
(2004) 12 KL CK 0028
In the High Court Of Kerala
Case No : W.A. No"s. 940 and 989 of 2004

University of Kerala

APPELLANT

Vs

Sankaran Nampoothiry

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2005 Ker 98 : (2005) 2 ESC 1392 : (2005) 1 ILR (Ker) 127 : (2005) 1 KLT 229

Hon'ble Judges : B. Subhashan Reddy, C.J;Kurian Joseph, J

Bench : Division Bench

Advocate : M.K. Chandramohan Das, for the Appellant; M. Jacob Murickan, Johnson Manayani, Nair Ajay Krishnan, Saijo Hassan, A.S. Sabu, A.G. Girish Kumar, Nagaraj Narayanan, R.T. Pradeep and V. Vijulal, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—These Writ Appeals are directed against the common judgment dated 7th April 2004 in W.P. (C) No. 35495 of 2003 and connected cases. The appeals are at the instance of the respondent University. The issue pertains to election to various statutory bodies envisaged under the Kerala University Act, 1974 and its First Statutes and Regulations. The question raised in W.P. (C) No. 32854/2003 leading to Writ Appeal No. 989 of 2004 is whether the Principals of self-financing affiliated colleges are entitled to participate in the election. The learned Single Judge, mainly on the ground of equal opportunity, held that the Principals and students of unaided affiliated colleges are entitled to participate in the election. Aggrieved, the University has filed the Writ Appeals.

2. We shall first deal with the case of the eligibility of the Principals. At the outset it has to be noted that there is no dispute that the managements of unaided/self-financing colleges are entitled to participate in the election. The dispute is only with regard to the participation of the Principals and students of such colleges. The main contention of Sri. Chandramohan Das, learned counsel appearing for

the appellant University is that such right is not provided under the statute and hence the Court is not justified in conferring such privilege, which is not contemplated under the statute. Thus it has become necessary for us to refer the statutory provisions. Section 2 deals with the definitions. To the extent relevant they are quoted below:-

"2(2) "affiliated college" means a college affiliated to the University in accordance with the provisions of this Act and the Statutes and in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations;

.....

2(7) "College" means an institution maintained by, or affiliated to the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations.

.....

2(9) "educational agency" means any person or body of persons who or which establishes and maintains a private college or more than one private college;

2(11) "Government college" means a college maintained by the Government and affiliated to the University;

.....

2(14) "prescribed" means prescribed by this Act or the Statutes, Ordinances, Regulations, rules or bye-laws made thereunder;

2(15) "principal" means the head of a college;

2(16) "private college" means a college maintained by an educational agency other than the Government or the University and affiliated to the University;

.....

2(24) "student" means a part-time or full-time student receiving instruction or carrying on research in any of the colleges or recognised institutions;

.....

2(27) "teacher" means a principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instruction on supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University;

2(28A) "Un-aided College" means a private College which is not entitled to any financial assistance from the Government or the University.

3. The composition of Senate of the University is provided u/s 17. We are concerned with the elected members Section 17 to the extent relevant reads as

follows:--

"17. Senate.-

Elected Members

(1) Seven principals elected from among themselves, of whom two shall be from among principals of Government Colleges, one from among principals of professional colleges and one from among principals of junior colleges.

(2) Twenty members not being persons eligible to be elected under item (1), (4), (5), (6), (9), (10), (11) or (12) elected by the registered graduates from among themselves, of whom one shall be a member of a Scheduled Caste and one shall be a member of a Scheduled Tribe.

(3) Six members elected by the members of the Legislative Assembly of Kerala from among the members representing the electorate of the University area, of whom one shall be a member of a Scheduled Caste.

(4) Three members elected by the teachers of the University from among themselves

(5) Five members elected by the teachers of Government colleges from among themselves.

(6) Sixteen members elected by the teachers of private colleges from among themselves.

(7) one member elected by the members of the local authorities of each district in the University area from among themselves.

(8) Two members elected by the registered trade unions in the University area designated by Statutes, from among their members.

(9) One member elected by the members of the non-teaching staff of the University from among themselves.

(10) Three members elected by the members of the non-teaching staff of the affiliated colleges from among themselves, of whom one shall be a member of the non-teaching staff of a Government college.

(11) Four members elected by the managers of the private colleges in the University area from among themselves.

(12) Ten members elected by the members of the General Council of the University Union from among full-time students, of whom one shall be a post graduate student, one shall be a research scholar, one shall be the student of a professional college and one shall be a lady student".

