

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 14558 of 2015 (T)

PETITIONER(S) :

- 1. DR.M.A.JOSEPH, PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
NIT CALICUT - 673 601.**
- 2. DR. VINEETH KUMAR PALERI, PROFESSOR,
DEPARTMENT OF COMPUTER SCIENCE & ENGINEERING,
NIT CALICUT - 673 601.**
- 3. DR. P.K.RAJENDRA KUMAR, PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING
NIT CALICUT -673 601.**

**BY SRI.M.RAMESH CHANDER (SENIOR ADVOCATE)
ADVS.SMT.DENNIS VARGHESE
SMT.B.BINDU**

RESPONDENT(S) :

- 1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HUMAN RESOURCES, NEW DELHI-110 001.**
- 2. THE NATIONAL INSTITUTE OF TECHNOLOGY,
CALICUT.**
- 3. THE CHAIRPERSON,
SENATE, NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT.**
- 4. THE DIRECTOR & CHAIRMAN SENATE,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT.**
- 5. THE REGISTRAR & SECRETARY TO SENATE,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT.**
- 6. DR. K.PRABHAKARAN NAIR, PROFESSOR,
DEPARTMENT OF MECHANICAL ENGINEERING,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT.**

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**7. DR.C.K.ALI, ASSOCIATE PROFESSOR,
DEPARTMENT OF ELECTRONICS AND COMMUNICATION ENGINEERING,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT.**

**R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
ADV. SRI.RAJAGOPALAN.A., CGC
R2 TO R5 BY ADV. SRI.MILLU DANDAPANI
R6 TO R7 BY ADVS. SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1:** TRUE COPY OF THE GAZETTE OF INDIA DATED JUNE 06, 2007, NATIONAL INSTITUTES OF TECHNOLOGY ACT 2007.
- EXT.P2:** TRUE COPY OF THE MINUTES OF THE 29TH MEETING OF THE SENATE OF THE NATIONAL INSTITUTE OF TECHNOLOGY CALICUT HELD ON 31/01/2011.
- EXT.P3:** TRUE COPY OF THE OFFICE ORDER DATED 30.04.2015.
- EXT.P4:** TRUE COPY OF THE MEMORANDUM SUBMITTED TO THE 5TH RESPONDENT, THE REGISTRAR AND SECRETARY TO THE SENATE, NIT CALICUT DATED 26.02.2015.
- EXT.P5:** TRUE COPY OF THE REPRESENTATION DATED 01.05.2015 ADDRESSED TO THE MINISTER OF EDUCATION.
- EXT.P6:** TRUE COPY OF THE REPRESENTATION ADDRESSED TO THE 3RD RESPONDENT THE CHAIRPERSON, BOARD OF GOVERNORS, NIT CALICUT DATED 12.04.2015.
- EXT.P7:** TRUE COPY OF THE REPRESENTATION ADDRESSED TO DIRECTOR (NITS), DATED 03.03.2015.
- EXT.P8:** TRUE COPY OF THE NOTIFICATION DATED 08.02.2011 AND PROCEDURE DATED 31.11.2011.
- EXT.P9:** TRUE COPY OF THE NOMINATIONS BY THE 4TH RESPONDENT ALONG WITH FILE NOTE.
- EXT.P10:** TRUE COPY OF THE LIST OF MEMBERS OF THE BOARD OF GOVERNORS IN THE WEBSITE ON 09.06.2015.
- EXT.P11:** TRUE COPY OF THE MEMO DATED 07.05.2015 ISSUED BY THE 5TH RESPONDENT TO THE 2ND PETITIONER.
- EXT.P12:** TRUE COPY OF THE COMPLETE DOCUMENT PERTAINING TO EXHIBIT R2(A) (MINUTES OF THE 50TH MEETING OF THE SENATE).
- EXT.P13:** TRUE COPY OF THE FIRST STATUTES RELATING TO THE NATIONAL INSTITUTE OF TECHNOLOGIES ACT, 2007.

RESPONDENT(S)' EXHIBITS :

- EXT.R2(A):** TRUE COPY OF RELEVANT EXTRACT OF THE MINUTES OF THE 50TH MEETING OF THE SENATE HELD ON 11.03.2015, REFERRED TO IN THE COUNTER AFFIDAVIT.

