
(2011) 07 KL CK 0067

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 4595 of 2011

Jyothi Kumar and Another

APPELLANT

Vs

The University of Kerala and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 23, 23(5)
Kerala University Act, 1974 — Section 21, 21(b), 35, 6

Citation : (2011) 3 KLJ 327

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; K. Gopalakrishna Kurup, (Sr.), M. Ragagopalan Nair, (SC), Nagaraj Narayanan, Saijo Hassan, Prathap Pillai, I.G. Augustine and Benoj C Augustine, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Election to the Syndicate of the Kerala University, pursuant to Ext. P1 notification dated 07.02.2011 is under dispute. With the same intent, the University had issued a notification earlier, which however was challenged for not notifying the Election in respect of the vacancy of student's representative in the Syndicate coming u/s 21 (b) (other member) of the Kerala University Act, by filing W.P.(C) No. 1641 of 2011. During the pendency of the said proceedings, the University withdrew the notification, based on which, the said writ petition was closed, leaving open all the issues concerned, vide Ext P2 judgment dated 21.01.2011.

2. Thereafter, the University published Ext. P2 Electoral roll on 31.01.2011, followed by Ext. P1 Election notification dated 07.02.2011, notifying the various steps in connection with the date of Election and the relevant dates, including the date of counting to be conducted on 05.03.2011. The said notification is sought to be set aside by the petitioners in the instant writ petition, raising many a

ground, referring to non-compliance of the mandate under Clauses 12, 13, 14, 28 and 34 of the Kerala University (Conduct of Election to various Authorities or Bodies) First Statutes, 1974.

3. When the matter came up for consideration before this Court on 22.02.2011, though the writ petition was admitted, interim order of stay was declined, but for making it clear that, the election pursuant to Ext. P1 shall be subject to the result of the writ petition and that all the contesting candidates shall be put on alert as to the proceedings pending before this Court.

5. Being aggrieved of the above order, particularly, for not granting the interim stay, as sought for, the petitioners filed Writ Appeal No. 293 of 2011, which was disposed of as per judgment dated 01.03.2011, observing that, Election could go on and that the results might be kept in a sealed cover until further orders, simultaneously, causing the matter be placed for final hearing. The writ petition is heard accordingly.

5. During the pendency of the proceedings as above, a contestant to the Election got impleaded as the additional 4th respondent, pursuant to the order passed by this Court on 27.05.2011 in I.A. No. 7636 of 2011. The petitioners on coming across the stand taken by the University (who has filed a detailed statement dated 21.02.2011 followed by counter affidavit dated 16.03.2011), with specific reference to the amendment of the statutory prescription by virtue of Statute No. 3 (5) of the above Statutes and the non applicability of the various prescription as to the electoral roll had sought the writ petition be amended by filing an I.A. No. 5158 of 2011 raising new contentions. It was accordingly contended that any Statute framed/amended by the University will become the law, only if it is assented by the Chancellor as contemplated under sub Section 6 of Section 35 of the Kerala University Act. It was alleged that the assent of the Chancellor had never been obtained to Statute 3 (5); that the same was never been published in the official gazette and this being the position, Ext. P1 Election notification was liable to be intercepted by this Court.

6. While so, the additional 4th respondent in his counter affidavit, besides supporting and adopting the version of the University, pointed out that the idea and understanding of the petitioners as to the absence of the assent of the Chancellor and non-publication in the gazette was quite wrong and misconceived. In fact, the above amendment was effected as early as in the year 1975 and a copy of the gazette notification has been produced as Ext. R4(a). Almost simultaneously, the petitioners also realized the fallacy in their submissions/pleadings and sought to file I.A. 9267 of 2011 producing a copy of the said gazette notification dated 02.12.1975 as Ext. P11, tendering unconditional apology on the mistake committed; however, contending that there was no assent given by the Chancellor at all, in respect of Ext. P11 publication in the gazette. Reliance was placed on Ext. P10 minutes of the meeting of the Syndicate held on 29.11.1975, contending that the Senate could have considered the matter only in the "next meeting" as provided, which does not stand satisfied

and that it lacks the assent of the Chancellor. Distinction is sought to be established, with reference to Ext. P12 gazette notification dated 30.07.1985 of the University of Kerala, wherein the specific date of assent of the Chancellor was mentioned, which however is stated as conspicuously absent in Ext. P11 (Ext. R4(a)) notification.

