

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

Friday, the 2nd day of June 2023 / 12th Jyaishta, 1945

WP(C) NO. 17282 OF 2023(I)

PETITIONERS:

1. DR. P. RAVEENDRAN, AGED 56 YEARS, S/O. K. NARAYANAN NAIR, ELECTORAL ROLL NO. 25, PROFESSOR, DEPARTMENT OF CHEMISTRY, UNIVERSITY OF CALICUT, RESIDING AT PRASANTHI HOUSE, PULAMANTHOLE, MALAPPURAM DISTRICT - 679 323.
2. DR. ABDUL ROF V, AGED 42 YEARS, S/O. ABU V., ELECTORAL ROLL NO. 828, ASSISTANT PROFESSOR, DEPARTMENT OF MATHEMATICS, KAHM UNIVERSITY WOMEN'S COLLEGE, MANJERI, MALAPPURAM DISTRICT, RESIDING AT VADAKKAYIL HOUSE, AMBALAKKADAVU P.O., MALAPPURAM DISTRICT - 676 525.
3. DR. MOHAMMED ABDUL KHAYYOOM M, AGED 43 YEARS, S/O. ABOOBACKER M., ELECTORAL ROLL NO. 495, ASSISTANT PROFESSOR, DEPARTMENT OF MATHEMATICS, PTM GOVERNMENT COLLEGE, PERINTHALMANNA, RESIDING AT MAMBRA HOUSE, KADAMBODE P.O., MALAPPURAM DISTRICT - 676 521.
4. MOHAMED SAJID T, AGED 42 YEARS, S/O. ABOOBACKER, ELECTORAL ROLL NO. 82, JUNIOR ENGINEER, USIC, UNIVERSITY OF CALICUT, THENHIPALAM, MALAPPURAM DISTRICT-673 635, RESIDING AT THEKKEDATH, ECSTACY HOUSE, KADANNAMANNA P.O., MALAPPURAM DISTRICT - 673 635.
5. MANOJ K.F, AGED 55 YEARS, ELECTORAL ROLL NO. 668, ASSISTANT SECTION OFFICER, UNIVERSITY OF CALICUT, THENHIPALAM, MALAPPURAM DISTRICT - 673 635, RESIDING AT ARYAVARTHAM, MUNDUPARAMBA P.O., MALAPPURAM, PIN - 676 507.
6. JAYASANKAR, AGED 41 YEARS, S/O. KARUNAKARAN NAIR, ELECTORAL ROLL NO. 1475, RESIDING AT ATTUPURATH, AZHINHILLAM P.O., VAZHAYUR, MALAPPURAM DISTRICT - 673 632.
7. USMAN P, AGED 38 YEARS, S/O. SAIDALAVI P., ELECTORAL ROLL NO. 820, RESIDING AT PARUTHIYIL HOUSE, KATTUPPARA, PULAMANTHOLE, CHELAKKAD, MALAPPURAM DISTRICT - 673 632.
8. SIYAR P.V, AGED 40 YEARS, S/O. SAIDALIKUTTY, ELECTORAL ROLL NO. 1471, RESIDING AT KIZHAKKETHODI, PUTHURPALLIKKAL POST, PALLIKKAL, MALAPPURAM DISTRICT - 673 636.
9. ARUNKUMAR P.K., AGED 49 YEARS, S/O. DAMODARAN NAIR P.K., ELECTORAL ROLL NO. 1536, RESIDING AT VALERI HOUSE, KOLAKKAD, ATHOLI (CT), KOZHIKODE - 673 315.
10. MOHAMMED SHAFEEQ CHOLA PEVUMTHARAYIL, AGED 47 YEARS, S/O. KAMMU CHOLA PEVUMTHARAYIL, ELECTORAL ROLL NO. 927, RESIDING AT PEVUMTHARAYIL HOUSE, MUSLIYARANGADI, NEDIYIRUPPU, MALAPPURAM DISTRICT - 673 638.
11. SUBHASH M., AGED 42 YEARS, S/O. SIVARAMAN NAIR M., ELECTORAL ROLL NO. 126, RESIDING AT MARUNNUVEETIL, KOLAKKATTUCHALI P.O., CHELAMBRA, MALAPPURAM DISTRICT - 673 634.
12. MUHAMMED NAJEEB K.M., AGED 43 YEARS, S/O. MOIDEEN KUNHI, ELECTORAL ROLL NO. 679, RESIDING AT KAYAL MOOLAKKAL, SIVAPURAM, KOZHIKODE DISTRICT - 673 574.
13. DILNA BALAKRISHNAN, AGED 40 YEARS, W/O. PREM SHAMIR, ELECTORAL ROLL

