

(2000) 01 KL CK 0040
In the High Court Of Kerala
Case No : W.A. No. 2474 of 1999-C

Kamaruddin P.K.

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Cochin University of Science and Technology Act, 1986 — Section 17(1), 45(2)
Constitution of India, 1950 — Article 226

Citation : AIR 2000 Ker 232 : (2000) KLJ 273

Hon'ble Judges : S. Sankarasubban, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : S. Radhakrishnan, for the Appellant; M.K. Damodaran, General instructed by Alexander Thomas, Govt. Pleader, G. Janardhana Kurup, Standing Counsel and John K. George, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, J.—Heard Mrs. S. Radhakrishnan for the appellant, Mr. M. K. Damodaran, Advocate General for the first respondent. Mr. G. Janardhana Kurup, Standing Counsel for the second respondent and Mr. John K. George for respondents 3 and 4.

2. The appellant-petitioner is the Working President of the Cochin University Employees Union. The appellant aggrieved by the continuation of two ruling party MLAs in the Syndicate of the University even after the expiry of the period fixed for them u/s 45(2) of the Cochin University of Science And Technology Act, 1986 (for short "CUSAT Act") filed the Original Petition to declare that Exhibits P-3 and P-4 orders issued by the Cochin University of Science and Technology and the Government Orders mentioned in Exhibits P-3 and P-4 in accordance with which Exhibits P-3 and P-4 are issued subject to Section 45 of the CUSAT Act and to declare that Exhibits P-3 and P-4 are non est from 7-6-1999 onwards and to declare that respondents 3 and 4 - Members of the Legislative Assembly - have no authority whatsoever to continue as members of the Syndicate of the

University after 7-6-1999 and for a mandamus directing the Government to make fresh notifications to the Syndicate u/s 17(1)(x) of the CUSAT Act and for other consequential reliefs.

3. Along with the writ petition. Exhibits P-1 to P-4 were filed. Under Exhibit P-1, Thiruvanjyoor Radhakrishnan. M.L.A. and M.J. Zachariya Sait, M.L.A., two of the Members of the Legislative Assembly, were nominated to the Syndicate of the University u/s 17(1)(x) of the CUSAT Act. The nomination was made on 7-6-1995 and with reference to the notification No. GA and EL 4/86 dated 7-6-1995 of the Registrar of the University. Exhibit P-2 is the notification, which reads thus:--

"It is hereby notified that the Government have been pleased to nominate the following members of the Legislative Assembly to the Syndicate of the Cochin University of Science and Technology as per Section 17(1)(x) of the Cochin University of Science and Technology Act, 1986 vide Government letter No. 7560/JI/95/H.Edn. dated 7-6-1995.

1. Sri Thiruvanjyoor Radhakrishnan, M.L.A.

2. Sri. M.J. Zachariya Sail, M.L.A. The term of Office of the nominees is for a period of four years from 7-6-1995 and will be subject to the provisions of the Cochin University and Science and Technology Act, 1986 (31 of 1986) and statutes thereunder.

University Buildings, Cochin University P.O.. Kochi - 682 022. Sd/- Dated : 7-6-1995. Registrar." Under Exhibit P-3. Dr. K.C. Joseph. M.L.A., the third respondent herein, and one S. Sarma, M.L.A. were nominated as members of the Legislative Assembly to the Syndicate of the University as per Section 17(1)(x) of the CUSAT Act, vide Government letter No. 15587/B-2/96/H. Edn. dated 12-6-1996. The term of office of the nominees was for a period of four years from 12-6-1996 and would be subject to the provisions of the CUSAT Act and the Statutes thereunder. Exhibit P-3 was issued by the Registrar on 15-6-1996. Exhibit P-3 was issued to nominate members to substitute the nominees under Exhibit P-2. viz., Thiruvanjyoor Radhakrishnan and M.J. Zachariya Sait. It is not specifically mentioned in Exhibit P-3 that the substitution is in the places of these persons. However, copy of Exhibit P-3 were sent to Thiruvanjyoor Radhakrishnan and M.J. Zachariya Sait signifying that it is in their vacancies that the new nominations have been made. It is also useful to note that Exhibit P-2 has not been served on the predecessors of Thiruvanjyoor Radhakrishnan and Zachariya Sait and that it was because their nominations were made afresh after the completion of the terms of their predecessors. Therefore, it is submitted that the nominations in Exhibit P-3 issued on 15-6-1996 can only be a substitution to the former members to whom copies of the notifications were issued. As per Section 45(2), the substituted members can hold office as members so long only as the member in whose place he is nominated would have been entitled to hold office if the vacancy had not occurred. Therefore, it is contended that the substituted members can continue only upto the vacancy left by the earlier members, viz.,