7. Mr. George Poonthottam, the learned counsel for the petitioners, with reference to the above pleadings and materials on record, submits that the course and conduct of the University in having proceeded with Ext. P1 notification is per-se wrong and illegal in all respects and is liable to be intercepted by this Court. In view of the violation of the statutory prescription, it is contended that, interference by this Court invoking the discretionary jurisdiction under Article 226 is essential.

8. Mr. K. Gopalakrishna Kurup, the learned senior counsel appearing on behalf of the University submits that, the petitioners have ventured into an experimental litigation, without having a consistent case. The course and conduct being pursued by the petitioners is sought to be deprecated, for raising one contention at one point of time and then changing to something else on the next moment, without taking the minimum effort to ascertain the factual position. The learned senior counsel submits that, by virtue of the amendment carried out, as per Statute 3 (5) w.e.f. 02.12.1975, as notified in the gazette dated 09.12.1975 (notification dated 03.12.1975), there is absolutely no merit in the contentions raised by the petitioners with regard to the alleged lapses. The said provision reads as follows:

3. Procedure for the Conduct of Elections: (5) The election of members to the Syndicate under items (a) and under the heading "Other Members" in Section 21 of the Act shall be held without Postal Ballot and in accordance with the provisions contained in Part A of Chapter III. The poll shall be taken at a booth specially provided for the purpose in the University Office. The Schedule for the conduct of this election shall commence from the publication of the electoral roll seven days prior to the date of notification of the election as provided for under Statute 34. The stipulation relating to publication of the electoral roll seven days prior to the date of notification of the election as provided for under Statute 34. The stipulation relating to publication of the electoral roll as required under Statute 13 will not apply in this election. All members of the Senate on the date of issue or notification shall be entitle to vote at this election. The learned senior counsel also submits that the alleged improbability in having brought out the amendment to effect, with reference to initiation and finalization of the proceedings for amendment on 29.11.1975, by the Syndicate, is also not correct. It is pointed out that the Senate meeting was going on 29.11.1975 and it was in the course of the said meeting, that the urgent requirement to have the Statute amended struck the mind of the Senate. In the said circumstances, an "Emergency meeting" of the Syndicate was held on the same date at 11.30 A.M., in the same building, more so, since almost all the members of the Syndicate

were the members of the Senate as well, who were very much available there. The factual position in this regard is discernible from the opening sentence of Ext. P10 minutes and it was after the said amendment made by the Syndicate, that the same was left over to be considered by the Senate in its meeting, which was being continued the same day. It was thereafter, that the assent of the Chancellor was obtained, finally leading to Ext. P11 [Ext. R4(a)] gazette publication. In view of Statute 3 (5), validly: brought into force, it is no more open for the petitioners to press any of the challenges in this writ petition, submits the counsel.

9. The learned senior counsel also submits that by virtue of Statute "69" of the Kerala University First Statutes, prescribing the procedure, there is a specific exclusion of Statute "34" and on a combine reading of Statutes 3 (5), 34 and 69, it can be easily seen that there is absolutely no merit in the contentions raised by the petitioners. Reliance is sought to be placed also on Section 22 (5) of Kerala Interpretation of General Clauses Act. The learned Senior Counsel submits that the Election was over on 05.03.2011; that the petitioners also contested the Election; that out of the total 94 members, 91 including the petitioners voted; that the persons shown at serial numbers 1 to 13 in Ext. P3 electoral roll, except 5, 8, 9 and 10, were there by virtue of their office: and hence the absence of their names and particulars in the electoral roll cannot invalidate the election, more so, when the particulars of the said persons, being the ex officio members, were known to all, including the petitioners, who are the Senate members. This is also for the reason that the Election to the Syndicate is confined to members of the Senate and all the members of the Senate are entitled to vote. As pointed out in the counter affidavit filed by the first respondent, it is stated that, the votes polled by the persons at serial Nos. 5, 8, 9 and 10 have been kept separately and even though, the Division Bench, while disposing the Writ Appeal No. 293 of 2011, had permitted to count the votes (directing only to keep the results in a sealed cover), the University thought it fit and proper, not to count the votes as well and that the proceedings have to be pursued from that stage onwards. The learned senior counsel further submits that, by virtue of the mandate u/s 29, the petitioners are having an effective alternate remedy, which has to be pursued by paying the requisite fees and no interference is warranted in the writ petition.

