

(1987) 07 KL CK 0057

In the High Court Of Kerala

Case No : W.A. No's. 460 and 501 of 1987

M. Gopi and Another

APPELLANT

Vs

A. Shamsuddin and Others

RESPONDENT

Date of Decision : 02-07-1987

Acts Referred:

Kerala University Act, 1974 — Section 21, 34

Citation : AIR 1988 Ker 22

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : S. Easwara Iyer and K.S. Rajamony, for the Appellant; B. Raghunathan and T.P.K. Nambiar, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran Nambiar, J.—The Syndicate of the Kerala University is a multi member constituency with five ex officio members and twelve elected members. The method of election is by the single transferable vote which thus provides for preferential voting. The election was held on 4th September, 1984 and the Registrar, the returning officer, declared the names of the candidates who have been elected. The election was challenged in an election petition by Sri Shamsuddin, a candidate who lost in the election. The Chancellor held that the procedure adopted by the returning officer in counting the votes was opposed to the relevant election statutes and directed recounting, after formulating the principles to be followed. One of the candidates Sri Gopi, declared elected by the returning officer, apprehending that the recount ordered may upset his election, challenged the order of the Chancellor under Article 226 of the Constitution. A learned single Judge accepted the reasoning and conclusion of the Chancellor and the writ petition was dismissed. Aggrieved, the writ petitioner has filed W. A. 460 of 1987. Another candidate who was also declared elected by the returning officer and who was party to the writ petition has filed a separate appeal. W. A. No. 501 of 1987, supporting the appellant in the connected appeal and

contending that no recount should have been ordered by the Chancellor. Both the appeals are heard together.

2. We shall state only the relevant facts and then advert to the statutory provisions to consider the questions of law raised by the appellants.

3. According to Section 21. Kerala University Act, there are only twelve elected members in the Syndicate, members to be elected by the senate from among themselves. They are : --

"(i) six, who are not members;

(ii) two, who shall be Principals of first grade colleges, of whom one shall be the Principal of a Government College and

(iii) four who shall be teachers who are not Principals of whom one shall be a University teacher and one shall be a teacher of a Government College."

It is, therefore, the legislative mandate that the Syndicate should consist of one Principal of a Government College, one teacher of a Government College and one University teacher.

4. The procedure for election is prescribed by the Kerala University (Conduct of Elections to various Authorities or Bodies) First Statutes, 1974. The election is held in accordance with the system of proportional representation by means of a single transferable vote and every elector entitled to vote at the election has as many preferences as there are candidates and the elector may indicate his choice by ranking them in order of his preference, 120 members of the Senate constituted the electorate, to elect 12 (twelve) members to the Syndicate. Only one principal of a Government College stood for election Sri Srcekantan, Principal of the Government Law College. There was no contest for him and he was declared elected. There was, therefore, contest only for the other eleven seats. The election statute prescribed a quota to "secure the return of a candidate and it provided in Statute 56 thus :--

"56. Quota. -- The number of papers in all the parcels shall then be added together and the total divided by a number exceeding by one the number of vacancies to be filled by election and the quotient increased by one shall be the number sufficient to secure the return of candidate, hereinafter called the "quota".

In the present case, the quota was 11 votes required for being elected. When the counting of votes proceeded, candidates who secured the quota were declared one by one. Thereafter the candidate who polled lowest was excluded and his unexhausted papers were distributed among the continuing candidates according to the next preference marked thereon. This process was continued. At one stage of the counting, Sri K. Samuel who was one of the two First Grade College Principals was excluded as he did not secure the required quota of votes. When he was thus excluded, Rev. K. C. Mathew remained in the field as the only

First Grade Government College Principal. He had necessarily to be declared as elected whether he obtained the quota or not as his constituency, that of the first Grade Government College Principal has statutory representation u/s 21 of the Act itself. But the Returning Officer treated him as a continuing candidate and votes were continued to be transferred to him. The same procedure was followed at the subsequent stages of counting also and when, at a later stage of the counting, Sri George M. Varghese, IInd Grade Professor, College for Women, Trivandrum, was the only remaining candidate in the category of teacher of a Government College, he was not declared elected; but was treated as a continuing candidate. The non declaration of Rev. K. C. Mathew and Sri George M. Varghese at the appropriate stages of counting, contrary to the mandate in Section 21, Kerala University Act, vitally affected the results of the election and, therefore, the election petitioner prayed for recounting according to the correct principles and according to the procedure followed by the same University for the previous elections to the Syndicate in 1976 and 1980.

