
(2004) 10 KL CK 0003
In the High Court Of Kerala
Case No : Writ Petition (C) No. 21958 of 2004

Mani

APPELLANT

Vs

Kerala Agricultural University

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Kerala Agricultural University Act, 1971 — Section 11(2)

Citation : (2005) 1 ILR (Ker) 102 : (2005) 1 KLT 588

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair, for the Appellant; N.D. Premachandran and K.I. Abdul Rasheed, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—This Writ Petition throws up a legal conundrum, to be solved by this Court. Whether a member of the General Council of the Kerala Agricultural University, elected by the Senate of the Calicut University, can continue to be the member of the General Council, notwithstanding the expiry of the term of the Senate, which elected him, is the point to be decided in this Writ Petition. The brief facts of the case, are the following:

2. The Senate of the Calicut University was reconstituted for a period of four years, on 2.11.1999. The petitioner was a member of the Senate. In that capacity, he was elected by the Senate, to the General Council of the Kerala Agricultural University, for a term of three years, on 18.6.2002. The term of the Calicut University Senate expired on 2.11.2003. While so, somebody brought to the notice of the Registrar of the Kerala Agricultural University that the petitioner has ceased to be a member of the Calicut University Senate and therefore, he has also ceased to be the member of the General Council of the Agricultural University. So, the Registrar addressed Ext.PI letter dated 5.4.2004, to the Registrar of the Calicut University, seeking the following information:

"(1) Whether Adv. K.V. Mani, Kalluvelil House, Mannarkad P.O., Palakkad, is now a member of the Senate of the University of Calicut.

(2) If he is not a member of the Senate of the University of Calicut now, the date on which his membership in the Senate of the University of Calicut was ceased."

The Registrar of the Calicut University furnished Ext.P2 reply, which reads as follows:

"Referring to the above, I am to inform you that Sri. K. V. Mani, is not a member of the Senate now, since the Senate reconstituted for a period of 4 years with effect from 2.11.1999 has been, expired in November 2003."

Soon thereafter, the Registrar of the Calicut University addressed Ext.P3 letter to the Agricultural University, stating that the petitioner still continues to be a member of the Senate. The said communication reads as follows:

"In modification to this office letter cited above, I am to inform you that Clause 3 of Section 18 of Chapter IV of the Calicut University Act, 1975 states "Every member of the Senate, other than ex-officio members shall, subject to the provisions of this Act and the Statutes, hold office until the next reconstitution of Senate". Further, vide Section 23 (A) of the University Laws (Amendment) Act, 1994, special power is conferred to the Syndicate in the absence of Senate. The Act states "Notwithstanding anything contained in the Act, the Syndicate shall exercise all the powers and perform all the functions of the Senate except the power of review under Sub-section (1) of Section 19 till the reconstitution of Senate".

In the above circumstances, I am to inform you that the Senate membership of Sri. K. V. Mani (Syndicate Member) has not been ceased."

The Agricultural University, by Ext.P4 communication dated 18.6.2004, asked the Calicut University to clarify whether the Senate of the University of Calicut is now in existence or not. The Registrar of the Calicut University replied as per Ext.P5, stating that though the term of the Senate is already over, the petitioner still continues to be a member of the Senate, by virtue of Section 18(3) of the Calicut University Act, 1975. But, ignoring the views expressed by the Calicut University, the Agricultural University issued Ext.P6 notification dated 22.7.2004, declaring that the petitioner's membership of the General Council of the Agricultural University ceased with effect from 2.2.2004. This Writ Petition is filed, challenging Ext.P6 and seeking consequential reliefs.

3. The petitioner, relying on Section 18(3) of the Calicut University Act, submits that though the term of the Senate expired, he will continue to be a member of the Senate, until a new Senate is constituted. By virtue of Section 23A of the Calicut University Act, introduced as per the University Laws Amendment Act, 1994, the Syndicate of the Calicut University is exercising all the powers and performing all the functions of the Senate. Therefore, it is contended that he is still functioning as a member of the Senate. By virtue of Section 18(3) of the Act,

it is submitted, the petitioner is still continuing as a member of the Syndicate and is discharging the functions of the Syndicate and also those of a Senate member. In support of that submission, he places reliance on Exts.P8 and P9 minutes of the Syndicate of the Calicut University, held on 22.7.2004 and 20.3.2004, respectively.

4. A counter affidavit has been filed on behalf of respondents 1 to 3, resisting the prayers in the Writ Petition. They rely on Section 11 (2) of the Kerala Agricultural University Act and submit that the petitioner has ceased to be a member of the Senate, after the lapse of three months from the date of expiry of the term of the Senate of the Calicut University. Reliance is also placed on Section 18(5) of the Calicut University Act. It is further submitted that in similar circumstances, the membership of the General Council, of Shri. Vikraman Thambi, representing the Kerala University, was also held to be terminated, by Ext.R1 (a) notification. Therefore, they pray for the dismissal of the Writ Petition.

5. I heard the learned counsel Mr. S. Gopakumaran Nair, for the petitioner, the learned Standing Counsel Shri. N.D. Premachandran, appearing for respondents 1 to 3 and also the learned Government Pleader Mr. K.I. Abdul Rasheed, appearing for the 4th respondent.

6. Before advertng to the contentions of both sides, it will be fruitful to refer to the relevant statutory provisions, first. Section 11 of the Kerala Agricultural University Act reads as follows:

"11. Reconstitution of the General Council:

(1) The General Council shall be reconstituted every three years.

