

(1980) 10 KL CK 0013
In the High Court Of Kerala
Case No : W.A. No. 245 of 1980

Krishnan Nambeesan and Another

APPELLANT

Vs

Vice Chancellor and Others

RESPONDENT

Date of Decision : 21-10-1980

Acts Referred:

Cochin University Act, 1971 — Section 15, 16(1), 16(2), 19(1), 19(6)

Citation : (1980) 10 KL CK 0013

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : P.K. appa Nair and Mohan C. Menon, for the Appellant; C.K. Sivasandara Panicker, K.S. Radhakrishnan and K.S. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—This appeal has been filed by the writ Petitioners in O.P. No. 2358 of 1980 against the Judgment of a learned Single Judge of this Court dismissing the said Original Petition. The writ Petitioners are two in number. The 1st Petitioner is holding the post of a reader in the department of Marine Sciences in the Cochin University and the 2nd Petitioner is working in the same department of the University as Lecturer in Marine Sciences. The 1st Respondent in the writ petition is the Vice Chancellor of the Cochin University. The 2nd Respondent is the Registrar of the University, who is to function as the returning officer for the conduct of elections to the various authorities under the University. Respondents Nos. 3 and 4 in the writ petition are Deans of two of the faculties of the University, who are functioning as ex officio members of the Syndicate u/s 16(1) of the Cochin University Act, for short, the Act, by virtue of their having been elected by all the Deans as their nominees on the Syndicate.

2. The term of the Syndicate of the University having expired on 20th May 1980 the Registrar, in his capacity as returning officer, notified that elections to the Syndicate would be conducted on 16th June 1980. The elections had however to

be postponed by reason of an order of interim stay passed by this Court in O.P. No. 1966 of 1980, filed by one Professor Velayudhan. That stay was subsequently vacated on 23rd June 1980. The Original Petition, out of which this appeal has arisen, was filed by the writ Petitioners; on 8th July 1980 and the relief sought was that a writ of mandamus should be issued commanding Respondents Nos. 1 and 2 to conduct elections to the Syndicate of the University of Cochin on the basis of the notification Ext. P-2 dated 5th June 1980 publishing the names and addresses of the candidates whose nominations for election to the Syndicate had been declared to be valid and that a direction should also be issued, commanding Respondents Nos. 1 and 2 not to convene any further meeting; of the erstwhile Syndicate of the University of Cochin whose term had expired on 20th May 1980. Another prayer contained in the writ petition was for a declaration that Respondents Nos. 3 and 4 were no longer members of the Syndicate of the Cochin University in view of the fact that the period of the erstwhile Syndicate had expired on 20th May 1980.

3. The main grievance put forward by the writ Petitioners before the learned Single Judge was that the elections to the Syndicate were proposed to be conducted by the Returning Officer on the basis that Respondents Nos. 3 and 4 were entitled to exercise the right of franchise in their capacity as members of the Senate which position they would be entitled to occupy by virtue of their membership of the Syndicate. According to the Petitioners, Respondents Nos. 3 and 4 had automatically ceased to be members of the Syndicate on the expiration of the term of the Syndicate and hence the Returning Officer was acting illegally in treating these two Respondents as persons entitled to exercise their right to vote in the elections proposed to be conducted to the Syndicate. The learned Judge examined this question with reference to the various provisions contained in the Act and the First Statutes and came to the conclusion that the Syndicate is a body functioning without a break and hence the contention put forward by the Petitioners cannot be accepted. It is on this basis that the writ petition has been dismissed.

