same to an election petition against the rejection of nominations or the acceptance of nominations, as it would have the effect of setting aside the entire election to the Syndicate itself. It is relevant to note that the election in the instant case is under the system of proportional representation by means of a single transferable vote by ballot, taking in the idea of quota and the rule of elimination.

15. It is trite that the courts, more out of restraint, as a general principle, do not interfere in the election process once notification is issued. But where issues crop up, indicating an attempt to disturb a level playing ground between candidates with no justifiable or intelligible basis, the Constitutional courts are required, nay they are duty bound, to step in. (See in this connection the decision in Union Territory of Ladakh v. Jammu and Kashmir National Conference [2023 KHC Online 6823] In the present case, not interfering at this stage will have a cascading effect going by the nature of the election. In that view of the matter, the interference by the Chancellor, who is vested with the power to consider the question of entitlement, under Section 7 of the Act and Section 5(2) of the Statutes on material issues. If the dispute as to the rights of respondents 6 and 7 is not considered now, the same will lead to a multiplicity of proceedings, including third-party rights being affected, which again will stall or at least delay the formation and the functioning of the Syndicate. Prudence demands a decision on the right to contest to be taken at this juncture so as to prevent such disputes from being carried forward. Doubtless, one of the functions of the law is to minimise disputes and avoid a multiplicity of litigations affecting many. The interference with the impugned orders at this stage can lead to serious

consequences.

16. Unlike a writ of Habeas Corpus, the other writs are not to be issued as a matter of course. It is trite that one of the principles inherent to the exercise of power under Article 226 of the Constitution of India should be for the sake of justice. In the instant case, quashing the order of the Chancellor at this point in time would result in complications of the issue, as stated above. I do not think that the orders impugned passed by the Chancellor are such as to warrant the exercise of the discretion to issue a certiorari. The facts of the case make me hold that interference can result in consequences which will not be in the better interest of the University and their interest would be better served if a decision on the right to contest of the petitioner is taken at this stage.

17. In the above view of the matter, I am not inclined to interfere with the orders passed by the Chancellor. However, the Chancellor will hear all the affected parties and take a decision strictly in accordance with the provisions of the Acts and the Statutes, at any rate, within three weeks from today, taking into account the urgency for the constitution of the Syndicate as has been directed by this Court in Ext.P3 judgment.

Subject to the above, the writ petition is dismissed.