(2) Every member of the General Council other than an ex-officio member shall, subject to the provisions of this Act and the Statutes, hold office until the next reconstitution of the General Council:

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

Provided further that where an elected or nominated member of the General Council is appointed temporarily to any office, by virtue of which he is entitled to be a member of the General Council Ex-officio, he shall cease to be such elected or nominated member, as the case may be.

(3) When a person ceases to be a member of the General Council, he shall cease to be a member of any of the Authorities of the University of which he may happen to be a member by virtue of his membership of the General Council."

By virtue of Section 11(2) of the Act, the members of the General Council, other than ex-officio members, can continue to be the members of the Council, till its

next reconstitution. But, the same is subject to the proviso that a person nominated or elected to the General Council, in his capacity as the member of some other body, shall hold office only for a further period of three months, after he has ceased to be the member of that particular body. The relevant provisions of the Calicut University Act are the following:

"Section 18. Reconstitution of the Senate:-

(1) The Senate shall be reconstituted every four years.

(2) The term of office of any member referred to in items (13) and (14) under the heading "Ex-officio Members" in Section 17 shall be two years from the date of his nomination.

(3) Every member of the Senate, other than ex-officio members, shall, subject to the provisions of this Act and the Statutes, hold office until the next reconstitution of the Senate:

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

Provided further that where an elected or nominated member of the Senate is appointed . temporarily to any office, by virtue of which he is entitled to be a member of the Senate ex-officio, he shall, by notice in writing signed by him and communicated to the Vice-Chancellor within seven days from the date of his taking charge of his appointment, choose whether he will continue to be a member of the Senate by virtue of his election or nomination or whether he will vacate office as such member and become a member ex-officio by virtue of his appointment and such choice shall be final:

Provided also that the term of a member referred to in item (12) under the heading "Elected Members" in Section 17 or of a member referred to in item (4) under the heading "Other Members" in that section shall be one year from the date of his election or nomination, as the case may be.

(4) On failure of a member to make the choice under the second proviso to Sub-section (3), he shall be deemed to have vacated his office as an elected or nominated member.

(5) When a person ceases to be a member of the Senate, he shall cease to be a member of any of the authorities of the University of which he may happen to be a member by virtue of his membership of the Senate.

Section 23 A. Special power of the Syndicate:

Notwithstanding anything contained in this Act, the Syndicate shall exercise all the powers and perform all the functions of the Senate except the power of

review under Sub-section (1) of Section 19 till the reconstitution of the Senate."

7. The main contention of the learned counsel for the petitioner is that though the term of the Senate, of which he was a member, has already expired, he is still holding the office of the member of the Senate, till its next reconstitution, by virtue of Section 18(3) of the Act mentioned above. In this case, the first proviso to the said sub-section is not attracted, as he is not nominated or elected to the Senate, as the member of a particular body or as the holder of a particular office. He has been elected from the constituency of registered graduates. So, he will not be hit by the first proviso to Sub-section (3). The petitioner submits, the identical provisions contained in Section 11 (2) of the Kerala Agricultural University Act, will save his membership of the General Council. But, the learned Standing Counsel for the Agricultural University, pointed out that the petitioner's membership of the General Council, will be hit by the first proviso to Sub-section (2) of Section 11. He was elected to the General Council, as a member of the Calicut University Senate. Its term is already over and so, he can continue only for a further period of three months from the date of expiry of the term of the Senate, it is submitted.

8. A reading of Section 11(2) of the Kerala Agricultural University Act and Section 18(3) of the Calicut University Act, would make it appear that there is some apparent conflict between them. But, on a closer scrutiny, I feel that there is no conflict. Section 18(3) is a special provision, concerning the tenure of the members of the Calicut University Senate. But, when Section 18(3) is read with its first proviso, it is clear that members of the Senate, other than ex-officio members and persons nominated or elected, representing a particular body or as the holder of a particular office, will continue to hold the office, until the next reconstitution of the Senate. The petitioner, not coming under any of the three exempted categories, will continue to be a member of the Senate, till the next reconstitution of the Senate, for the limited purpose of retaining his membership in the various committees of the Calicut University. It is common case that at present, there is no Senate and it is not meeting or transacting any business. Its business is being transacted by the Syndicate. But, the same will not make the members of the Syndicate, the members of the Senate also, for other purposes.

9. As far as the membership of the General Council of the Kerala Agricultural University is concerned, Section 11(2) comes into play. The first proviso to Section 18(3) of the Calicut University Act will not operate, to nullify the legal effect of the first proviso to Section 11(2) of the Kerala Agricultural University Act. The first proviso to Section 18(3) mentioned above, is a special provision, as far as the Calicut University is concerned. But, it is only a general provision, as far as the Agricultural University is concerned. On the contrary, the first proviso to Section 11(2) of the Kerala Agricultural University Act, is a special provision, as far as the said University is concerned. So, when there is an apparent conflict between the first proviso to Section 18(3) of the Calicut University Act and the first proviso to Section 11(2) of the Kerala Agricultural University Act, the latter

will prevail, as far as the Agricultural University is concerned. Here, the maxim "Generalia Specialibus Non Derogant" will come into play. In view of the above position, I am of the view that the petitioner's membership of the General Council of the Agricultural University; will be hit by the first proviso to Section 11(2) of the Kerala Agricultural University: Act. He has come to the General Council of the Agricultural University, representing the Calicut University as a nominee of the body called Seriate. Since that body is no longer in existence, the petitioner's membership of the General Council has ceased with effect from 2.2.2004. In view of the above legal position, I find nothing illegal with Ext. P.6 notification. Accordingly, the Writ Petition is dismissed. No order as to costs.