4. In this appeal counsel for the writ Petitioners--Appellants--took us through the various provisions contained in the Act and the first Statute issued thereunder in an endeavour to substantiate the plea that he reiterated before us that Respondents Nos. 3 and 4 were not entitled to voting rights in the election to the Syndicate. We may at this stage mention that the elections actually took place on 1st August 1980 and the 1st writ Petitioner was successful in getting himself elected as a member of the Syndicate. The 2nd writ Petitioner who was also a candidate did not however get elected. According to counsel for the Appellants, persons nominated u/s 19(6) of the Act are to function as members of the Syndicate only for the duration of the term of the particular Syndicate in office at the time when they became ex officio members u/s 19(6). Inasmuch as the term of the Syndicate which was in office at the time when Respondents Nos. 3 and 4 became ex officio members expired on 20th May 1980, it was strongly argued by counsel for the Appellants that the Returning Officer acted illegally in treating the

Respondents Nos. 3 and 4 as entitled to participate in the voting to be held for election to the Syndicate. It was further submitted before us by counsel that, in any event, after the Syndicate was reconstituted on the basis of the results of the elections held on 1st August 1980, Respondents Nos. 3 and 4 ceased to be members of the Syndicate and the Petitioners ought to have been granted at least the relief of a declaration to that effect.

5. Section 16(1) of the Act lays down that the Senate shall be reconstituted every four years. Sub-section (2) of the said section states that every member of the Senate, other than ex officio and life members shall subject to the provisions of the Act and the Statutes, hold office until the next reconstitution of the Senate. Under Clause 9 of Section 15 all members of the Syndicate who are not otherwise members of the Senate are to be ex officio members of the Senate.

6. Section 20 of the Act deals with the subject of term of office of members of the Syndicate and it lays down that members of the Syndicate other than ex officio members shall held office for a term of four years from the date of their election. The time limit specified by the section is thus expressly made inapplicable to ex officio members. Even if it is to be assumed for the purpose of discussion that the Petitioners are right in their contention that persons who have become ex officio members of the Syndicate under Clause 6 of Section 19(1) of the Act can continue as such members only for the duration of the term of the particular Syndicate which was in office at the time when they became ex officio members in the said clause, there cannot be any doubt that they will be entitled to function as members of the Syndicate until the Syndicate is actually reconstituted u/s 16(1) of the Act. Admittedly, on the date of filing of the writ petition such a recon-situation had not taken place, obviously for the reason that the elections were then only proposed to be held. Hence, there is no merit at all in the Petitioners' contention that as on the date of filing of the writ petition Respondents Nos. 3 and 4 had ceased to be members of the Syndicate and as a consequence thereof they had ceased to be member; of the Senate as well, and had thereby become disentitled to exercise votes at the elections that were proposed to be held. In this view we consider it unnecessary to go into the merits of the larger question raised by the Petitioners as to whether the term of office of persons who have become ex officio members under Clause 6 of Section 19(1) of the Act is limited in duration to the term of the particular Syndicate in office at the time when persons concerned became ex officio members under Clause 6 of Section 19(1). The contentions urged by the Petitioners before the learned Single Judge were limited to the question as to whether Respondents Nos. 3 and 4 were entitled to exercise their right to vote at the elections which were then propose to beheld. In view of what we have stated above, the plea put forward by the Appellants that Respondents Nos. 3 and 4 were not entitled to be treated as members of the Syndicate and the Senate as on the date of institution of the Original Petition as well as on the date of conduct of the elections to the Syndicate, cannot stand. In this view we consider it unnecessary to express any opinion on the question as to whether persons like Respondents No. 3 and 4 who

have become ex office members of the Syndicate under Clause 6 of Section 19(1) of the Act would automatically cease to be members of the Syndicate on its being reconstituted after the holding of elections. We therefore decline to go into the merits of the contentions advanced by the counsel for the Petitioners against the conclusion reached by the learned Single Judge on the aforesaid question based on the view that the Syndicate is a body virtually functioning without break. We leave the said question open, because we consider that the writ Petitioners (Appellants) are not entitled to call in question in the present writ proceedings the entitlement of the Respondents Nos. 3 and 4 to continue in office as members of the Syndicate subsequent to the elections that were held only on 1st August 1980, since this is not a writ petition seeking the issuance of a writ in the nature of quo warranto.

In the light of what we have stated above, we dismiss this Writ Appeal. The parties will bear their respective costs.