6-6-1999. Out of the two MLAs nominated in Exhibit P-3, S. Sarma, MLA was nominated to the Syndicate for the second time against the provisions contained in Section 17(2) of the CUSAT Act and when it was pointed out, he tendered his resignation and the Government nominated the 4th respondent herein - M.A. Thomas, MLA - and the University issued a notification dated 30-7-1996 nominating the 4th respondent herein as member of the Syndicate of University consequent on the resignation of S. Sarma. MLA from the membership of the Syndicate of the University. This nomination was made in accordance with Section 17(1)(x) of the CUSAT Act. The term of office of the nominee was for a period of four years from 30-7-1996 and would be subject to the provisions of the CUSAT Act and the Statutes thereunder. It is specifically stated in Exhibit P-4 that the notification of even No. dated 15-6-1996 stands modified to this extent. It is clear from Exhibit P-4 that the nomination of the 4th respondent is in the place of S. Sarma attracting the provisions contained in Section 45 of the CUSAT Act.

4. According to Sri. S. Radhakrishnan, it is evident from Exhibits P-3 and P-4 that respondents 3 and 4 were nominated in the places of other MLAs who were nominated vide Exhibit P-2 and the present nomination would be by virtue of Section 45 of the CUSAT Act and since their nominations have necessarily to be subject to Section 45, they are entitled to continue as members of the Syndicate only upto the period fixed as per Exhibits P-1 and P-2, i.e. four years from 7-6-1995. Exhibit P-3 notification is by virtue of Government letter No. 15587/B2/96/H.Edn. dated 12-6-1996 and Exhibit P-4 is by virtue of Government Order G.O. No. 20990/B2/96/H. dated 29-7-1996. Eventhough the terms have expired, respondents 3 and 4 are still continuing as members of the Syndicate without any authority and against the provisions of Section 45 of the CUSAT Act. Aggrieved by the improper functioning of respondents 3 and 4 as Syndicate members of the second respondent University, the above writ petition has been filed.

5. A statement was filed by Sri G. Janardhana Kurup, Standing Counsel for the Cochin University, in the Original Petition explaining the stand of the University. It is submitted that the Government have not resorted to filling up of vacancies by virtue of Section 45 of the CUSAT Act, but has made fresh nominations to the Syndicate u/s 17(1)(x) of the CUSAT Act and. therefore, there is no illegality in the exercise of the discretion of the Government.

6. A counter affidavit was filed by respondents 3 and 4. According to them, the orders under challenge in the writ petition, viz., Exhibits P-3 and P-4, were passed in June and July, 1996 and challenged in September, 1999 and hence it is hopelessly belated and not maintainable and that before filing a writ for mandamus, the appellant-petitioner did not raise any complaint before any authorities so as to pray for a writ of mandamus and that respondents 3 and 4 by virtue of Exhibits P-3 and P-4 nominations acquired vested right to hold the office of a Syndicate member for a period of four years.

7. Koshy, J. dismissed the writ petition and permitted the persons nominated under the impugned orders to continue In office as per Section 17(2) of the CUSAT Act. Being aggrieved, the petitioner in the Original Petition has preferred the above appeal reiterating the contentions.