10. Mr. Nagaraj Narayanan, the learned counsel appearing for the additional 4th respondent, while supporting the arguments of the University submits that, the assent of the Chancellor was very much obtained and it was thereafter, that the matter was published in the gazette dated 09.12.1975 as borne by Ext. R4(a) (Ext. P11). Reliance is also sought to be placed on Section 23 (5) of the General Clauses Act, as to the scope and effect of the gazette notification, which reads as follows:

23. Provisions applicable to making of rules or bye-laws after previous publication: -

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules of bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

11. After hearing the learned counsel appearing for all the parties concerned, this Court finds that, by virtue of the amendment to the Statutes incorporating Statute No. 3(5) the challenge raised by the petitioners with regard to the particulars of the electoral roll does not hold any water at all. The only question to be considered is, whether the said amendment was with the assent of the Chancellor to have binding effect, as contemplated under sub Section 6 of Section 35 of the Kerala University Act and whether it was duly published in the gazette. Though the petitioners initially contended that there was no gazette notification, they themselves realized their mistake later and filed I.A. No. 9267 of 2011, also producing a copy of the relevant gazette notification dated 09.12.1975, which clearly shows that the notification is actually dated "03.12.1975". It is specifically mentioned therein that the said provision had already come into effect on "02.12.1975". It is true that there is no mentioning in the said notification as to the date on which the assent was given by the Chancellor, as contained in similar notification like Ext. P12. Mere non-mentioning of such date as to the assent given by the Chancellor will neither make the notification invalid in all respects; nor is possible to presume that there was no assent at all.

12. The factual position as to the publication of the notification in the gazette having been admitted, it has to be reasonably presumed there was a valid consent issued by the Chancellor, more so, when the specific date of effect has been referred to in the notification dated 03.12.1975 that the same had come into effect on "02.12.1975". To put it more clear, though the notification is dated 03.12.1975, the specific date of commencement with reference to the "previous date" having been mentioned therein, it cannot but be on the basis of a "conscious decision" on a vital aspect of significance. In the said circumstances, this Court has to reasonably presume that the assent was given on 02.12.1975 or on a prior date. Considering it in the light of the stipulation u/s 23 of the General Clause Act and also read with Section 22 (5) of Kerala Interpretation of General Clauses Act, this Court finds that the challenge raised by the petitioners as to the absence of assent of the Chancellor to the amendment of Statute 3 (5) brought into force and the alleged non-publication in the gazette fails. It is answered accordingly. With regard to the non - mentioning of particulars of the persons at serial Nos. 1 to 13 in Ext. P3 electoral roll, this Court finds that the: version of the University is having considerable force, when they contend that, such persons except at serial No. 5, 8, 9 and 10, were shown being the "ex-officio" members (i.e. by virtue of their office) whose identity was well known and nothing was obscure. That apart, since all the voters of the Senate are entitled to take part in the Election to the Syndicate; the petitioners who are the members of the Senate can never contend that the identity was not known. As such, grievance if any, can only be with respect to the eligibility of the voters or

as to the right of the parties concerned with regard to serial Nos. 5, 8, 9 and 10. But since such members are having no right to contest the Election and since they do not have any such claim, it does not come to the rescue of the petitioners in any manner. The subsisting grievance, if any, is liable to be worked out, by raising an "Election dispute", in view of the effective alternate remedy as provided under Statute 29 of the First Statutes. This is more so, in view of the law declared in crystal clear terms by the Apex Court in a similar situation, as per the decision reported in AIR 1998 (SC) 66 {Gujarat University v. N. U. Rajguru & Ors.)

In the above circumstances, interference is declined and the Writ Petition is dismissed.

The respondent University is at liberty to declare the results and constitute the Syndicate in accordance with the relevant provisions of law.