4. Principal is defined as the head of a college and college is defined as an institution affiliated to the University where instruction is provided in accordance with the provisions of the statutes, ordinances and regulations issued under the

Kerala University Act, 1974. Affiliated college is defined as a College affiliated to the University in accordance with the provisions of the Act and the Statutes. Section 17 does not make any difference between the Principal of an aided college and the Principal of an unaided college. In other words, what is relevant for the purpose of participation of the Principals in the election to the Senate of the Kerala University is only that he should be the head of a college affiliated to the University. The statutory provisions as extracted above clearly show that no distinction whatsoever is sought to be made on the ground of the source of fund. That is a totally irrelevant factor for the purpose of participation of affiliated colleges in the activities of the University and be part of its main stream like the aided or Government colleges. The University being an academic body cannot differentiate its affiliated colleges on the ground of the source of fund, be it from the Government or otherwise, in the matter of participation of the Principals in the election to the Senate.

5. The contention of Sri. Chandramohan Das, learned counsel appearing for the appellant University is that Principal is also a teacher as defined u/s 2(27) of the Act. The teacher Under Section 2(27) should be one whose appointment has been approved by the University. We are afraid the contention cannot be appreciated. There is no quarrel to the proposition that teacher includes the Principal. But the principal is distinctly defined as the head of a college and the college is defined as an institution affiliated to the University where instruction is imparted according to the statutes, regulations and ordinances issued under the Act. There are separate and distinct channels for Principals and teachers, in the Senate. As far as teachers are concerned, they have a representation of 16 members elected by the teachers of private colleges from among themselves. For Principals of private colleges, there is a separate quota for 5. If Principal is a teacher for the purpose of Senate election, there was no need for a separate quota. In this context it is also pertinent to note that the University has no demur against the participation of the Managers of private colleges. No distinction is sought to be made on the basis of aid. All the Managers, be it of aided private colleges or unaided private colleges, are eligible to participate in case their colleges are affiliated to the University. What is relevant is only affiliation and aid is an irrelevant factor. Therefore, we hold that the Principals of unaided private colleges/self financing colleges affiliated to the University are also eligible to participate in the election to the Senate and other organs of the Kerala University as in the case of Principals of aided private colleges.

6. The next issue is with regard to the participation of students of self-financing colleges. Section 2(24) of the Act defines student -- "student" means a part-time or full-time student receiving instruction or carrying on research in any of the colleges or recognised institutions". The participation of students in the colleges affiliated to the University is through the various bodies like the Senate of the University, Academic Council of the University, Students Council, the Kerala University Union etc. The Bye-laws of the Kerala University Union are framed u/s 40 of the Kerala University Act, 1974. The following definitions as appearing

under Clause 2 of the Bye-laws are relevant.

"2. Definition.

In these bye-laws unless the context otherwise requires.

(a) "Academic year" means the period of twelve months commencing with the 1st of June.,

(b) "College" means a College affiliated to the University of Kerala.

(c) "Department" means a University Department of teaching and research establishment and maintained by the University of Kerala.

(d) "Executive Committee" means the Executive Committee of the Kerala University Union.

(e) "Funds" means the Funds of the Kerala University Union.

(f) "General Council" means the General Council of the Kerala University Union.

(g) "General Secretary" means the General Secretary of the Kerala University Union.

(h) "Honorary Treasurer" means the Honorary Treasurer of the Kerala University Union.

(i) "Patron" means the Patron of the Kerala University Union.

(j) "Chairman" means the Chairman of the Kerala University Union.

(k) "Staff Adviser" means the Staff Adviser of the Kerala University Union

(l) "Student" means any person undergoing a course of study on a full-time or part-time basis in a University Department established and maintained by the Kerala University or in a College affiliated to the Kerala University.

Such person ceases to be a student after the last date of the academic year, which happens to be the final year of the particular course, he/she is undergoing.

(m) "Syndicate" means the Syndicate of the University of Kerala.

(n). "Union" means the Kerala University Union".

Clause 4 on membership reads as follows:--

"4. Membership-- All students in the rolls of Colleges or University Departments shall ipso facto be members of the Union".

Clause 7 dealing with College Unions and Departments Union reads as follows:-

"7. College Unions and Departments Union

a) There shall be college union in all colleges and a department's Union for the University Departments to promote the all round development of the students

and to achieve the objectives of the Union. Each College and the University Departments Union shall be represented at the General Council by one or two Councillors, as the case may be elected to the University Union.

b) There shall be various associations in all Colleges/Departments" Union to achieve the objectives of the Union.

c) Each College Union and the Departments" Union shall have a "Constitution" as prescribed by the Syndicate."