8. In the writ appeal, a statement was filed by the University stating that the Original Petition is belated and that the continuance of respondents 3 and 4 as members of the Syndicate is not in any way illegal since the nominations were made by the Government u/s 17(I)fx) of the CUSAT Act and that if the Government chooses to appoint a person for the remainder of a term of certain retaining/resigning members u/s 45(2) it enables the Government to do so. It is also submitted that the writ petition is not the proper remedy in view of Section 48 of the CUSAT Act as per which if any dispute arises regarding the interpretation of any provision of the CUSAT Act or any Statutes, Ordinances or as to whether a person has been duly appointed, or nominated or is entitled to be a member of any authority or body of the University, the matter may be referred to the Chancellor and shall be so referred to him if not less than ten members of the Syndicate so require. Therefore, it is submitted that the appellant ought to have approached the Chancellor for resolving the dispute.

9. The Government filed a counter affidavit in C.M.P. 6341/1999 in the writ appeal.

10. The relevant provisions of the CUSAT Act are reproduced hereunder:--

" Section 16. Authorities of the University.-" The following shall be the authorities of the University, namely:--

(i) the Syndicate.

(ii) (viii)".

" Section 17. The syndicate.-(1) The Syndicate shall be the chief executive body of the University and shall consist of the following members, namely:--

(i) The Vice-Chancellor,

(ii) The Pro-Vice-Chancellor,

(iii) The Director of Technical Education.

(iv) The Secretary to Government, Higher Education Department,

(v) The Chairman of the Kerala State Committee on Science and Technology.

(vi) Three Deans of Faculties of the University by rotation in the alphabetical order of the Faculties in every two years,

(vii) An expert from the field of Industry and Commerce, nominate by the Chancellor.

(viii) Five members of the Senate, nominated by the Government, of whom one

shall be a member of the Scheduled Caste or Scheduled Tribe and one shall be a teacher,

(ix) An official representative of the University Grants Commission, nominated by the Commission.

(x) Two persons nominated by the Government from among the members of the Legislative Assembly of Kerala.

(2) The term of office of the members nominated under items (vii), (viii), (ix) and (x) in Sub-section (1) shall be four years from the date of their nomination and they shall not be eligible for re-nomination:

Provided that no person nominated in his capacity as a member of the Legislative Assembly shall hold office as a member of the Syndicate for a longer period than three months after he has ceased to be such member of the Legislative Assembly, unless in the meanwhile, he again becomes a member of the Legislative Assembly."

" Section 45. Filling up of Vacancies.- (1) All vacancies among the members (other than ex-officio members) of any authority or body of the University by reason of death, resignation or otherwise shall be filled, as soon as may be, by the person or authority who or which appointed or nominated the member whose place has become vacant.

(2) Any person appointed or nominated under Sub-section (1) shall hold office as member so long only as the member in whose place he is appointed, or nominated, as the case may be, would have been entitled to hold office if the vacancy had not occurred."

11. Mr. Radhakrishnan submitted that the Government of Kerala have to nominate two members of the Legislative Assembly to the Syndicate. Such nominations can be done only in two different situations. As per Section 17(2) every nominated member can hold office only for a period of four years. The power to nominate two MLAs for a term of four years is vested u/s 17(1)(x) with a condition that these members shall not be eligible for re-nomination. This type of nomination can be considered as original nomination. In case there is a contingency of arising of vacancy during this period of four years, then the nomination u/s 17(1) (x) can only be for filling up of casual vacancies. Filling up of casual vacancies to any authority or body of the University is regulated u/s 45(1) and the period of such nomination is governed by Section 45(2). In other words, in the four year period of the original members nominated u/s 17(1)(x) does not expire, there cannot be any original nomination as per Section 17(1)(x) and in such a situation. Section 17(1)(x) is subject to Section 45(2). An original nomination for a period of four years can be made only if the nomination is after the expiry of four year period of the original nominees and not in the cases of substituted nominees. Therefore, it is submitted that Exhibits P-3 and P-4 issued by the University and the respective Government Orders are illegal as far as the