5. The Chancellor accepted the case raised in the election petition and held thus : --

"The contention of the petitioner that Rev. K. C. Mathew and Shri George M. Varghese should have been declared elected when they were the only candidates that remained for contesting the election to the reserved vacancies of Principal of first grade college and teacher of a government college respectively at certain stages of counting has necessarily to be conceded as they were qualified to be declared elected whether they secured the required quota of votes or not because there were no other candidates left to contest their election. In this context the provision under Statute 62 has relevance as this statute is intended to make it clear that a candidate can be declared elected without obtaining the quota if the number of vacancies is equal to the number of continuing candidates".

"However, if, as contended by the petitioner, certain votes of the excluded candidates which have gone in favour of Rev. K. C. Mathew and Shri George Varghese would have gone in favour of the petitioner had the above candidates been declared elected is true, then the transferred votes which had gone in favour of Rev. Mathew and Shri Varghese had been rendered useless as even without these votes they would have been eligible to be declared elected. This can, however, be established only on a recount".

".....it is to be concluded that Rev. K. C. Mathew and Shri George M. Varghese should have been declared elected when they became qualified to be so declared by virtue of their being the only candidates left in the poll contesting the two reserved vacancies of principal of a first grade college and teacher of a Government College respectively. As such the procedure followed in counting, exclusion of candidates and declaration of result in the poll held on 4-9-1984 was wrong and so a recount has to be ordered. It is so ordered. The petitioner's prayer is granted to this extent."

6. The learned single Judge affirming the decision of the Chancellor held thus : --

"When a candidate has become eligible to be elected, and has got to be declared as elected, there is no point in postponing his declaration of election just to abide by the technicality of his reaching the quota because quota or no quota he gets elected".

7. In these two appeals, Sri Easwara Iyer and Sri K. S. Rajamony, counsel appearing for the appellants, contend that under the relevant election statutes made under the Kerala University Act, no person can be declared elected unless he secures the required "quota" of votes and the Returning Officer was not competent to declare any person as elected at any stage of the counting when he has not secured the minimum quota. The procedure adopted by the Returning Officer, according to the counsel, was correct and did not warrant any interference by the Chancellor. Sri Easwara Iyer also contended that in any case, the Returning Officer should have fixed a separate quota for each category and then only decided whether a candidate from that particular category had secured the minimum quota. Assuming that any candidate can be declared elected without obtaining the quota, as he happened to be sole surviving candidate in a particular category, the question would arise now the preferential votes cast by the excluded candidates after his exhausted papers should be transferred. Even though this question may not directly arise from the order of the Chancellor, the counsel for all the parties agreed that we decide that question also, as it is implicit in the process of counting. We shall advert to these contentions with reference to the relevant election statutes.

Statute 41

"Declaration of election of validly nominated candidates.-- If the number of candidates validly nominated and not withdrawn does not exceed the number of vacancies to be filled by election, such candidates shall be declared to have been duly elected.

If the number of candidates validly nominated and not withdrawn is less than the number of vacancies to be filled by election, such candidates shall be declared to have been duly elected, and the electorate shall be called upon to elect a person or persons, as the case may be, to fill the remaining vacancy or vacancies.

If the number of candidates validly nominated and not withdrawn exceeds the number of vacancies to be filled by election, then the Returning Officer shall proceed with the election in the manner prescribed hereinafter."

Statute 54

"Fractions and preferences.-- In carrying out the provisions regarding the procedure for election hereinafter prescribed,--

(1) all fractions shall be disregarded; and

(2) all preferences recorded for candidates already elected or excluded from the

poll shall be ignored."

Statute 57

"When persons who obtained quota are declared elected.-

(1) If at the end of any count a number of candidates equal to the number of vacancies to be filled by election has obtained the quota, such candidates shall be treated as elected and no further steps shall be taken.

(2) Any candidate, in whose parcel the number of votes on the first preference being counted is equal to or greater than the quota shall be duly declared elected.

