

Hesham Hyder T. vs Apj Abdul Kalam Technological University Represented by Its Registrar

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Court : Kerala

Decided On : Feb-14-2022

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/594/2022

Appellant : Hesham Hyder T.

Respondent : Apj Abdul Kalam Technological University Represented by Its Registrar

Judgement :

WP(C) NO. 594 OF 2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TH MONDAY, THE 14 DAY OF FEBRUARY 2022 / 25TH MAGHA, 1943 WP(C) NO. 594 OF 2022 PETITIONER/S:

1 HESHAM HYDER T., AGED 21 YEARS, S/O.MUSTHAFA HYDER, THADATHIL HOUSE, KUTTIPURAM POST, ATHANI BAZAR,

MALAPPURAM- 679571. 2 RIFAS ALI, AGED 21 YEARS, S/O.ABDUL RASHEED, VATTAPARAMBIL HOUSE, KOKKUR P.O., MALAPPURAM- 679591. 3 ROSHITH V.P., AGED 20 YEARS, S/O.PARAMESWARAN V.P., VADAKKEPURAKKAL HOUSE, KANHITHRAMUKKU P.O., MALAPPURAM, PIN - 679584. 4 FARHA THASNI M., AGED 18 YEARS, D/O.YOOSAF, MULAKKAL HOUSE, ATHAVANAD P.O., MALAPPURAM- 676301. 5 SIYAD, AGED 22 YEARS, S/O.JABBAR, MALIYAKKAL HOUSE, KAVANSHERY P.O., TIRUR, MALAPPURAM, PIN - 676561. 6 P.P. MOHAMMED AFHAM, AGED 21 YEARS, S/O.P.P.ABDURAHIMAN, BARKATH MAZIL HOUSE, TIRUR, MALAPPURAM, PIN - 676109. 7 MOHAMMED NIHAL A., AGED 19 YEARS, D/O.MOHAMMED ABDUL NAZAR,

WP(C) NO. 594 OF 2022 2 AREEUADAN HOUSE, PUNNATHULU P.O., VALANCHERRY, MALAPPURAM, PIN - 676552. 8 MUHAMMED NIHAL, AGED 19 YEARS, S/O.RAFEEL K.M., DARUL DAWA, KALLUNKOOL, CHOKLI, THALASSERY, KANNUR, PIN - 670672 BY ADVS. ARUN KUMAR M.A RENJITH RAJAPPAN ANJALI MENON RESPONDENT/S:

1 APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY REPRESENTED BY ITS REGISTRAR, CET CAMPUS, THIRUVANANTHAPURAM, PIN - 695106. 2 VICE CHANCELLOR APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY,CET CAMPUS, THIRUVANANTHAPURAM, PIN - 695016. 3 RETURNING OFFICER M E S COLLEGE OF ENGINEERING, KUTTIPPURAM, THRIKKANAPURAM , MALAPPURAM, PIN - 679582. 4 M E S COLLEGE OF ENGINEERING REPRESENTED BY ITS SECRETARY, KUTTIPPURAM, THRIKKANAPURAM, MALAPPURAM, PIN - 679582. 5 PRINCIPAL, M E S COLLEGE OF ENGINEERING, KUTTIPPURAM, THRIKKANAPURAM , MALAPPURAM, PIN - 679582.

WP(C) NO. 594 OF 2022 3 BY ADVS. BABU KARUKAPADATH P.E.SAJAL M.A.VAHEEDA BABU P.U.VINOD KUMAR ARYA RAGHUNATH VAISAKHI V. T.M.MUHAMMED MUSTHAQ MOHAMED

HISHAM P KARUKAPADATH WAZIM BABU AISWARYA ANN JACOB
P.LAKSHMI SRI ELVIN PETER, STANDING COUNSEL THIS WRIT
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.02.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: WP(C) NO. 594 OF 2022 4

JUDGMENT

Instant writ petition is filed seeking to quash Exhibit P2 election

notification dated 21.12.2021 issued by the 3rd respondent, Returning Officer, M.E.S. College of Engineering, and also to defer the conduct of the election in pursuance to Exhibits-P1 and P2 until a proper Electoral Roll is published by the 3rd respondent in accordance with the provisions of the Act and the Election Manual.

