
(1995) 12 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 6162/95-H

Gangadharan, P.S.

APPELLANT

Vs

University of Calicut and Others

RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:

Citation : (1995) 12 KL CK 0029

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : N.P. Samuel and A.J. Ayyapachan, for the Appellant; M.A. Manhu, M.K. Damodaran and P.K. Vijayagopalan for Respondent 4 and C. Vathsalan and C.M. Rafeequ for Respondent 5, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, J.—Though this Original Petition was heard alongwith other Original Petitions relating to the election to the Senate of the Calicut University, I am dealing with this Original Petition separately in view of the individual question raised therein.

2. The Petitioner and Respondent No. 4 are registered Graduates of the Calicut University in terms of Statute 3(9) of the Calicut University (Registration of Graduates) First Statutes, 1975. Both of them belong to the Scheduled Caste. Under Statutes 5 only those Graduates who are ordinarily resident within the territorial limits of the Calicut University would be entitled to registration. As a matter of fact Clause 5 insists on an affidavit being filed alongwith the application for registration affirming that the applicant is ordinarily resident within the territorial limits of the University. The territorial limits of the Calicut University is confined to the Districts of Kasaragod, Kannur, Calicut, Wayanad, Malappuram, Palghat, and Trichur. Once a candidate is registered, Statute 8 provides that he is eligible to participate in the elections provided his registration was 60 days prior to the date of publication of the electoral roll. Statute 7 provides for revision and correction of the register of Graduates on the 1st day of November of each year.

Statute 10 insists that every registered Graduate should report his change of address to the Registrar. Statute 10(2) gives the power to the Registrar to remove the name of a registered Graduate from the register if such change of address is not intimated to him and when any communication posted to the concerned Graduate in his address as originally registered in the register is returned undelivered with an endorsement that the addressee has shifted. Statute 10(3) gives the power to the Vice Chancellor to make an enquiry and to remove the name of any Graduate on being satisfied that he is dead. Statute 10(4) deals with the contingency of a Graduate being deprived of his degree and the power to remove him from the register. Statute 10(5) provides that if the Vice Chancellor on enquiry is satisfied that a Graduate who has registered his name in the register of Graduates has shifted his residence from the University area, he shall remove his name from the register of Graduates. Thus Statute 10(5) not only confers a right on the Vice Chancellor to conduct an enquiry and to remove a Graduate on his shifting his residence from the University area but it also imposes a duty on him to do so.

3. According to the Petitioner Respondent No. 4 who was originally residing within the area of the Calicut University had shifted his residence and this is clear from the diary published by the University itself wherein the names and residential addresses of the members of the Syndicate are given. Respondent No. 4 was a member of the Syndicate. According to the Petitioner the diaries for the years 1994 and 1995 indicate that Respondent No. 4 was residing in Trivandrum which was not an area comprised in the University of Calicut. In support of his claim the Petitioner has also subsequently produced Ext. P-8 travelling allowance bill submitted by Respondent No. 4 indicating that he had his normal residence as Deputy Chief Officer, Central Bank of India, Post Box No. 36, Trivandrum. Respondent No. 4 does not dispute that he is employed in the Central Bank of India and he is working in Trivandrum in that capacity. His case is that he has a residential house in Thenhipalam within the area of the Calicut University, that his wife is still residing in that house, that he goes to that house almost every Sunday, that his correspondence are still received at that address and that therefore he must be taken to be normally resident in the territorial jurisdiction of the University. But it is clear that in terms of Statute 10, the 4th Respondent did not intimate any change of address to the Registrar of the University.

4. Contending that Respondent No. 4 is not entitled to be a voter or candidate in the election notified under Ext. P-4 dated 1st March 1995, the Petitioner filed a representation before the 2nd Respondent Vice Chancellor to remove the name of Respondent No. 4 from the ballot paper. According to the Petitioner no intimation was given to him about any enquiry into that objection nor was he informed of the decision on his representation. The Petitioner has therefore approached this Court praying for the issue of a writ of mandamus directing the third Respondent Registrar to remove the name of Respondent No. 4 from the voters' list and the candidate list and for a declaration that Respondent No. 4 has ceased to be a registered Graduate of the Calicut University and

consequently he is disentitled to be a voter or a candidate for the election to the Senate. Relief is sought for on the basis that Respondent No. 4 was now not normally resident in the territorial jurisdiction of the University.

