
(2006) 01 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition No's. 3929 and 10882 of 2004

M.A.H. Khan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Kannur University (Amendment) Act, 2001 — Section 19, 23, 24, 24(1)
Kannur University Act, 1996 — Section 23, 24(1)

Citation : (2006) 1 KLT 411

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi and K.K. Ravindranath, for the Appellant; Mohammed Mustaque, M. Sasindran, Tojan J. Vathikulam and Viju Abraham, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner is a member of the Syndicate of the 2nd respondent Kannur University. He was nominated to the Syndicate, as the Principal of a college, affiliated to the University, by Ext.P2 order dated 10.06.2002. The said nomination was made under the Kannur University Amendment Act, 2001, which is produced as Ext.Pl. Section 23 of the Kannur University Act, as amended by Ext. P1, deals with the constitution of the Syndicate. The members are broadly classified as Ex-officio members and other members. Two principals of colleges, affiliated to the University, nominated by the Government, shall be the members of the Syndicate, as per Clause (c) of Section 23 under the heading "other members". The term of office of the members of the Syndicate is provided in Section 24. Normally, the term of the members, other than Ex-officio members, is 4 years from the date of their nomination, as per Sub-section (1) of Section 24. The petitioner was nominated on 10.6.2002. So, normally, he can continue up to 10.06.2006. But the first proviso to Section 24(1) provides, inter alia, that no person, who is nominated as the holder of a particular office, shall be a member of the Syndicate for a longer period than 3 months, after he has ceased to be the holder of such office, unless

he becomes the holder of that office again, within three months. The petitioner has, admittedly, been nominated as the holder of the office of Principal of an affiliated college. But, the second proviso to Sub-section (1) of Section 24 mentioned above, further provides that such a member can continue to hold office, until his successor is nominated. The petitioner retired from service on 31.03.2003. The three months' period expired on 30.06.2003. Soon thereafter, by Ext.P5 order dated 14.08.2003, the petitioner was again appointed as the Principal of another self-financing affiliated college. While so, the General Secretary of the Kannur University Employees' Union filed representations before the University and the Government, stating that the petitioner has ceased to be a member of the Syndicate, after 30.06.2003. The Government sought the views of the University on this controversy, The University, in Ext.P6 communication dated 01.11.2003 addressed to the Government, took the stand that the petitioner can continue as a Syndicate Member, until his successor is nominated. But, the Government by Ext.P8 dated 29.01.2004, took the view that the petitioner has ceased to be a member of the Syndicate with effect from 30.06.2003. The said communication reads as follows:

In inviting attention to the reference cited, I am to inform you that Sri. M.A.H. Khan ceased to be a member of the Syndicate with effect from 30.6.2003 vide first proviso to Section 24(1) of Kannur University Act.

This Writ Petition is filed, challenging Ext.P8. According to the petitioner, though his term expired on 30.06.2003, as per the first proviso, he can continue till his successor is nominated, by virtue of the second proviso to Section 24(1) of the Kannur University Act.

2. The 2nd respondent University has filed a counter affidavit, supporting the impugned order. Though, initially, by Ext.P6, it supported the case of the petitioner, now, in this Writ Petition, it is supporting the stand of the Government and opposing the contentions of the petitioner.

3. The 3rd respondent, who is a Section Officer of the University and who got himself impleaded in this Writ Petition, also supports the stand of the Government.

4. I heard Mr.KJaju Babu, learned counsel for the petitioner, Mr.Viju Abraham, learned Government Pleader, appearing for the first respondent State, Mr.Mohammed Mustaque, learned Standing Counsel for the University, Mr.M.Sasindran, learned counsel for the additional 3rd respondent and also Mr.K.K.Ravindranath, learned counsel for the petitioner in the connected Writ Petition. The learned counsel for the petitioners in both the Writ Petitions submitted that the Syndicate consists of Ex-officio members and other members. The Ex-officio members become members of the Syndicate, by virtue of their office. Other members are nominated by the Government, representing various categories. The petitioner has been nominated as one, holding the office of Principal. His term expires on completion of 4 years or on completion of three

months after his retirement from the office of Principal. But, persons like the petitioner can continue in office, till his successor is nominated, by virtue of the second proviso to Section 24(1), it is contended by the learned counsel for the petitioners. The learned counsel for the 3rd respondent submitted that the nominated members of the Syndicate, are representing various groups. If the contention of the petitioner is accepted, then, a retired Principal can continue indefinitely, taking shelter behind the second proviso. So, the very purpose of the first proviso that he should lay down office after three months of his retirement, will be defeated, it is submitted. Therefore, the 3rd respondent submits that the petitioner has ceased to be a member of the Syndicate, from 30.6.2003. The learned Government Pleader and also the learned Standing Counsel for the University raised contentions, identical to those raised by the 3rd respondent. The learned counsel for the petitioners, in support of their submissions, relied on the decisions in *Mathew Philip v. Malayalam Plantations (India) Ltd.* (1994 (2) KLT 130 : ILR 1994 Ker 557) *Ali v. State of Kerala* 2003 (2) KLT 922 *Haryana State Cooperative Land Development Bank Ltd. Vs. Haryana State Cooperative Land Development Banks Employees Union and Another*, , *Mani Vs. Kerala Agricultural University*, . *University of Kerala Vs. Sankaran Nampoothiry*, and *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, .

