

(2024) 05 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37236 Of 2023

Mohammed Faris. M

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Calicut University Act, 1975 — Section 40(1)

Citation : (2024) 05 KL CK 0012

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : P.E.Sajal, Ajas K.S., M.Krishnakumar, P.C.Sasidharan

Final Decision : Dismissed

Judgement

T.R. Ravi, J

1. The writ petition has been filed by the students of the 2nd respondent college which is affiliated to the 5th respondent University. The 5th respondent decided to conduct the college union election for the year 2023-2024 and the 3rd respondent issued a notification on 30.09.2023, a copy of which is produced as Ext.P1. As per Ext.P1 the election was to be held on 31.10.2023 which was postponed to 01.11.2023, owing to a bus strike. Ext.P1 contemplated a parliamentary mode of election. The first phase of the election was conducted on 01.11.2023. Ext.P2 is the list of class representatives elected in the first phase. The valid list of candidates for the second phase has been produced as Ext.P3. The writ petition was filed when the second phase of the election was temporarily suspended due to student unrest. Ext.P5 is the notice issued by the 2nd respondent which says that further decisions regarding the conduct of the election will be taken after due consideration and in consultation with the Dean of Students Welfare. The 3rd petitioner submitted Ext.P6 representation to the 4th respondent requesting to conduct the second phase of the election, publish the result of the college union election, and protect the valuable rights of the students. The writ petition has been filed praying for a direction to the 4th

respondent to pass appropriate orders on Exts.P5 and P6 and for a direction to the 1st respondent to conduct the second phase of the election on the basis of Exts.P2 and P3 and publish the results.

2. The 2nd respondent has filed a counter affidavit contending that there is no legal obligation for an affiliated college to conduct an election and hence there is no right available to the petitioners, that can be enforced through a court of law. Reliance is placed on the judgment in Council of Principals of Colleges V. State of Kerala [2004 (2) KLT 995], wherein it was held that directions issued through letters to conduct an election following the presidential system of election cannot be sustained and affiliated colleges are free to follow a system which is better for the administration and discipline in the colleges. The above judgment had been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court had by an interim order provided guidelines adopting the Lyngdoh Committee report as to how election should be conducted. However, later the matter was referred to a Larger Bench by the Hon'ble Supreme Court, entertaining doubt as to whether the directions issued in the interim order would amount to judicial legislation. The matter was taken up before a Larger Bench and it was closed without pronouncing on the merits of the issue. The 2nd respondent points out that subsequently this Court had in the judgment in the Principal, Elijah Institute of Management Studies, Thrissur V.University of Calicut and Others (2016 (4) KLT 474), considered the entire decisions and held that the bye-law framed by the University for the purpose of conduct of election is not a bye-law framed in terms of the power vested in the Syndicate under Section 40(1) of the Calicut University Act and it can only be treated as a guideline for the affiliated colleges. It is hence contended by the 2nd respondent that there cannot be a compulsion on the affiliated colleges to conduct an election.

3. I have considered the contentions of the petitioners and the respondents. This Court has in Elijah Institute (supra) categorically held that the power under Section 40(1) is to make rules, bye-laws, and orders for the guidance and working of "boards and committees of other bodies constituted under the provisions of the Act or the Statutes or the Ordinance or the Regulations" and for regulating the procedure and conduct of business at meetings of any authority of the University other than the Senate. This Court held that the bye-law framed to conduct of election cannot be treated as a bye-law which is framed under Section 40(1) of the Act. This Court further held that the powers and duties of the Syndicate, though available to manage and control colleges or affiliated institutes by the University, there is no power vested to interfere with college union elections of an affiliated college. The learned Judge held that the judgment in Council of Principals of Colleges still holds the field and as held by the Division Bench, the bye-laws are not binding on the affiliated colleges.

4. I do not find any reason to take a different view. The prayer in the writ petition to direct conduct of the election for the second phase in accordance with Exts.P2 and P3 cannot hence be granted since there is no legal obligation on the

2nd respondent. The further prayer in the writ petition is for a direction to the 4th respondent to consider Exts.P5 and P6 representations. Since this Court has already held that the bye-laws framed by the University are not binding on the affiliated colleges and the affiliated colleges are free to adopt their own methods for election, no directions can be issued by the 4th respondent in that regard.

In the above circumstances, the writ petition fails and is dismissed.