2. The petitioners herein are students pursuing their education in the

M.E.S. College of Engineering, the 4th respondent herein. The said College is affiliated to the APJ Abdul Kalam Technological University constituted under the APJ Abdul Kalam Technological University Act, 2015. The election for the year 2021-2022 was announced by the 1st respondent as per Exhibit-P1 notification. In accordance with the same, the 5th respondent issued election notification to various office bearers of the M.E.S. College of Engineering, Kuttippuram, College Union 2021-2022 would be held on 10.01.2022 by the electoral college of Class Representatives (Parliamentary Mode) by means of secret ballot. The petitioners contend that in Exhibit-P1, the timeline to publish the voters list and

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to finalize the same after consideration of the objection is not the same. Though in Exhibit P1, the date and time of publication to the voters list is fixed as 22.12.2021 at 11.00 a.m. and the last date and hour for filing complaints regarding Electoral Roll have been fixed on 23.12.2021 at 11.00 a.m, when Exhibit-P2 was issued the timeline was slashed down to about one hour. Though there are over 2000 students studying in the College, the draft voters list contains the names of just 50

students. This, according to the petitioners, is in blatant violation of the Act, Statutes of the University and the Manual of Election. It is contended that the petitioners have lodged a complaint before the 3rd respondent on 3.1.2022 as is evidenced by Exhibit P4 receipt. However, the complaint has not been considered to date. It is in the afore circumstances that this writ petition is filed seeking the following reliefs:

(i) Issue a writ of certiorari or any other writ, order or direction quashing Exhibit-P2 and Exhibit-P3.

(ii) Defer the conduction of election in Exhibit-P1 and Exhibit-P2 notification until a proper electoral roll in accordance with the Act and election manual is published by the 3rd respondent.

(iii) Direct the 3rd respondent to consider and pass orders on Exhibit-P4 complaint.
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(iv) Issue such other writ, order or direction as this Honble Court may deem fit and proper in the facts and circumstances of the case.

3. By an interim order dated 07.01.2022, this Court after considering

the submissions of the petitioners, as an interim measure, ordered the respondents to defer the conduct of election pursuant to Exhibit-P2 notification for a period of one week.

4. A counter affidavit has been filed by the 4th respondent. It is

stated that it would be inappropriate for this Court to interfere with an election after the commencement of the election process and before the declaration of the result. It is stated that if the petitioners are in any way aggrieved by the election process, they can very well approach the Vice-Chancellor as per clause 30 of the Election Manual and file an election petition. It is further stated that Ext.P2 election notification was issued strictly in terms of Ext.P1 and clause (17) of the Election Manual. It is contended that adoption of the presidential mode of election in the campus had invited massive unrest and violence. In the said circumstances, the

management decided to adopt the parliamentary mode as provided in clause 6.2.4. as narrated in Ext.P1. As per the Parliamentary mode,

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class representatives would be directly elected in the Colleges and University Campus and they are required to elect the office bearers for the College Unions and the University Campus Union. They shall also elect their representatives for the University Student Union. These elected representatives from Colleges and University campus shall form the electoral college and they shall elect the

office bearers of the University Student Union. In accordance with clause 6.2.4., steps were taken to elect the class representatives. A Returning Officer was appointed, who issued Ext.P2 election notification on 21.12.2021 by appointing Sub Returning Officers for conducting the election of class representatives from the electoral roll. The said electoral roll consists of the registered students for the present academic semester of the College. It was mentioned in the notification that the polling procedures are to be completed before 12.30 pm on 23.12.2021 so as to publish the final electoral roll as per the schedule notified in Ext.P1. It is stated that the electoral roll of students in each class was published in the notice board along with the schedule of election for electing class representatives on 22.12.2021. The respondents have produced a copy of the schedule of election of class representatives published with respect to the Department of IT as Ext.R5(a). The final electoral roll for

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submitted nominations. Only 39 classes participated in the election. The petitioners were also included in the Final Electoral Roll of the class representatives election and they had also participated in the election conducted as scheduled in Exhibit-R5(a). Petitioners 2 and 7 were elected as Class

Representatives from their respective classes to be eligible for inclusion in the Electoral College/Electoral Roll of the College Union election. Accordingly,

Exhibit-P3 Electoral Roll was published on 23.12.2021 before 11.00 a.m. Petitioners 2 and 7 were included as Serial No.3 and 40. Rectification of errors was called for and none of the students submitted any complaint. Exhibit-P3 Electoral Roll became final and it was thereafter the same was published. It is stated that nominations were accepted till 03.01.2022 as scheduled in Exhibits-P1 and P2 and petitioners 2 and 7 had also submitted their nominations for contesting to the posts of the University Union Councilor and

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scrutiny for legitimate reasons. The contest was only for 4 posts, viz, the Chairperson, Vice-Chairperson, General Secretary and Magazine Editor. The 7th petitioner was elected to the post of Arts Club Secretary. Ext.R5(c) is the final list of valid nominations. Ext.R5(d) is the acceptance letter issued by the 2nd petitioner on the rejection of his nomination to the post of University Union Council.

