
(2005) 07 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition No"s. 36201 of 2004 and 11670 and 11697 of 2005

Rajendran

APPELLANT

Vs

University of Calicut

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Calicut University Act, 1975 — Section 2(27), 57

Citation : (2005) 4 KLT 32

Hon'ble Judges : S. Siri Jagan, J;M. Ramachandran, J

Bench : Division Bench

Advocate : P.K. Ibrahim, K.P. Ambika, Ashira Mohamed Ashrof and K.K. Ashkar, for the Appellant; S. Gopakumaran Nair and Babu Varghese, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—The three Writ Petitions could be disposed of by a common judgment, as the issue raised is common. W.P.(C) No. 36201 of 2004 is filed by two individuals, who are respectively the Principal of a self-financing College affiliated to the University of Calicut and a Lecturer, also belonging to another affiliated College to the Calicut University. Additional respondents had got themselves impleaded to the proceedings, who had opposed the claim that had been urged by the petitioners.

2. W.P.(c) No. 11670 of 2005 is filed a few persons who are working as Lecturers of an unaided affiliated college. They have urged claims almost similar to those that had been raised in W.P.(C) No. 36201 of 2004. W.P.(C) NO. 11697 of 2005 is filed at the instance of two persons, who are working as Lecturers of an aided affiliated College, who are aggrieved about certain interlocutory orders passed in W.P.(C) No. 36201 of 2004 and points out that the objections raised by them nevertheless are independently to be considered. Essentially, they oppose the claims that had been made in the connected Writ Petitions.

3. In respect of the cliams of the first petitioner in W.P.(C) No. 36201 of 2004, as

Principal, no contentions had been urged, but the arguments were about the justifiability or otherwise of the exclusion of the Lecturers from the electoral college reserved for Lecturers in the Calicut University Senate. Elections are overdue and ad hoc arrangements are continuing. The Senate is to consist of ex-officio members, elected members and nominated members. To the constituencies of members, persons are to be elected from Government and private sectors. The consistency of teachers is to comprise of 16 teachers from private colleges, 5 teachers from Government colleges and three teachers of the University. When electoral rolls were prepared, the petitioners in W.P.(C) No. 36201 of 2004 and W.P.(C) No. 11670/05 had no doubt that their names would be included in the voters list. On the other hand, the petitioners in W.P.(C) No. 11697 of 2005 had no doubt about the position that such of the teachers of the self financing colleges had no right or place to be included in the electoral rolls. The claimants thereupon had occasion to file a representation as Ext.P1, forwarding their request and eligibility for being included in the electoral roll on the strength of the order passed in W.P.(C) No. 35495 of 2003. Although the matter was being processed, no decision had come, but they came to notice that steps were being taken for notifying the election. Ext.P2 is the press release, which disclosed that the election notification was proposed to be issued on 18.12.2004. It was at this stage the Writ Petition had been filed. As an interim order, a learned Single Judge had directed that taking notice of the judgment in W.P.(C) No. 35495 of 2003, before issuing the election notification and finalisation of the voters list, Ext.P1 should be taken up and disposed of. This was followed by another order on 21.12.2004, which according to the contesting respondents, practically had the effect of allowing the Writ Petition exparte, by which the voters list was directed to be modified and Principal and Teachers of self-financing affiliated colleges were declared as eligible to be included in the voters list for election. It appears that a list with such modification also had been prepared.

4. The election notification had come on 18.12.2004, prescribing respective dates for acceptance of nomination, scrutiny etc. As the interim orders were found inconveniencing, teachers of aided colleges had filed an appeal against the order, seeking leave. But the Writ Appeal was closed, reserving rights to intervene in the pending proceedings. An impleading petition had been filed therefore by additional respondents 3 and 4, pointing out that there was certain amount of indiscretion on the part of the Court in passing such orders, since the election process was to be left undisturbed. They point out to the circumstance that the election process was postponed thereby. It was also highlighted that reliance placed on the decision and the Writ Petition was misconceived, as the said Writ Petition was filed by students and Principals of unaided colleges and there were no claims of teachers of self-financing colleges urged or decided. They stood on a different pedestal and without further examination of the issue, such claims could not have been taken notice of.

5. It had further been averred in W.P.(C)No. 11697 of 2005 that electoral roll of

teachers of private colleges was published on 7.10.2004 and only those persons, who were included in the electoral roll, were eligible to participate in the election as per the governing statutes. The present claimants had not filed any objections within the appointed time. As per the provisions of the University Act, a teacher whose appointment had not been approved by the University, could not be included in the constituency of teacher and a finding even in favour of the petitioners could only be with prospective effect, and the election process was to go on uninterruptedly.

6. As pointed out by the additional respondents, the only issue is whether the petitioners had eligibility to be included in the electoral roll of teachers enabling them to participate in the election. The first petitioner as Principal, irrespective of the position that he was attached to a self financing college, automatically was to be included in the electoral college of members, but, however, his case has not been specifically highlighted in this petition, perhaps for the reason that excepting to the constituency of teachers in the Senate, the rest of the election was complete. As had been held by a Division Bench judgment of this Court (University of Kerala v. Sankaran Namppothiri 2004 (1) KLT 229, normally his claims for inclusion could not have been ignored.