- NO. 877, RESIDNG AT SUBHASH, NEAR CUIE, THENHIPALAM P.O., MALAPPURAM DISTRICT - 673 636.
14. HYSM MUHAMMED K., AGED 40 YEARS, S/O. MUHAMMED K., ELECTORAL ROLL NO. 637, RESIDING AT KOROTH HOUSE, CHENGARAM VELI, MEPPAYYUR P.O., KOZHIKODE DISTRICT - 673 524.
 15. SAMEEL T.V., AGED 41 YEARS, S/O. ABDUL HAMEED, ELECTORAL ROLL NO. 992, HAMEED MANZIL, KOYILANDI, KOLLAM P.O., MUDADI, KOZHIKKODE - 673 307.
 16. SUNIL KUMAR T., AGED 49 YEARS, RESIDING AT THEKKEDATH, ELECTORAL ROLL NO. 1528, RESIDING AT NEEROLPALAM, THENJIPALAM P.O., MALAPPURAM DISTRICT - 673 636.
 17. SUNESH K.P., AGED 35 YEARS, S/O. RAJAN M., ELECTORAL ROLL NO. 1046, RESIDING AT MALOORKANDY, MUTTANNUR, PATTANNUR P.O., PATTANNUR, KANNUR DISTRICT - 670 595.
 18. SUBAIR K.T., AGED 41 YEARS, S/O. CHEKKUMHAMMED, ELECTORAL ROLL NO.1552, RESIDING AT KOOLATHAYIL, 4, THENJIPALAM, MALAPPURAM DISTRICT - 673 636.
 19. MOHAMMED BASHEER K, AGED 47 YEARS, ELECTORAL ROLL NO. 1421, RESIDING AT KARIKKANTHODI VEEDU, ANTHIYOORKUNNU P.O., MALAPPURAM DISTRICT - 673 637.
 20. NAVAS M.P., AGED 40 YEARS, S/O. MAJEED, ELECTORAL ROLL NO. 113, RESIDING AT PUTHALATH, THIRUTHIYAD, VAZHAYOOR P.O., MALAPPURAM - 673 633.
 21. ABDULLA POOVAKKATTU, AGED 48 YEARS, ELECTORAL ROLL NO. 1069, RESIDING AT POOVAKKATTU HOUSE, PULIYATTUKULAM, KODUR P.O., MALAPPURAM DISTRICT - 676 504.

RESPONDENTS:

1. THE UNIVERSITY OF CALICUT, THENHIPALAM P.O., MALAPPURAM DISTRICT - 673 635, REPRESENTED BY THE REGISTRAR.
2. THE VICE CHANCELLOR, UNIVERSITY OF CALICUT, THENHIPALAM P.O., MALAPPURAM DISTRICT - 673 635.
3. THE RETURNING OFFICER/REGISTRAR, UNIVERSITY OF CALICUT, THENHIPALAM P.O., MALAPPURAM DISTRICT - 673 635.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 3rd respondent not to print the ballot papers affixing the serial number in the ballot paper while taking steps for arranging the polling, pending disposal of the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI. GEORGE POONTHOTTAM (SENIOR ADVOCATE) along with M/S. NISHA GEORGE & A.L.NAVANEETH KRISHNAN, Advocates for the petitioners, SRI.P.C.SASIDHARAN, STANDING COUNSEL for the respondents and of ADVOCATE COMMISSIONER, the court passed the following:

GOPINATH P., JUDGE.