Clause 8 dealing with General Council reads as follows:--

"8. General Council

i) The General Council shall consist of Councillors to the University Union elected from Colleges/Departments,

ii) The General Council shall meet at least once in six months and such meetings along with the agenda shall be notified atleast 15 days in advance.

iii) The General Council shall have power;

a) to give general guidance over all college Unions/departments" Union.

b) to frame rules for the conduct of business at meetings of the Union.

c) to issue instructions not inconsistent with the bye-laws and the rules in all matters not otherwise provided for;

d) to consider and approve the budget estimates of the Union".

7. The Constitution for College Unions is framed under Clause 7 of the bye-laws extracted above. It is provided that "each college affiliated to the Kerala University shall have a College Union for students duly constituted as prescribed....." The Objectives are

"1. Objectives:--The objectives of the Union shall be-

(a) to train the students of the college in the duties, responsibilities and rights of the citizenship;

(b) to promote opportunities for the development of character, leadership, efficiency, knowledge and spirit of service among students;

(c) to organise debates, seminars, work squads, touring parties and such other functions; and

(d) to encourage sports, arts and other cultural, educational, social or recreational activities that are incidental and conducive to the above objects."

On membership it provides as follows:--

"2. Membership:--wAll the students enrolled in the college shall be members of

the Union. They shall have the right to vote and contest in all the elections to the College Union".

Clause 10 provides for the University Union Councillor which reads as follows:-

"10. The University Union Councillor: The Councillor to the University Union shall be elected directly by and from among the students of the College. The Councillor elected by the students will represent the students of the College in the University Union".

Thus it can be seen that all student's of Colleges affiliated to the Kerala University are members of the respective College Unions constituted as provided under Clause 7 of the Bye-laws of the Kerala University Union. The students of the College elect the Councillor to the Kerala University Union. The General Council of the Kerala University Union consists of the Councillors thus elected from the Colleges affiliated to the University or Departments maintained by the University.

8. u/s 17 of the Act the General Council of the Kerala University Union is empowered to elect to the Senate ten members who are full time students of whom one shall be a post graduate student, one shall be a research scholar and one shall be a student of a professional college and one shall be a lady. The Chairman of the Union is an ex-officio member of the Senate. The General Secretary of the University Union is an ex-officio member of the Academic Council. Section 29 deals with the Students' Council. The Chairman and General Secretary of the University Union are ex-officio members. Apart from the ex-officio members there are elected members also. To the extent relevant Section 29 dealing with elected and other members, reads as follows:--

ELECTED MEMBERS

(a) Ten members, not being members of the Senate or the Academic Council, elected by the members of the General Council of the University Union from among themselves, of whom two shall be women.

(b) Three members elected from among the full-time students of the Departments of the University in such manner as may be prescribed.

(c) Two members, other than students, elected by the members of the Senate from among themselves.

(d) One member elected by the members of the Syndicate from among themselves

(e) One member elected by the members of the Academic Council from among themselves.

OTHER MEMBERS.

Five students who have distinguished themselves in academic field, sports or of fine arts, the nominated Vice-Chancellor after giving due consideration to the

representation special interests.

(3) A member nominated by the Vice-Chancellor in consultation with the Chairman of the University Union, from among the elected Student members of the Council shall be the Secretary to the Council.

(4) The members of the Students' Council other than ex-officio members shall hold office for a term of one year from the date of their election or nomination, as the case may be".

Nowhere under the Act, Statutes or Bye-laws any distinction whatsoever is made as to whether a student is imparted instruction in an aided college or unaided college. The only instance is that he should be a student of a college affiliated to the Kerala University. It is significant in this context to note that all students undergo the same course of study, the syllabus is the same for the courses and the very same degree is awarded by the University, without any distinction as to whether a student is from an aided college or unaided college. The only requirement is that the student should be from an affiliated college. As far as the University is concerned, it is affiliation that is relevant and material. The students of all unaided/self financing but affiliated colleges are entitled to the same treatment as the students of aided and affiliated colleges. Denial of such equal opportunity to students of self financing or unaided colleges would certainly violate Article 14 of the Constitution of India. Therefore, we hold that the students of all affiliated colleges whether styled as self financing colleges, unaided private colleges etc. are entitled to the same status and treatment as the students of aided and affiliated colleges in the University. They are entitled to constitute a College Union as provided under Clause 7 of the Bye-laws of the Kerala University Union. They are entitled to participation in the various bodies like the Kerala University Union, Students Council, Senate, Academic Council etc. We direct the University to take steps to see that the needful is ensured forthwith.

Writ Appeals are accordingly dismissed.