(3) If the number of papers in any such parcel is equal to the quota, the papers shall be set as finally disposed of,"

Statute 59

"Exclusion of candidate lowest in the poll;--

(1) If, after all the surplus have been transferred as hereinafter provided, the number of candidates elected is less than the required number, the Returning Officer shall exclude from the poll candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences marked thereon and any exhausted papers shall be set apart as finally disposed of.

(2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of such paper being one.

(3) The papers containing the transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which he obtained them.

(4) Each of such transfer shall be deemed to be a separate transfer, but not a separate count.

(5) If the total of the votes of two or more candidates lowest on the poll together with any surplus votes transferred is less than the votes credited to the next highest candidate, those candidates may in one operation be excluded from the poll and their votes transferred in accordance with the provisions in Clauses (1) to (4).

(6) The above process shall be repeated on the successive exclusions one after another of the candidate lowest on the poll until the last vacancy is filled, either by the election of a candidate with the quota or as hereinafter provided."

Statute 62

"When continuing candidates are declared elected; -- When at the end of any count, the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected."

Statute 67

"Declaration of results.-- The Returning Officer shall at the end of the counting declare the names of the candidates who have been duly elected."

8. The Kerala University Election Statutes are, of course, subject to the provisions of the University Act and Section 34 of the Apt expressly provides thus : --

"34. The Statutes :-- Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters namely : --

(a) x x x

(b) x x x

(c) the procedure for election of members of the Senate, the Syndicate, the Academic Council and other authorities of the University and all such other matters relating to these bodies, as may be necessary or desirable to provide;"

x x x

Section 21 of the Act classifies the categories entitled to representation in the Syndicate and insists on a minimum number being elected from some of the designated categories. It is, therefore, the statutory mandate that at least one principal of a Government College, one University teacher and one teacher of a Government College are members of the Syndicate. The Senate, the supreme authority of the University empowered to make, amend or repeal statutes has made the First Statutes for the conduct of elections to the various authorities or bodies of the Kerala University. This election statute is thus meant to give effect to the provisions of the University Act and thus to regulate the conduct of elections to the various University bodies. The University Statute cannot therefore be inconsistent with the Act and cannot be read in isolation.

9. With this background, we shall understand the scope and ambit of the election statutes. Candidates have to be declared elected if the number of candidates validly nominated does not exceed the number of vacancies to be filled by election (Statute 41).

A contest, therefore, arises only when the number of candidates exceeds the number of vacancies. The electors proceed to vote and votes are then counted. At the end of the counting, the returning officer shall declare the names of the candidates who have been duly elected. In view of the fact that there are specified categories entitled to be represented in the Syndicate, Statute 62 enables a candidate to be declared elected not "at the end of counting but "at the end of any count". If at the end of any count, the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidate shall be declared elected. This declaration does not wait and need not wait till the entire counting is over. The category in which the vacancy arises and the body in which that vacancy occurs have both to be taken into

account to determine and identify the vacancy to be filled up. If, therefore, in any category or class entitled to be represented in the Syndicate, the number of continuing candidates is reduced to the number of vacancies remaining unfilled, those candidates will have to be declared elected at any stage of the counting. This is the plain purport of Statute 62. This effectuates the legislative policy underlined in Section 21 also. Statute 62 is thus an enabling provision which entitles the returning officer to declare a candidate elected even before the final counting is over, if the number of vacancies remaining unfilled and the number of continuing candidates remain the same. When, therefore, for a particular vacancy in the Syndicate, which can be filled only by a member of that class and a solitary member of that class is available, Statute 62 enjoins that this remaining surviving candidate shall be declared elected. Thus when Rev. K. C. Mathew, happened to be the only principal of a Government College and Sri George M. Varghese, the only teacher of a Government College, the returning officer was bound to declare them elected under Statute 62. He fails in his statutory duty, if without declaring them elected, he treats them as continuing candidates requiring some more votes to be declared elected. This was the mistake committed by the returning officer, corrected by the Chancellor. The returning officer was wrong when he refused to declare Rev. K. C. Mathew and Sri George M. Varghese elected at the respective counting and the Chancellor was right in holding that they should have been declared elected. The procedure adopted by the Returning Officer was not only contrary to the express provisions of the University Act, especially Section 21 of the Act, but also to Statute 62, and also to the accepted procedure followed in the previous years of 1976 and 1980. The Chancellor was, therefore, justified in directing a recount of the votes polled.