5. I have considered the submissions advanced and have gone through the records.

6. From the records made available by the respondents 3 to 5, it

appears that it is in terms of class 6.2.4 of the Lyngdoh Committee recommendations which was approved by the Supreme Court that the College had resorted to Parliamentary mode of election. The exhibits produced by the respondents reveal that the stipulations issued by the 1st respondent have been followed by the College in its letter and spirit. As the Parliamentary mode of election was adopted, some modifications have been put in place which have not resulted in any violation of the schedule prescribed by the 1st respondent.

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I find from the counter filed by the respondents that petitioners 2 and 7 were elected as class representatives and it was they who had elected the office bearers of the college union. The records also reveal that the 7th petitioner was elected as the Arts Club Secretary. The complaint lodged by the petitioners was only on 3.1.2022 and the assertion of the learned counsel appearing for the respondents that it is clearly an afterthought to unsettle the election process cannot be brushed aside. Furthermore, if the petitioners have any complaint regarding the elections they can very well lodge a complaint in writing before the Vice Chancellor of the University. The Vice Chancellor is required to enquire into the complaint and take a decision. The said decision is also recognized as final.

7. On a consideration of the entire facts, I am of the view that none

of the rights of the petitioners has been infringed by Ext.P1 to P3. On the other hand, it would not be proper for this Court to unsettle the election process on the grounds narrated in the writ petition. In that view of the matter, I am of the considered view that no interference is warranted on Exts.P1 to P3. This writ petition will stand dismissed. However, it is made clear that it WP(C) NO. 594 OF 2022 11 would be open to the petitioners to invoke the provisions of the Election Manual and to challenge the same, in accordance with law, if they are so advised. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE DSV WP(C) NO. 594 OF 2022 12 APPENDIX OF WP(C) 594/2022 PETITIONER (S) EXHIBITS : Exhibit P1 THE TRUE COPY OF THE NOTIFICATION ALONG WITH THE ENCLOSURES, ELECTION MANUAL AND

ORDER OF THE SUPREME COURT APPROVING THE

LYNGDOH COMMITTEE RECOMMENDATIONS FOR CONDUCT OF ELECTIONS, DATED 20.12.2021. Exhibit P2 THE TRUE COPY THE ELECTION NOTIFICATION EL.NO.1 DATED 21.12.2021. Exhibit P3 THE TRUE COPY OF THE ELECTORAL ROLL AS PUBLISHED BY THE 3RD RESPONDENT. Exhibit P4 THE TRUE COPY OF THE COMPLAINT DATED 3.1.2022 WITH THE ENDORSEMENT OF RECEIPT BY THE 3RD RESPONDENT. RESPONDENT (S) EXHIBITS : Exhibit R5(A) TRUE COPY OF THE SCHEDULE OF ELECTION OF

CLASS REPRESENTATIVES PUBLISHED WITH RESPECT TO THE DEPARTMENT OF IT, SCHEDULING THE DATE OF ELECTION AS WELL AS ITS PROCEDURE FROM NOMINATION ACCEPTANCE TO DECLARATION OF RESULT AS 23/12/2021 FROM 9.30 AM TO 12.30 P.M.

Exhibit R5(B) TRUE COPY OF THE FINAL ELECTORAL ROLL DATED REPRESENTATIVE IN THE DEPARTMENT OF IT, CLASS S5 Exhibit R5(C) TRUE COPY OF THE FINAL LIST OF VALID NOMINATIONS PUBLISHED ON 04/01/2022 AFTER WP(C) NO. 594 OF 2022 13 WITHDRAWAL TIME Exhibit R5(D) TRUE COPY OF THE ACCEPTANCE LETTER DATED THE REJECTION OF HIS NOMINATION TO THE POST OF UUC.

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