terms of the present nominees are concerned since it is against the letter and spirit of Section 45(2) of the CUSAT Act. Their terms fixed at the time of nomination of their predecessors whom they substituted expired on 6-6-1999 and, therefore, after this date they cannot be treated as members of the Syndicate. Consequently, the decisions taken by the Syndicate consisting of respondents 3 and 4 are null and void and, therefore, liable to be quashed. It is submitted that the learned single Judge, without appreciating the real scope of Section 45 dismissed the Original Petition stating that the Syndicate being a continuing body, as per Section 17(2) the nominee can continue for a period of four years and a person nominated under Exhibit P-4 can continue in office upto 30-7-2000 as per the plain reading of Section 17(2). It is submitted that Section 45 clearly stipulates that all vacancies among the members (other than ex-officio members) or any authority or body of the University shall be filled according to Sub-section (2) of Section 45 and that the Legislature has not carved any exception to Section 45 to exclude Syndicate and the only exclusion u/s 45 is for Ex-Officio members. Nominated members cannot be considered as ex-officio members by any stretch of imagination. Therefore, the Legislature definitely intended to bring all the authorities or bodies of the University within the scope of Section 45. It is submitted that in Section 45(2) it is clearly stated that any person appointed or nominated under subsection (1) shall hold office as member so long only as the member in whose place he is appointed, or nominated as the case may be, would have been entitled to hold office if the vacancy had not occurred. Since the Legislature was particular in using the terms "appointed" or "nominated", under no circumstances can a conclusion be reached that Section 45(2) is not applicable as far as nominated members are concerned.

12. The learned Advocate General submitted that as contemplated u/s 17, the Syndicate is not an elected body nor are there any elected members to it. u/s 17(1)(x), two persons from among the Members of the Legislative Assembly of Kerala are to be nominated by the Government to it. There is no tenure fixed for the Syndicate unlike in the case of other authorities of the University like the Senate, which, u/s 20 is to be reconstituted every four years and consists of elected members along with ex-officio and nominated members. The Syndicate is a continuing body without a specified duration. That being so, a member nominated to the said body u/s 17(1)(x) is entitled to continue for a period of four years as stipulated u/s 17(2) which provides that "the term of office of the members nominated under items (vii), (viii), (ix) and (x) in Sub-section (1) shall be four years from the date of their nomination and they shall not be eligible for re-nomination." u/s 17(1)(x) a person nominated to the Syndicate is entitled to continue for a term of four years from the date of his nomination, irrespective of any other consideration. Such a provision is conspicuously absent in the case of membership in other Authorities of the University like the Senate. Thus. Section 17(1)(x) read with Section 17(2) makes it clear beyond any doubt that the term of office of a member nominated u/s 17(1)(x) will be four years from the date of his nomination. According to the learned Advocate General Section 45 of the

CUSAT Act is to provide for situations where the duration of a Body is for a particular period and in between the commencement and expiry of its period, if a vacancy among its members occurs and such vacancy is to be filled up. In such cases since the duration of the authority or body of the University itself will cease on a specific and ascertained date, the person nominated to the vacancy can also hold the post only till such time, which essentially will be the period which the member in whose place he is appointed could have been continued. Section 45 is, thus, a general provision. Any other meaning given to this section as to suggest that it will be applicable to a nomination to the Syndicate, which has no prescribed duration and as such is a continuing body, will have the effect of rendering the provisions contained in Sections 17(1) and 17(2) otiose. Moreover, when the mandate of Section 17(2) is that the term of a member nominated u/s 17(1)(x) shall be for four years in the absence of a non-obstante clause in Section 45 Section 17(2) will prevail in the case of nominations made by the Government u/s 17(1)(x) irrespective of the fact, whether the persons nominated earlier has vacated office before they completed the term of four years or not. In fact in a continuing body like the Syndicate for which duration is not prescribed right given u/s 17(2) is the right given to the member nominated in any contingency to continue in office for four years. Section 17 is a self contained provision and the ambit of it is not restricted by Section 45. The above being the position, the respondents 3 and 4 nominated by the Government to the Syndicate u/s 17(1)(x) can, as enjoined under Exhibits P-3 and P-4 continue as members of the Syndicate for a period of four years from the date of their nomination. It is also submitted that the appellant-petitioner has no locus standi to file the Original Petition since he is not a party affected by the nomination of respondents 3 and 4 to the Syndicate and the Original Petition is also highly belated.

