

(1997) 04 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No's. 1153 and 1168 of 1996

State of Kerala

APPELLANT

Vs

Thiruvanchoor Radhakrishnan and Others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Cochin University of Science and Technology Act, 1986 — Section 17(1), 17(2), 46(4)

Citation : AIR 1997 Ker 266 : (1997) 3 ILR (Ker) 128

Hon'ble Judges : U.P. Singh, C.J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : M.K. Damodaran, General, for the Appellant; S.V.S. Iyer G. Mohan, Standing Counsel, T.R. Ramachandran Nair and V.N. Achutha Kurup, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, C.J.—Both the writ appeals arise out of a common judgment of the learned single Judge rendered in O. P. No. 9680/1996. While W. A. No. 1153/1996 has been filed by the State of Kerala, W. A. No. 1168/1996 is by Dr. K.C. Joseph, the third respondent in the Original Petition.

2. The petitioner in the original petition is a member of the Kerala Legislative Assembly. On 7-6-1995, he was nominated as a member of the Syndicate of the Cochin University of Science and Technology (hereinafter called the "University") u/s 17(1)(x) of the Cochin University of Science and Technology Act (hereinafter called the "Act"). Exhibit P1 notification was issued by the University nominating him and also another person as members of the Syndicate of the University. The notification further stated that the terms of office of the nominees would be for a period of four years from 7-6-1995 and it shall be subject to the provisions of the Act and the Statutes thereunder. Thus the petitioner could continue to be a member of the Syndicate up to 7-6-1999. But, by letter dated 12-6-1996, Exhibit P2, the Commissioner and Secretary, Higher Education Department, Government of Kerala nominated respondents 3 and 4 of the original petition as members of

the Syndicate of the University u/s 17(1)(x) of the Act. The consequential notification, Exhibit P 3, was thus issued by the Registrar of the University notifying the nomination of respondents 3 and 4. The Original Petition was thus filed for quashing Exhibits P2 and P3, on the ground that (1) the petitioner had neither resigned nor ceased to be a member, (2) Ext. P2 was not a decision u/s 17(1)(x) of the Act, and (3) it was issued in violation of Statute 74 of the Cochin University First Statutes. The Original Petition was later amended by filing C.M.P. 17081/ 1996, wherein the petitioner took the ground that he could not be deemed to have vacated the membership by not attending three consecutive meetings as envisaged u/s 46 of the Act.

3. A statement was filed on behalf of the second respondent, the University, and it was contended that the petitioner ceased to be a member of the Syndicate since he failed to attend three consecutive meetings of the Syndicate, i.e. 365th meeting held on 21-12-1995, the 366th meeting dated 30-12-1995 and 367th meeting notified to be held on 17-1-1996. The said meeting had to be aborted due to lack of Quorum because a majority of the members of the Syndicate including the petitioner did not attend the meeting. The 367th meeting of the Syndicate was then held on 8th February, 1996. The petitioner did not attend any of these four meetings. Therefore, in terms of Section 46(4) of the Act, the petitioner ceased to be a member of the Syndicate. The Registrar of the University informed the petitioner about the cessation of his membership by letter dated 15-4-1996, produced as Exhibit R 2 (a). The petitioner failed to submit any reply to the said Exhibit R2(a) disclosing reasons for his absence. Since the petitioner ceased to be a member, Exhibit P3 notification was issued nominating respondents 3 and 4 to the Syndicate of the University. The fourth respondent was nominated in the place of Sri. Zacharia Sail, who ceased to be a member of the Legislative Assembly.

4. The petitioner filed an affidavit in reply stating that Exhibit R 2 (a) was neither received by him nor served on him. It was, further, submitted that no meeting was held on 17-1-1996 as there was no Quorum. The learned single Judge held that since there was no Quorum for the meeting held on 17-1-1996, it was not a valid meeting and it could not be reckoned for cessation of the petitioner's membership u/s 46 of the Act. The learned single Judge, therefore, held that the petitioner continued to be a member, and quashed Exhibits P2 and P3. The Original Petition was thus allowed.

5. Challenging the order of the learned single Judge, it was first contended on behalf of the appellants that the Government is free to withdraw the nomination of any nominated member to any statutory body at its pleasure and such nominated members do not have any vested right to continue in the nominated posts till the expiry of their term as stipulated. The first contention has to be rejected. A distinction has to be drawn between cases in which nominees hold office during the pleasure of the Government and nominees whose term of office do not depend upon such pleasure. In cases where nominees do not hold office

during the pleasure, their term is not liable to be terminated otherwise than for reasons stated in the Statute.