10. But contend counsel for the appellants in the two appeals, that the jurisdiction to declare a person elected arises only when the number of votes obtained by a candidate is equal to or greater than the quota and rely on Statutes 59 and 60. These provisions take care of all situations where a "quota" is required for a candidate to be elected. Statute 62, on the other hand, provides for situations where a declaration can be made not only where the quota requirement is satisfied, but also where no quota is required as in the case of a solitary surviving member of a class entitled to be elected as the representative of that class. If a quota rule is insisted for one who require no quota, a stage may be reached when he will be excluded as a candidate last in the poll and his constituency therefore remains unrepresented. The legislative mandate of a reservation to a class cannot thus be defeated by importing a quota rule where none exists. The quota rule cannot therefore restrict the meaning and effect of Statute 62. This contention cannot be accepted.

11. Sri Easwar a Iyer faintly argued that quota should have been fixed for each category entitled to representation in the Syndicate. It is sufficient to note that the election statute does not make any provision for fixing a separate quota for any class or category and a fresh procedure cannot be judicially adopted or recognised de hors the statutes. This contention is without merit and is rejected.

12. Even if Rev. K. C. Mathew and Shri George M. Varghese have to be declared elected at the end of certain counts the question that remains to be considered is regarding the distribution of exhausted papers among the continuing candidates. It is stated that if the unexhausted papers of the candidate excluded from the poll, (the candidate with the lowest poll) have to be distributed among the continuing candidates, according to the next preferences marked thereon, even then, these unexhausted papers are of no use, when their first preferences are for those already declared elected, though without securing the quota. Thus it is urged, these votes given to Rev. K. C. Mathew and Sri George M. Varghese by the candidates lowest on the poll as their first preferences are of no use, as they cannot be given either to Rev. K. C. Mathew and Sri George M. Varghese or to anybody else. If a candidate entitled to be declared elected is treated as a continuing candidate and the votes are transferred in his name and to his credit, the votes are wasted, for even without those votes, he is entitled to be declared elected. We feel that this contention proceeds on a wrong understanding of the relevant statutes. The question is not how many votes are lost but how best the votes are utilised. The fact remains that some candidates are likely to be elected even if they do not obtain the required quota, provided they remain as the solitary representative of any particular class. When they are declared elected, counting has still to proceed, as there may be continuing candidates still to be elected. The unexhausted papers of the candidate who polled lowest are then utilised for the purpose. If the first preference in those papers is to the candidate already elected earlier, that first preference is of no use. Are we to utilise these unexhausted papers or have we to ignore the same? We do not think that there is any difficulty on this account as the Statute provides for such contingencies as well.

13. Statute 54 states that in carrying out the provisions regarding the procedure for election, all preferences recorded for candidates already elected or excluded from the poll shall be ignored. Thus the first preference recorded by the candidate who polled lowest, in favour of the candidate who has been declared elected, has to be ignored. And Statute 59 states that the unexhausted papers of the candidate who polled last shall be distributed according to the next preference marked thereon. The next preference cannot relate to the preference statutorily ignored. It can refer only to the next preference which is capable of being distributed. The next preference, in that context, can only mean the first preference available to the continuing candidates. In the case before us, therefore, after the declaration in favour of Rev. K. C. Mathew and Sri George M. Varghese, at the end of the appropriate stages of counting, the exhausted papers of the candidate who polled last have to be distributed to the continuing candidates ignoring the first preference given to the candidates already declared elected -- Rev. K. C. Mathew and Shri George M. Varghese. It is stated that this was the practice followed in 1976 and 1980 elections and the Chancellor has only directed the same procedure to be followed.

14. The order of the Chancellor in the election petition rectified a vital mistake

committed by the Returning Officer in the counting process and the Chancellor was right in directing a recounting. The order of the Chancellor was rightly upheld by the learned single Judge. These appeals are without merits and are thus, dismissed, but, in the circumstances of the case, without costs.

The result of the recounting is kept in a sealed cover in this Court, as per directions issued during the pendency of the appeal. The sealed cover will be returned to the counsel for the Returning Officer of the Kerala University and the stay of the publication of the results ordered earlier stands vacated.

Issue photostat copy of this judgment to counsel appearing for all parties.

No substantial question of law of general importance which needs to be decided by the Supreme Court arises for consideration in this case. Hence leave to appeal to the Supreme Court is refused.