W.P.(C)No.17282 of 2023

Dated this the 2nd day of June, 2023

ORDER

The petitioners have approached this Court seeking to quash Ext.P12 and to direct the 3rd respondent to conduct the elections to the Senate of the Calicut University by using ballot papers without affixing or marking the serial number in the ballot paper. The petitioners also seek a declaration that the 3rd respondent cannot affix or mark the serial number on the ballot paper in terms of the expressed stipulations contained in Statute 76 of the Calicut University (Conduct of Elections to Various Authorities or Bodies) First Statutes, 1975 (hereinafter referred to as the '1975 Statutes') and that respondents 1 to 3 cannot conduct any election contrary to the stipulations and the provisions of 1975 Statutes. The other reliefs sought (prayers (v) & (vi) in the Writ Petition) are extracted herein below:-

“v. Issue a writ of mandamus directing the 3rd respondent to interdict every action of persons to threaten the electors and sabotage the secrecy and transparency of the election;

vi. Issue a writ of mandamus directing the 3rd respondent to transfer and keep the election papers, the used and unused ballot papers including the counterfoil in the treasury after the counting of the votes and the time period for statutory remedy is exhausted;”

2. Sri. George Poonthottam, the learned senior counsel appearing for the petitioners on instructions of Adv. Nisha George

W.P.(C)No.17282/2023

2

would contend that the language of Statute 76 of the 1975 Statutes and, in particular, Statute 76 (6) does not authorize the University or its officials to mark the ballot papers with numbers corresponding to the number in the counterfoil. It is submitted that if the marking of serial numbers is permitted, the secrecy of the ballot will be lost. It is pointed out that in respect of the constituency of the teaching staff of the University, the number of voters is only 162, and it would be easy to identify which ballot paper had been issued to which elector. It is submitted that the petitioners apprehend that if the secrecy of the ballot is lost, they will be targeted and harassed for having voted in any particular manner and according to their choice. It is also pointed out that there is no provision for the destruction of ballot papers and, therefore, there is every possibility that the secrecy of the ballot will be easily defeated.

3. Sri. P.C. Sasidharan, the learned counsel appearing for the respondent University, would submit that the language of Statute 76 is clear and that the only meaning that can be ascribed to Statute 76 is that the counterfoil and the ballot paper have to be serially numbered, for the rule specifically requires the counterfoil to be serially numbered and uses the term '*corresponding to the counterfoil*'. It is submitted that should there be an election

W.P.(C)No.17282/2023

3

dispute requiring the Chancellor of the University to call for and examine the ballot paper and the corresponding counterfoil, there will be absolutely no method of identifying the ballot paper corresponding to the counterfoil if the ballot paper is also not serially numbered. The learned counsel also submits that the Vice Chancellor supervises the entire election process. It is submitted that the petitioner's apprehension that the secrecy of the ballot is likely to be lost cannot be accepted at all, and the petitioners are not entitled to claim the reliefs sought in the writ petition based on mere apprehension. It is submitted that the practice of printing serial numbers on the ballot paper commenced in the year 1968, and there is no reason to hold at this point in time that the practice should be discontinued as it will affect the secrecy of the ballot. The learned counsel would emphasise that directions if any issued by this Court should not make it appear that this Court is doubting the capacity of the University or the integrity of the Vice Chancellor to conduct polling fairly and in a democratic manner. The learned counsel also submits that a similar challenge was repelled by this Court through judgment in W.P.(C) No.16027/2022. Reference is also made to Statute No.44, which indicates that a defective ballot paper includes one that does not have a serial number. It is submitted that though Statute 44 is in relation to postal ballots, the

W.P.(C)No.17282/2023

4

fact that such ballot papers must contain serial numbers indicates beyond doubt that even in respect of ballots other than postal ballots, the serial number must be available in the ballot paper. It is also submitted on instructions that in respect of the constituency consisting of the teaching staff of the University and in respect of which the learned senior counsel mainly expressed the apprehension of loss of secrecy, the number of voters is 162 and four ballot books each containing 50 leaves have been prepared. It is pointed out that on 5.6.2023, the date on which the elections for the constituency of the teaching staff of the University is fixed, four booths are provided in the University Senate house. It is submitted that the voter can vote in any of the booths, and the ballot books will be shuffled before issuing the same to the Presiding Officer of each booth. He states that this will be sufficient to ensure the secrecy of the ballot. It is also submitted that it can be made clear that the polling agents will not be permitted to note the number of the counterfoil/ballot paper in any manner.

