

(2011) 03 MAD CK 0181

In the Madras High Court

Case No : Writ Petition No. 6149 of 2010 and M.P. No's. 1 and 2 of 2010

R. Murthy

APPELLANT

Vs

The University of Madras

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Madras University Act, 1923 — Section 41

Citation : (2011) 03 MAD CK 0181

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Namasivayam, for the Appellant; G. Thilakavathy, for R1, A. Palaniappan, for R2 and A. Suresh, Government Advocate for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is a member of the teaching staff in the third Respondent college. The third Respondent college is an

autonomous college granted autonomy by the University of Madras. In the present writ petition, the Petitioner seeks to quash the election and the

declaration of second Respondent as having been elected to the Academic Council of the first Respondent-University of Madras representing the

constituency formed out of the third Respondent college.

2. The grievance of the Petitioner was that election notification calling for nomination for the membership of the academic council from the

constituency of the third Respondent college had not been properly notified as per the statute governing such elections. It was deliberately held

during the vacation of the college. Hence in the absence of proper notification of election, the election held has to be set aside and fresh elections

had to be ordered by this Court.

3. Private notice was ordered in this writ petition. Pursuant to the private notice, the first Respondent University had filed a counter affidavit dated

23.07.2010. In the counter affidavit, it is stated that the University has drawn election program and sent the same to 53 affiliated colleges for

conducting election as per the schedule and no exclusive arrangement can be made to any college. Therefore, the information received by the

University revealed that the Principal in-charge of the college had duly displayed the election notification on the college notice board and also

intimated the voters through circular to all the departments on 27.10.2009 and 28.10.2009. Therefore, there is no case for conducting any fresh

election.

4. The third Respondent-Principal had filed a counter affidavit dated Nil (May 2010) stating that he had published election notification as per the

election schedule sent by the University and even circular was issued by him to all the departments. It is further stated that Heads of department of

College, who belonged to an association in which the Petitioner had represented had signed the election circular and the election has been

conducted as per the schedule.

5. The elected candidate viz., the second Respondent, who had also become a syndicate member had also filed a counter affidavit dated

19.04.2010. In the counter affidavit, it was averred that there is proper publicity in terms of election and he had filed due nomination. Since there

was no opposing candidate, he has been declared elected for the Academic Council.

6. In the light of the factual background, it is seen that whether any case is made out for setting aside the election of the second Respondent who

has been elected as a member of the Academic Council representing the third Respondent college.

7. The Petitioner had not sent any objection after the election. On the contrary, he relies upon a petition sent by teachers of the college found in

page 10 of the typed set of papers filed in support of the writ petition dated 02.12.2009. In that, the Petitioner is not a signatory though signatures

of 14 teachers are found. Even the second objection dated 07.12.2009 was sent only by an Association. It must be noted that election schedule

fixed for the college had fixed the date of receipt of nomination as 06.12.2009. In case of contest, the election was fixed on 04.12.2009 and votes

were to be counted on 04.12.2009 itself. In the present case, if the Petitioner is aggrieved over the improper conduct of elections, the Madras

University Act, 1923 more particularly Section 41 provides for a settlement of disputes with reference to constitution of any University authority. If

any question arise whether any person has been duly elected or nominated as or is entitled to be a member of any authority (or other body) of the

University, the question shall be referred to the Chancellor whose decision thereon shall be final. In the present case, the Chancellor of the

University is the Governor of Tamil Nadu.

8. Pursuant to the said provision, statutes have been framed for raising disputes in Chapter XIX of the statutes relating to the election to the

authorities of the University. Rule 8 provides for Objections to elections shall be made in writing and shall be forwarded to the Vice-Chancellor so

as to reach him within seven clear days after the declaration of the results of the election.

9. In the present case, neither the Petitioner nor any aggrieved teacher have sent representations to the authorities provided under the Act. In such

circumstances, whether this Court under Article 226 of the Constitution of India can entertain such a objection of the Petitioner is the only question

to be considered. Hence, it is necessary to refer to the judgment of the Supreme Court in the case of Gujarat University Vs. N.U. Rajguru and

Others, . In that case, the Hon"ble Supreme Court construed provisions of Section 58 of the Gujarat University Act, 1949, which is almost

identically worded as that of Section 41 of the present Act, of course, with slight modification.

10. The Hon"ble Supreme Court held in paragraph 6 as follows:

6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum

for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While

considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental nor a common law

right, instead it is a statutory right regulated by the statutory provisions. It is not

permissible to invoke the jurisdiction of the High Court under

Article 226 of the Constitution bypassing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy

provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary

circumstances may exist to justify bypassing the alternative remedies. In the instant case, there existed no circumstance justifying departure from the

normal rule as even the challenge to the validity of Statute 10 was not pressed by the Respondents before the High Court.

11. The said judgment of the Supreme Court came to be referred and followed in respect of an election to Bharathiar University, another

University in Tamil Nadu vide judgment of a Division Bench of this Court presided by A.K. Ganguly, C.J., (as he then was) in the case relating to

The Vice Chancellor, Bharathiar University, Coimbatore-641 045 v. B. Markandan reported in 2009 W.L.R. 6. After referring to the above said

judgment, the Bench in paragraph 22 had observed as follows:

22. For the reasons aforesaid, we are of the opinion that the learned Judge of the writ court should not have entertained the writ petition and by

entertaining the writ petition, the judgment which was delivered by the learned Judge was not done on a proper exercise of jurisdiction under

Article 226, in the facts and circumstances of the case. As such the judgment of the learned Judge is set aside. The appeals are allowed.

12. In the light of the factual matrix and binding legal precedents, no case is made out. Accordingly, the writ petition stands dismissed.

13. M.P. No. 2 of 2010 was filed by another teacher to get himself impleaded in the writ petition, since the main writ petition itself had been

dismissed and as he had not chosen to file separate writ petition on the merits of the matter, this Court is not inclined to entertain M.P.2 of 2010.

Hence, the same stands dismissed. M.P. No. 1 of 2010 also stands closed. No costs.