7. A learned Judge, who heard the matter, could not agree with the reasoning of the earlier interim orders passed on 21.12.2004, and was of the view that the matter has to be referred to be heard by a Division Bench. The cases had come up for consideration before us, in the aforesaid circumstances.

8. The petitioners in W.P.(c) No. 11697 of 2005 had been directed to take notice by publication under Rule 148 of the Rules of the High Court of Kerala and this is reportedly done. However, there has not been much of response, but nevertheless the decision will be binding on persons, who might be otherwise affected because of the constructive notice. It may not be possible, when we look back to uphold the trend that had come to be there, because of the interim orders dated 21.12.2004, since the judgment relied on by the learned Single Judge did not at all lay down any such proposition, as was stated to have been adopted as the guideline. The issue is whether the petitioners in W.P.(C) No. 36201 of 2004 could come in the electoral college of teachers as prescribed in the Calicut University Act, at least for the purpose of election to the Senate.

9. Teacher is defined in the Calicut University Act, by Section 2(27) as following:

"(27). "teacher" means a principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instruction or supervising research in any of the colleges or recognized institutions and whose appointment has been approved by the University".

It is mandatory that normally the appointment made is to be approved by the University. It is admitted that the petitioners in the two Writ Petitions, concerning teachers belonging to self financing colleges, are not approved teachers of the University as on the date of publication of the electoral roll. This is because

formality of approval is not envisaged as far as such teachers are concerned. The question is whether this condition of necessity of approval is significant and mandatory, and whether absence of an approval operates as a disability. The petitioners claim that self-financing colleges were not envisaged at the time when the University Act came to be enacted, and when it is admitted that they are part of an affiliated college, the affiliation presupposes recognition of teachers as faculties, and they are to be recognized as teachers within the purview of the University, at least for the purpose of election to the Senate in the constituency of teachers of private colleges.

10. However, we cannot ignore the provisions of the Act and Statutes while dealing with the issue. u/s 57 of the Act the stipulations are there, whereunder appointments made by an aided college are to be reported to the University and approval is to be secured. The Syndicate is given power to approve the appointment. The Syndicate should satisfy themselves that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post. However, such stipulations admittedly were not there as far as a specific group, namely teachers of affiliated self financing colleges, some of whom have come to this Court invoking its extra ordinary jurisdiction. The said teachers had not been screened by a selection committee, mandatorily to be constituted, as per the provisions of the University Act and Statutes. The age stipulations could have relaxed in favour of such groups and it could be safely stated that as of now there has been no conscious effort on the part of the University to water down the definition, although it has been stated that Ordinances issued during the pendency of the Writ Petitions may come to the aid of the teachers, at least prospectively.

11. We may also examine the election statutes, at this juncture. The First Statutes for the conduct of elections have been published by notification dated 17.3.1975. Method of preparation of Electoral Rolls is prescribed by Statute 12 onwards. Under Statute 19, the electoral rolls of the teaching staff of colleges affiliated to the University is to include names and official addresses of the teachers of the colleges, whose appointments have been approved by the University. Eligibility to take part in the elections is stated as that the names of persons, who are on the electoral body 60 days before the date of publication of the roll alone shall be included in the electoral roll, and such persons alone shall be entitled to participate in the election. It is conceded that the petitioners, who had approached this Court, did not possess this essential qualification. They had also not applied for corrections.

12. Mr. P.K. Ibrahim, counsel for the petitioners in W.P.(C) No. 36201 of 2004, submits that before the publication of the election notification the Writ Petition had been filed and therefore the rigor of the rules might not be there. However, it is difficult to accept the contentions. When we hold that as on the date of publication of the election notification, the petitioners were not approved teachers, by any stretch of the situation, or even by operation of subsequent

Ordinances, it may not be possible to approve their claims.

13. In this context, reference had been made by Mr. Sasidharan to a judgment passed by a learned Judge of this Court in W.P.(C) No. 15489 of 2005, which according to him, has given a quietus to the question. Both the issues raised, viz., the necessity for the inclusion of the name in the voters list, and the mandatory requirement for being an approved teacher had been found as necessary by the Court. The judgment had been approved by a Division Bench. Although Mr. Ibrahim submits that the issue has to be looked into afresh as the enquiry needs to be made from an altogether different angle, on the facts of the present case, we do not think a readjudication is of no consequence.

14. In this view taken, it may not be necessary for us to go to the developments that had taken place consequent to the interlocutory orders passed, and examine the validity of the revised list published and or competence of the Academic Council and the Vice Chancellor to come up with orders in the light of the interim orders passed earlier.

15. As pointed out by the respondents, in fact the hectic activities came to arise because of interlocutory orders alone. Being *ex parte* orders, the petitioners may not be entitled to make capital out of it. Once an election process has started, normally it will be impermissible for the Court to intervene and substitute the timetables, at its discretion. As far as the teachers' constituency is concerned, we find that the law had been followed in letter and spirit and for reasons which were neither arbitrary nor irrelevant. It may not be expedient to interfere with the original electoral roll, the nominations or the process of election which are already adopted.

16. The Writ Petitions are therefore disposed of upholding the position that for the present election contemplated, from the constituency of teachers of private colleges, the electoral college is to consist only of persons, whose appointments were approved by the University, and whose names found a place in the final electoral roll, as already prepared prior to the interim order of the learned Single Judge. No order as to costs.