4. Having heard the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel appearing for Calicut University, I am clear in mind that the only interpretation that can be placed on the provisions of the Statute 76 (6) is that both counterfoil and the ballot paper have to be serially numbered.

W.P.(C)No.17282/2023

5

I am inclined to take this view on the wording of Statute 76 (6), which specifically requires that the counterfoil must be serially numbered and the ballot paper corresponding to the same shall be issued to the voter. For the sake of convenience, Statute 76 (6) is extracted hereunder:

“76. Voting:

xxx xxx xxx xxx

*(6) The name of the voter shall be entered in the **serially numbered counterfoil** and the **ballot paper corresponding to that counterfoil** shall be torn off after affixing the initials of the Presiding Officer thereon and handed over to the voter.”*

As indicated earlier, a reading of Statute 76(6) indicates that the counterfoil is to be serially numbered. There cannot be any doubt about this. The wording of Statute 76(6), also provides that the ballot paper corresponding to the counterfoil shall be torn off after affixing the initials of the Presiding Officer thereon. One must, therefore, necessarily conclude that the torn off ballot paper must be capable of being corresponded with the counterfoil and unless there is a serial number on the ballot paper, it will be impossible to do so. In the matter of preparation of ballot papers, **V.S Rama Devi & S.K. Mendiratta**, in their classic work, '**How India Votes – Election Laws, Practice and Procedure**' (4th Edition), refer to the provisions of the **Conduct of Election Rules, 1961** ('the Rules') and, in particular, to Rule 30 thereof.

W.P.(C)No.17282/2023

6

Though the Rules have no application here and applies only to election to the Parliament and the State Legislatures, Rule 30 provides that every ballot paper shall have a counterfoil attached thereto, and the particulars therein shall be in such form, language or languages as the Election Commission may direct. The learned Authors refer to the prescriptions made by the Election Commission of India in the exercise of the power conferred by Rule 30 of the Conduct of the Election Rules, 1961. The particulars prescribed by the Election Commission of India require that every ballot paper shall have a counterfoil attached to it and that the serial number of the ballot paper shall be printed on the left-hand side, either on the front or on the back as may be convenient.

5. Though the Rules have absolutely no application in the facts of the present case, one could make useful reference to the same to determine the intent of the Statute governing the issue and also to determine whether the case of the petitioners as projected in the writ petition that the printing of serial numbers on the ballot paper can lead to the secrecy of the ballot being lost, is to be accepted or not. It cannot be disputed, on the authority of the judgment of the Supreme Court in ***A. Neelalohithadasan Nadar v. George Mascrene and others; 1994 Supp (2)***

W.P.(C)No.17282/2023

7

SCC 619 that in certain kind of election disputes, it may be necessary for the election tribunal (here the Chancellor) to call for and examine the counterfoil and the corresponding ballot paper. In such situations, unless the ballot paper also contains the serial number, it would be impossible for the election tribunal to identify the ballot paper corresponding to the counterfoil in question. Therefore, taking into consideration the provisions of Statute 76(6), at least *prima facie*, I find it difficult to accept the contention of the learned senior counsel appearing for the petitioners that the printing of serial numbers on the ballot paper corresponding to the serial number on the counterfoil should be prohibited.

6. The other contention of the learned senior counsel appearing for the petitioner is that since the number of voters, especially in the constituency of the teaching staff of the University, is only 162, it may be possible for election agents to identify the persons who voted in a particular manner by noting the order in which they came to the polling booth for casting their votes. There appears to be some merit in the contention taken by the learned senior counsel, for it may be that if the order in which the voters come to a polling booth is noted and if the election agent already has the serial numbers of the ballot books issued to that particular booth, it may be possible to identify as to who has voted for whom.