6. Section 17 (2) of the Act provides that the term of office of the members nominated from among the members of the Legislative Assembly of Kerala shall be four years from the date of their nomination. Section 17(1)(x) of the Act provides that the Syndicate of the University shall consist of two persons nominated by the Government from among the members of the Legislative Assembly of Kerala. The Syndicate is a statutory body. The reconstitution of the Syndicate every four years can be arranged only by the Registrar under the directions of the Vice-Chancellor as per Statute 74 of the Cochin University First Statutes, 1980. It is a statutory rule that the process of nomination to vacancies can be done by the nominating bodies like the Government, only upon such vacancy being determined and informed either by the Vice-Chancellor or the Registrar. This has been the practice in vogue in the University as it can be seen from the letter dated 8-8-1991, Ext. P4, issued by the Registrar of the University to the Government. Thus the Government have no power to nominate at their whims and fancies, thereby eroding the authority of statutory bodies constituted to secure excellence in the field of education independent of Governmental interference. In view of these provisions, it cannot be contended that the Government can withdraw the nomination at any time. The decision in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, , cannot be of any help to the appellants. In the said case, the statute had itself provided that the nominated member shall hold office during the pleasure of the State Government.

6A. In accordance with the terms of Section 17 (2) of the Act the term of office of the nominated members from among the members of the Legislative Assembly of Kerala shall be four years from the date of their nomination and in accordance with Section 17 (1) (x) of the Act the Syndicate shall consist of two such nominated persons by the Government from among the members of the Legislative Assembly of Kerala. Thus such a nominated member shall, normally, continue for a term of four years from the date of his nomination, unless he ceases to be a member of the Legislative Assembly or incurs disability to continue as a member of such body u/s 46 (4) of the Act, which has specifically stated that if any member who is not an ex-officio member, fails to attend three consecutive meetings then he shall cease to be a member of the Syndicate. Therefore, the contention of the appellants that such a nominated member can be removed at any time in accordance with the pleasure of the Government is not tenable.

7. The next contention as to whether the petitioner ceased to be a member has to be determined on the true ambit and scope of Section 46 (4) of the Act and, therefore, it is necessary to notice the provision of Section 46 (4) of the Act and it reads as follows:

"If a member of any authority or body of the University who is not an ex-officio

member fails to attend three consecutive meeting of that authority or body, he shall cease to be a member of such authority or body and thereupon the Registrar shall intimate him that he has ceased to be such member.

Provided that such authority or body may, if satisfied that there was sufficient cause for the failure of the member to attend the meetings, restore him to its membership."

Thus, on a plain reading of the aforesaid provision contained in Section 46(4) of the Act, it is obvious that if a member other than an ex-officio member fails to attend three consecutive meetings of the Syndicate, he shall cease to be a member of the Syndicate, and according to proviso, the membership can be restored if the Syndicate is satisfied that there was sufficient cause for the failure of the member in attending the meetings.

8. The 365th meeting of the Syndicate was held on 21st December, 1995. The petitioner did not attend the same. The petitioner also did not attend the 366th meeting which was held on 30th December, 1995. The 367th meeting was proposed to be held on 17th January, 1996. Here again the petitioner did not attend. That meeting was adjourned to 8-2-1996 due to lack of Quorum. On that day, the petitioner did not attend. The contention of the petitioner is that since the meeting on 17-1-1996 could not be held due to lack of Quorum, absence on that day cannot be reckoned for the purpose of Section 46(4) of the Act. Statute 76 of the Cochin University First Statutes states that no business shall be transacted where there is no quorum.

9. It is true that no business can be transacted in a meeting where there is no Quorum and if a decision is taken at such a meeting, it may not have legal validity. But, the question for consideration is whether a member can justify his absence in a meeting on the ground that there was no Quorum before he attends the meeting.

10. Section 46(4) of the Act casts a duty and confers responsibility on each member to attend the meeting of the Syndicate regularly. All those, after being elected or nominated are supposed to attend the meetings with a view to transact the business of the Syndicate unless they are prevented by sufficient cause, which again has to be communicated to the University. They are nominated with a purpose that they participate in the deliberations of the Syndicate. The duty is cast on each member to see that the powers and duties of the Syndicate are exercised according to law. Thus, a narrow meaning cannot be given to the word "meeting" occurring in Section 46(4) of the Act. Krishna Iyer, J. (as he then was) said in the case of Kanta Goel Vs. B.P. Pathak and Others, . that: "The interpretative effort must be illumined by the goal though guided by the word. The key to the opening of every law is the reason and spirit of the law". Thus the meeting means, the meeting that was proposed to be held. The non-existence of Quorum will occur due to non-attendance of the members. If a majority of the members deliberately fail to attend the meetings of the

Syndicate, they can defeat the purpose and object behind Section 46 (4) of the Act on the ground that there was no Quorum. There may be a concerted act of a few members for non-existence of a Quorum by their conspicuous absence from the meetings. It is not open to them to take a defence behind this quorum. That is the reason why Section 46 (4) imposes disability on such members resulting in cessation of their membership by not attending three consecutive meetings. And then again if sufficient cause can be shown for non-attendance, the cassation from membership can be restored.

11. In the present case, the 367th meeting was adjourned to 8-2-1996 and the petitioner did not attend even the adjourned meeting. He failed to give any sufficient reason for his non-attendance of four consecutive meetings. He, thus, incurred disability u/s 46(4) of the Act and ceased to be a member of the Syndicate of the University. The second contention thus raised by the appellants is accordingly allowed.

In this view, the judgment of the learned single Judge is set aside and these appeals are allowed, but without any order as to costs.