13. The Original Petition, in our opinion, is devoid of any merits. Section 17(1) describes the constituents of the Syndicate. Sub-clauses (i) to (v) deals with ex-officio members. Sub-clauses (vi) to (x) are again reproduced for sake of convenience :-

"(vi) Three Deans of Faculties of the University by rotation in the alphabetical order of the Faculties in every two years.

(vii) An expert from the field of Industry and Commerce, nominate by the Chancellor.

(viii) Five members of the Senate, nominated by the Government, of whom one shall be a member of the Scheduled Caste or Scheduled Tribe and one shall be a teacher.

(ix) An official representative of the University Grants Commission, nominated by the Commission.

(x) Two persons nominated by the Government from among the members of the Legislative Assembly of Kerala."

Members nominated under sub-clauses (vii) to (x) shall hold office for four years from the date of their nomination. It is pertinent to notice that the date of Constitution of the Syndicate is not mentioned. But, there is an express embargo for a person to get renominated to the Syndicate. The Syndicate, in substance, is a continuing body. The Legislature has not intended to fix a tenure for the Syndicate. Date of Constitution of Syndicate is totally insignificant as far as the tenure of the members under Sub-clauses (vi) to (x) and the rest are ex-officio members. Moreover, there is yet another reason for not truncating the tenure of such members, i.e. they are not eligible for renomination. Section 45, in our view, is only an enabling provision which could be resorted to for filling up of vacancies under the authorities of the University. If the nominating authority resorts to Section 45(1), the terms he hold would be the remaining portion of the tenure of the earlier incumbent who had vacated. There are various authorities in the University as mentioned in Section 16 of the CUSAT Act. They are: the Syndicate, the Senate, the Academic Council, the Faculties, the Boards of Studies, the Planning Committee, the Finance Committee, and such other boards or bodies of the University as may be declared by the Statutes to be authorities of the University. In various authorities in the University, tenure is fixed for the body itself. Therefore, vacancy can be filled by virtue in the Syndicate, which is a permanent body can either be filled by the substantive provision under Sub-clause (x) of Sub-section (1) of Section 17 or by virtue of Section 45 of the CUSAT Act. It is within the domain of the nominating authority to either fill up an existing vacancy for the remainder of the term or make a fresh nomination. In the instant case, nominations were made by the Government u/s 17(1)(x) of the CUSAT Act for four years and the continuance of these members of the Syndicate is not in any way illegal.

14. As already noticed. Exhibits P-3 and P-4 were passed in June and July. 1996. The appellant did not challenge the same, eventhough he claims to be the Working President of the Cochin University Employees Union, a registered organisation of non-teaching employees of the University and having about 300 members, till September. 1999. In our opinion, the challenge has been made after an inordinate delay of more than three years and by the time the nominees have acquired a vested right to hold the office as Syndicate members for a period of four years. We, therefore, hold that the writ petition is also hopelessly belated and not maintainable. This apart, the appellant sought to quash Exhibits P-3 and P-4 nominations and also for a mandamus directing the Government to make fresh nominations to the Syndicate u/s 17(1)(x) of the CUSAT Act and for other consequential reliefs. The appellant-petitioner did not raise any complaint before any authorities so as to pray and maintain a writ petition for mandamus.

The Writ Appeal fails and it is accordingly dismissed. No costs. We hold that Respondents 3 and 4 are entitled to continue for a period of four years from the date of their respective nominations.