W.P.(C)No.17282/2023

8

This may lead to the secrecy of the ballot being lost. However, this apprehension is no reason to hold that the printing of serial numbers on ballot paper should be completely prohibited. Some methodology will have to be evolved to ensure that the secrecy of the ballot is not affected in any manner. Therefore, I deem it appropriate to issue the following directions as an interim measure. These directions shall apply only to the election to be held on 05.6.2023 and 06.06.2023 and to two constituencies, namely - *'teachers of the University'* and *'non-teaching staff of the University'*.

I) The booklets containing the ballot paper and the counterfoil regarding the election from constituencies of *'teachers of the University'* and *'non-teaching staff of the University'* shall be issued to the Presiding Officers only just before the time fixed for polling. The booklets containing the counterfoil and ballot paper that will be distributed as above will be randomly distributed to various booths ensuring that it will not be easy to identify which booklet was issued to which booth;

II) The ballot books shall be distributed to the Presiding Officer of each polling booth regarding the constituency [*'teachers of the University'*] by an Advocate Commissioner to be appointed by this Court. The Advocate commissioner shall specifically note

W.P.(C)No.17282/2023

9

the time at which the books are distributed. The Advocate Commissioner shall act as an observer regarding the elections to be held at the University Senate House on 05.06.2023 and 06.06.2023. The Advocate Commissioner need not act as an observer regarding the elections to be held at the University Centre Thrissur. It is made clear that the Advocate Commissioner shall not interfere with any election process or issue any instructions regarding the conduct thereof and need only report the results of her observation in a report to be filed in this Court;

III) The officers appointed by the University, namely the Presiding Officer, Polling Officers, and Polling assistants of each booth, shall ensure that the polling agents have no access or knowledge of the serial number of the books issued to that particular polling booth and they shall ensure that the polling agents do not mark the number of the ballot papers in any manner, whatsoever;

IV) Immediately after the election is completed, the counterfoils shall be kept in a sealed cover under the signature and seal of the Registrar of the University and the Advocate Commissioner (in respect of the elections at the Senate House) and shall not be opened without further orders from this Court. The counterfoils regarding the election from the constituency - 'non-

W.P.(C)No.17282/2023

10

teaching staff of the University ' to be held at the University Centre Thrissur shall also be kept in a sealed cover immediately after the polling is completed;

(V) The ballot papers regarding the elections to be held from both constituencies, namely '*teachers of the University*' and '*non-teaching staff of the University*' on 05.06.2023 and 06.06.2023 shall also be preserved in a sealed cover and in such manner as the Vice-chancellor of the University will direct. The Vice-Chancellor shall issue necessary directions in this behalf forthwith;

(VI) Ms. Amrutha Suresh, Advocate of this Court, is appointed as Advocate Commissioner regarding the Elections to be held on 05.6.2023 and 06.06.2023 at the Senate Hall of the Calicut University. No advocate commissioner is being appointed in respect of the election from the constituency – '*non-teaching staff of the University*' at Thrissur on 06.06.2023 as the Learned Counsel for the petitioners would submit that the apprehension is mainly regarding the polling from the constituency of Teaching Staff for which the polling takes place only on one day (05.06.2023) at the University Senate House;

(VII) The petitioners shall pay a sum of Rs.50,000/- as batta to the Advocate Commissioner. The petitioners shall also arrange necessary transportation for the Advocate Commissioner. The

W.P.(C)No.17282/2023

11

Registrar, University of Calicut, will ensure that a convenient room is made available to the Advocate Commissioner at the University Guest House on 05.06.2023 and 06.06.2023.

I make it clear that the directions issued in this order will not be interpreted in any manner as casting any aspersions on the capacity of the Vice-Chancellor of the University to conduct a free and fair election in consonance with democratic principles. List this matter for consideration on 09.06.2023.

acd



sd/-
GOPINATH P.
JUDGE

APPENDIX OF WP(C) 17282/2023

Exhibit-P12

**TRUE COPY OF THE COMMUNICATION NO. 265942/ELECTION-
ASST-1/2022/ADMN DATED 19.05.2023 ISSUED BY THE
UNIVERSITY OF CALICUT**