5. Respondent No. 4 seeks to meet the challenge so made by contending that since no objection was taken to his inclusion in the voters' list, an objection of the above nature cannot be raised in challenge to the acceptance of his nomination, that Respondent No. 4 continues to be normally resident within the territorial jurisdiction of the Calicut University, that the mere fact that he had to reside in Trivandrum in connection with his employment cannot deprive him of his right as a registered Graduate and that therefore the Original Petition was liable to be dismissed. He also submitted that he was receiving all the correspondence issued to him in the address given by him at the time of his registration and consequently Statute 10 relied on by the Petitioner did not have any application.

6. It must be noticed here that though an election was notified, no election has been held as regards the two seats reserved for the Scheduled Caste and Scheduled Tribe candidates. The contention of the University in fact is that since the Senate has not been constituted, various decisions that had to be taken by the Senate could not be taken and this has resulted in impeding of the work of the University. In this context it may also be noticed that Statute 7 of the Calicut University (Registration of Graduates) First Statutes contemplates a revision and correction of the register of Graduates on the first day of November of each year. That means that the register has to be revised by the first November of 1995. Since a Notification regarding the seats reserved for Scheduled Caste and Scheduled Tribe has to be issued in any event, it is obvious that the register of Graduates has also to be revised and corrected as on 1st November 1995. If Respondent No. 4 is found to be not eligible in view of his employment in Trivandrum to continue in the register of Graduates, it is clear that his name will have to be removed from the register at least with effect from 1st November 1995. The argument on behalf of Respondent No. 4 therefore that the Petitioner is not, entitled to raise that contention at this stage or that the same cannot be considered by this Court at his instance does not have any substance. Even if the contention be correct in so far as it related to the register of Graduates as on 1st November 1994, in view of the requirement to revise and correct the rules as on 1st November 1995, the argument raised as above on behalf of Respondent No. 4 cannot be of any avail. It is therefore necessary to consider whether the name of Respondent No. 4 is liable to be retained in the register of Graduates. Of course, in terms of Statute 10(5) the Vice Chancellor could be directed to conduct an enquiry and to take a decision before this Court is called upon to decide that question. But considering the submissions of learned Counsel for the University that without a functional Senate the working of the University has been seriously affected and any further delay would seriously harm the interests of the University and the student community, I think it appropriate to decide that question in this Original Petition especially since the said question has been

elaborately argued before me by Counsel appearing in the case and the facts are not in dispute.

7. The question in the context of Statute 3 of the Calicut University (Registration of Graduates) 1st Statutes, 1975 is not resintegra in this Court. Mr. Justice K. Sukumaran in O.P. 3537 of 1986 (short noted in 1986 KLT S.N. 41 case No. (66) interpreting the expression "only so long as he continues to be employed in or normally resident in the territorial jurisdiction of the University" held:

Viewed in that context, the term "resident" connotes something more intimate and something more real than a casual connection forged by a fleeting visit. This has got added relevance in the context of Clause 3 of the statute, where the term "resident" is further qualified by the adjective "normally". This dispels all possible doubts about the intendment of the statutes. It confirms that even the test which in certain situation might satisfy residence, would be totally inadequate to make a person "normally resident".

In that case the registered Graduate was working as a Professor in a college at Dhanuvachapuram which was outside the territorial jurisdiction of the Calicut University. That candidate had pleaded that he had his sister's residence at Palghat that he was coming to Palghat quite often and that was sufficient to confer on him the status of a "normally resident" within the meaning of the statutes. This Court also noticed that a person toiling in the southern part of the State (here also it is Trivandrum) could not usefully contribute to the grave and serious problems-academic and otherwise-confronting the Calicut University while he continued to reside in Trivandrum. His continuation as a member of the Senate would be devoid of any vitality looked at from the objective underlining Sections 80 and 17 of the Calicut University Act. The only difference in the case on hand is that the Petitioner claims that he has a house in Thenhipalam and that his wife continues to reside there whereas in the decision referred to above the person had only the house of a sister within the territorial jurisdiction of the University. The question is, how far this fact would make the ratio of the above decision not applicable to the case on hand.

