
(1992) 10 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No's. 13063 and 13207 of 1992

T.N. Raman Piilai and Others

APPELLANT

Vs

Kerala University and Others

RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Kerala University Act, 1974 — Section 18

Citation : (1992) 2 KLJ 872

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : K.J. Joseph, Benny Gervacis and P. Sukumaran Nayar, for the Appellant; P. Gopalakrishnan Nair, for the Respondent

Judgement

K.T. Thomas, J.—"Senate", under the Kerala University Act, 1974 (for short "the Act") is the supreme body conferred with vast powers in the functioning of the University. It consists of ex officio as well as elected members from different specified constituencies. Sec. 18 of the Act mandates that the Senate shall be reconstituted every four years in the manner Indicated therein. The term of the present Senate of the Kerala University expires on 21-1-1993. Necessarily the reconstituted Senate has to come into being on the next day. The Vice Chancellor of the University, issued notification for holding election in the specified constituencies and appointed the Registrar of the University to be the returning officer. In turn, the returning officer issued Ext. P1 notification dated 15-1-92 fixing a schedule of dates for the election regarding various formalities such as scrutiny of nominations, withdrawal of nominations polling, counting of votes etc. But the Vice Chancellor of the University in the purported exercise of his powers contained in Statute 4 (2) (ii) in Chapter I of the Kerala University (Conduct of Elections to various Authorities or Bodies) First Statutes, 1974 postponed the elections sine die. Thereupon, the returning officer published Ext P3 notification holding that the conduct of election stands postponed until further orders. Petitioners have offered themselves as candidates in different constituencies and their nominations, according to them, were accepted. They have filed these

Original Petitions challenging Ext. P3 notification as well as the order of the Vice Chancellor pursuant to which the returning officer issued Ext. P3.

2. A scrutiny of Ext. P1 schedule reveals that even if the election process could be completed as per the said schedule, the last date of completion of all the formalities is 18-1-1993. It is crystally clear, and admitted by all sides, that if election cannot be held in accordance with Ext. P1 schedule, the Senate cannot be reconstituted with effect from 21-1-1993. The corollary is that postponement of the various dates fixed in Ext. P3 would defeat the legislative mandate contained in Sec. 18 of the Act.

3. Petitioners submit that pursuant to Ext P2 notification, several persons have offered themselves as candidates in various specified constituencies and have adopted several steps in furtherance thereto. It is pointed out that a minimum period of 65 days is mandatory for completion of election process for reconstituting the Senate and the indefinite postponement will create a situation where University may have to function without its supreme body, namely, the Senate after 21-1-1993. All the administrative functions of the University will come to a stands till adversely affecting a large section including student-and teachers as well as employees of the University, contended the petitioners.

4. A counter affidavit has been sworn to by the Registrar of University who contended, inter alia, that the Vice Chancellor is competent to postpone the date fixed in the programme by virtue of the Statute indicated above. In justification of the action of the Vice Chancellor postponing the election the Registrar points out that on 16-9-92 one Sri. Nizamuddin (a member of the Senate) furnished a copy of the Supreme Court judgment in Civil Appeal No. 7119/87 from which it was understood that University authorities have been empowered to frame new statutes relating to elections including recasting and amending the statutes "for the purpose of avoiding confusion". Another reason advanced by the Registrar is that a Secretary to Government addressed a letter to the Vice Chancellor on 30-9-92 stating that the Government are contemplating steps to have a common legislation for the three Universities in the Kerala State and requested the Vice Chancellor to consider postponement of the elections. It was mainly for the said reasons that the Vice Chancellor has postponed the elections, according to the Registrar.

5. Unfortunately the Registrar did not produce a copy of the order of the Vice Chancellor. The said order is the hub on which the impugned order of the returning officer is fixed. I presume that the Registrar would have seen the order though he withheld it from production in court. I also presume that the order of the Vice Chancellor contains only the reasons adverted to by the Registrar in the counter affidavit. I, therefore proceed to consider the legality of those reasons despite its non-production in court.

6. Statute 4 of Chapter I of the First Statutes (Kerala University (Conduct of Elections to various Authorities or Bodies) First Statutes, 1974) confers on the

Vice Chancellor, the responsibility for the conduct of elections. Clause (2) reads thus:

(2) It shall be competent for the Vice Chancellor when any emergency arises-

(i) to assume the powers of the Returning Officer and function as such either by himself or by deputing any other person when in the course of the conduct of any election the Returning Officer cannot carry on his duties: or

(ii) to postpone the date or dates fixed in the programme for transaction of business connected with the elections at any intermediate stage. The Vice Chancellor shall record his reasons for doing."

On a reading of the Clause it is evident that the Vice Chancellor can exercise powers thereunder only when "any emergency arises". There is no case for the respondents that any emergency has arisen. Without any such emergency the Vice Chancellor cannot postpone the elections. The two reasons mentioned by the Registrar which would have persuaded the Vice Chancellor to postpone elections are totally outside the scope for the Vice Chancellor to be guided by, since the consequence of postponement in the present context is the flouting of a legislative mandate. Those reasons even assuming that those reasons exist, would not snowball into emergency situation as envisaged in the sub-clause.

7. No functionary under the existing Act can decline to discharge his functions to carry out legislative mandates merely in anticipation of new amendments which legislature may or may not bring about. The various functionaries under the present Act exist because of the continuance of the present Act. Similarly, so long as the University authorities have no case that the Supreme Court has issued any direction, injunction or prohibition restraining the authorities of the University from holding the election, the duties cast on the functionary by the enactment cannot be abdicated on the strength of the communication made by Sri. Nizammuddin as referred to in the counter affidavit.

8. The most crucial aspect which should have weighed with the authorities of the University is the consequence of not completing the election process before 21-1-1993. The major consequence is that there will be no Senate, which is admittedly the Supreme decision making body of the University. Second is that the election process which has already commenced, incurring lot of expenses and involving lot of time and energy of many, will go in vain and there is no jurisdiction to undo all such steps. No emergency, not even a situation, has arisen to erase all what took place towards the completion of the election process.

9. I have absolutely no doubt that if the schedule fixed in Ext. P1 is disrupted, the reconstitution of the Senate as mandated by the Act will be jeopardised. For the aforesaid reasons, I allow both the Original Petitions and declare that the order passed by the Vice Chancellor postponing the elections noticed as per Ext. P1 is null and void. I quash Ext. P3 notification issued by the returning officer. I direct the returning officer to proceed with the election process envisaged in Ext.

P1 subject to the following rider; Since some of the dates fixed in the schedule for the election process as per Ext. P1 have already intervened between issuance of Ext. P3 and now, the returning officer shall refix such dates for the purpose of enabling the participants in the election to comply with the required formalities. Such refixation of dates must be notified by the returning officer (Registrar of the University) within one week from the date of receipt of a copy of this judgment.

A photo copy of this Judgment will be forwarded to the Registrar of the University in order to enable him to comply with the directions contained herein.