5. The relevant provisions required to be interpreted for deciding the point raised in this Writ Petition are Sections 23 and 24. They are quoted below for convenient reference:

23. The Syndicate. The Syndicate shall be the Chief Executive body of the University and shall consist of the following members, namely:-

Ex-Officio Members

- (a) The Vice-Chancellor
- (b) The Pro-Vice-Chancellor
- (c) The Secretary to Government, Higher Education Department or an Officer not below the rank of a Joint Secretary in the Higher Education Department nominated by him.
- (d) The Secretary to Government, Finance Department or an officer not below the rank of a Joint Secretary, nominated by him.
- (e) The Secretary to Government, information Technology Department or an officer, not below the rank of a Joint Secretary, nominated by him.
- (f) The Director of Collegiate Education.

Other Members

- (a) Two eminent Educationalists or Scientists nominated by the Government:
- (b) Three Deans of Faculties, nominated by the Chancellor, by rotation:

(c) Two Principals of Colleges, affiliated to the University, nominated by the Government;

(d) Three teachers of colleges nominated by the Government of whom one shall be a member of a Scheduled Caste or a Scheduled Tribe:

(e) The members of referred to in item (iv) under the heading "Other Members" in Section 19 nominated by the Government.

Provided that one of the members nominated by the Government shall be a woman..

24. Term of office of members of Syndicate (1) members of the Syndicate, other than ex-officio members, shall hold office for a term of four years from the date of their nomination.

Provided that no person nominated in his capacity as a member of a particular body or as the holder of a particular office, shall be a member of the Syndicate for a longer period than three months after he has ceased to be such member or holder of such office, unless in the mean while, he again becomes a member of that body or the holder of that office:

Provided further that a member, other than an ex-officio member shall, notwithstanding the expiration of his term, continue to hold office until his successor is nominated:

Provided also that no person other than an ex-officio member shall be eligible to hold office for more than two terms in succession,

(2) Notwithstanding anything contained in the first proviso to Sub-section (1), a member of the Syndicate referred to in item (c) or in item (d) under the heading "Other Members" in Section 23 shall not cease to be such member merely on the ground that

(a) he has been transferred to an educational institution within the State, situated beyond the territorial limits of the University or

(b) the college of which he is the Principal or in which he is a teacher, has been transferred to another University or

(c) in the case of a teacher, he has been promoted as Principal.

Section 23 would show that all members, other than Ex-officio members are nominated by the Government or the Chancellor. By virtue of Section 24(1.), they can continue for a period of four years. But, a person like the petitioner, who has been nominated as the holder of a particular office, will cease to be a member of the Syndicate, on completion of three months from the date he ceased to be the holder of that office. The second proviso further, provides that a nominated member of the Syndicate, notwithstanding the expiry of his term, can continue, till his sucessor is nominated. According to the Government and other respondents, the second proviso will apply, only to those persons covered by Sub-

section (1) and not to those, who are covered by the first proviso, like the petitioner. But, I think, the second proviso will cover the persons, governed by Sub-section (1) and also by the first proviso. Sub-section (1) generally deals with the expiry of the term of a Syndicate Member. The first proviso deals with the expiry of the term of the member, who is nominated as the member of a particular body or as the holder of a particular office. The second proviso deals with all "other members" of the Syndicate, whose term has expired. As per the said proviso, they can continue till fresh hands are nominated in their place. This is to avoid vacuum in the office of the member of a Syndicate.

6. The decisions of this Court, cited by the learned counsel for the petitioners do not directly apply to the facts of this case. The decisions of the Apex Court, relied on by them, deal with the effect of a proviso, on a statutory provision. The law on this point is well settled. The proviso generally except some thing from a statutory provision, it takes out of the main provision, some thing, which would have been covered by it, but for the proviso. In *Union of India (UOI) Vs. Sanjay Kumar Jain*, , the Apex Court described the effect of a proviso as follows :

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which, but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey* (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta*), when one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment and its effect is confined to that case, it is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. If the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.* Normally, a proviso does not travel beyond the provision to which it is a proviso, it carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See *A.N. Sehgal v. Raje Ram Sheoran*, *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* and *Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.*)

"This word (proviso) hath diverse operations. Sometime, it worketh a qualification or limitation; sometime a condition and sometime a covenant" (Coke upon Littleton, 18th Edn., p. 146).

"If, in a deed, an earlier clause is followed by a later clause, which destroys altogether the obligation created by the earlier clause, the later clause is to be

rejected as repugnant and the earlier clause prevails.... But, if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in *Forbes v. Git*).

12. A statutory proviso is something engrafted on a preceding enactment (*R. v. Taunton, St.James*, ERp. 311).

The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances (per Lord Esher in *Barker, Re*).

13. A proviso to a section cannot be used to import into the enacting part, something which is not there, but, where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (see *Jennings v. Kelly*).

Going by the principles laid down in the above decision and other decisions, concerning the effect of a proviso on the main section, the only view possible is that the petitioner can continue as a Syndicate Member, until a new member is nominated by the Government in his place.

7. In view of the above position. Ext.P8 is quashed. It is declared that the petitioner can continue as the member of the Syndicate of the Kannur University, until the Government nominate some other Principal of an affiliated college in his place.

W.P.(C) No. 10882/04

8. The point raised by the petitioner herein is covered by the Judgment of this Court in W.P.(C) No.3929/04. Accordingly, Ext.P6 order of the Government and the consequential order of the University Ext.P5 are quashed. The petitioner herein can also continue as a member of the Syndicate, until the Government nominate another Principal of an affiliated college, in his place.

The Writ Petitions are disposed of as above.