8. As noticed by His Lordship Justice Sukumaran, a member of a Senate or a Syndicate has to bestow serious attention to the affairs of the University. The Petitioner, in the normal course, has to be away in Trivandrum in any event for six days a week. At best, in the normal course, he can come to Thenhipalam only on Sundays and other holidays for the bank. His residence at a distance, is not conducive to the discharge of his functions effectively as a member of the Senate or as a member of the Syndicate. In such a situation the fact that the Petitioner has a house in Thenhipalam or that his wife resides within the territorial jurisdiction of the Calicut University would not by itself be sufficient to treat Respondent No. 4 as a person who is normally a resident within the territorial jurisdiction of the Calicut University. The insistence on normal residence or employment within the territorial jurisdiction of the University is intended to serve a purpose. The object is to have as active members in the register only

those Graduates of the University who continue to reside within the territorial limits of the University and who will be available to bestow their time and attention to the affairs of the University in case they are elected to the Senate or the Syndicate of the University. This object would be defeated or in any event seriously impaired if a person like Respondent No. 4 employed in a Bank in Trivandrum is treated to be normally resident within the territorial limits of the University. In my view the ratio of the decision of Justice Sukumaran referred to above clearly applies to the present case. I am also in respectful agreement with His Lordship in His Lordship's view that normal resident connotes something more than the owning of a house or having a relative residing in a particular place. In the present case it is also to be noticed that the University is compelled to pay Travelling Allowance to the 4th Respondent as and when he seeks to attend the meeting of the Senate or the Syndicate as is clear from Ext. P-8 submitted by Respondent No. 4 himself. When Universities and other academic bodies suffer from absence of adequate funds, this would obviously be an avoidable expenditure if the expression "normally resident" is given the meaning indicated by His Lordship Justice Sukumaran.

9. Sri. M.K. Damodaran appearing on behalf of the 4th Respondent referring to Ramanatha Aiyar's Law Lexicon submits that "residence" only signifies a man's abode or continuance in a place. But as explained therein the word "reside" is used in two senses—one constructive, technical, legal; the other, denoting the personal, actual habitation of individuals. When a person has a fixed abode, where he dwells with his family, there can be no doubt as to the place where he resides. The place of his personal and legal residence is the same, so that when a person has no permanent habitation or family, but dwells in different places, as he happens to find employment, there can be no doubt as to the place where he resides. He must be considered as residing where he actually or personally resides. But some individuals have permanent habitations where their families constantly dwell, yet pass a great portion of their time in other places. Such persons have a legal residence with their families, and a personal residence in other places; and the word "reside" may, with respect to them, be used to denote either their personal or their legal residence. The question in the present case would therefore be to choose which of the meanings should be given and as indicated by His Lordship Sukumaran J. in the decision referred to above considering the object for which this body is created and taken with the use of the expression "normally" before the word "resident" and taking note of Statute 10 which provides for removal, it is clear that the expression "normally resident" should be taken to mean his personal residence and not legal residence alone. In that view it is clear that Respondent No. 4 is disentitled to continue in the register of members.

10. The other decisions relied on by Mr. Damodaran like the one in *Mary Kurian v. Joseph* 1980 KLT 530 Smt. Shanno Devi Vs. Mangal Sain, and Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, do not, in my view, compel this Court to come to a conclusion that legal residence would be sufficient to enable a person

to have his name continued in the register of Graduates and that he need not personally reside within the jurisdiction of the University.

11. In the view I have taken as above and taking note of the fact that an election has to be held immediately to the Senate, which in the first place induced this Court to consider and decide this question by itself, I hold that the Petitioner is entitled to a declaration that Respondent No. 4 has ceased to be a registered Graduate of the Calicut University and is not entitled to contest in the election to the Senate to be held pursuant to the direction of this Court made in the Other Original Petitions heard alongwith this Original Petition. It is needless to say that it will be open to the 4th Respondent to seek the inclusion of his name in the register of Graduates if and when his employment takes him back to any territory within the jurisdiction of the Calicut University.

In the result, the Original Petition is allowed as above. In the circumstances I make no order as to costs.