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**EXT.R2(B): TRUE COPY OF THE MINUTES OF THE 50TH MEETING OF
THE SENATE OF NIT CALICUT.**

**EXT.R2(C): TRUE COPY OF THE OBJECTIONS SUBMITTED BY PETITIONERS
1 TO 3.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P(C). No.14558 of 2015

Dated this the 9th day of October, 2015.

JUDGMENT

The petitioners are Senate members of the National Institute of Technology, the 2nd respondent, who are aggrieved with Ext.P3, by which the respondents 6 and 7, who are also Senate members, have been nominated to the Board of Governors. The petitioners contend that the process of nomination by the Chairman is alien to the Act and Statutes and that the procedure followed is in complete violation of the provisions. The issue revolves around the interpretation of certain provisions of the Statute, which require nomination to be made to the various Bodies of the National Institute of Technology.

2. The National Institute of Technology, Calicut is the Institute, wherein the subject matter has arisen. The National Institute of Technologies, all over the country, are governed by

Ext.P1, the 'National Institute of Technology's Act, 2007' [hereinafter referred to as 'the Act'] and Ext.P13 'First Statutes for the National Institute of Technologies'. An interpretation of the provisions, along with an understanding of the procedure followed, would in fact decide the issue.

3. The Board of Governors, as per Section 10 of Ext.P1, is the highest Body within the Institute, with the Senate just below the Board of Governors and then the other authorities as declared by the Statutes. The Constitution of the Board of Governors is evident from Section 11 of the Act. The Chairperson nominated by the Visitor [the President of India], two persons each nominated by the Central Government and the State Government, two persons having special or practical experience in respect of educational engineering or science nominated by the Council, of which one should be a woman and one Professor and one Assistant Professor or Lecturer of the Institute nominated by the Senate; along with the Director, ex-officio constitutes the Board of Governors. The nomination of two members of the Senate, one being a Professor and one an Assistant Professor or a

Lecturer, is the bone of contention in the above writ petition.

4. The first Statutes prescribe for a specific procedure, according to the petitioners, in Statute No.4. The Constitution of Board of Governors and the manner in which nomination is to be made is delineated in Statute No.4, specifically 4(i), which is extracted hereunder:

"The Bodies entitled to nominate or elect representatives of the Board shall be invited by the Registrar to do so within a period not exceeding 8 weeks from the date on which invitations are issued by him."

Hence, what is indicated by the above provision is that, when nominations to the Board of Governors are to be made, the Bodies entitled to nominate such representatives should be invited to do so within 8 weeks. The petitioner would contend that when vacancy arises under Section 11(f) of the Act this requires an invitation by the Registrar to the Senate members and any among them could offer themselves for nomination.

5. The learned counsel for the respondent Institute, however would argue that this does not take in the Senate and

the bodies referred to are Central Government or the State Government. This Court on a reading of Section 11 and Statute No.4 is unable to countenance such contentions of the NIT. The Board of Governors is constituted by persons nominated by different Bodies; the Visitor, the Central Government, the State Government, the Council and the Senate. These are the Bodies referred to in Statute No.4(i) and there is no exclusion in so far as the procedure for nomination from the Senate is concerned. The Registrar, in the event of a vacancy in the Board of Governors, should invite the respective Bodies to make the nomination; with reference to the factum of where the vacancy arises and the particular Body, which has to make the nomination. Hence, when vacancies arise; wherein the Senate has to make the nomination; necessarily the Registrar would have to issue an invitation to the Senate members and would have to convene the Senate with a specific agenda for such nomination and if more than one person offers themselves, in the Senate, then definitely there could be an election.

6. The said interpretation is further supported by the

procedure followed earlier, which is produced at Ext.P2. The learned counsel for the NIT would submit that the same cannot be relied upon, since the procedure followed indicated therein is of the year 2011 and the Senate is entitled to have different procedure at the present meeting. The procedure as of now has been placed before the Senate and it has been resolved to go for a nomination, as specifically indicated at Ext.R2(a). It is also submitted that the petitioners having not challenged Ext.R2(a) cannot maintain a challenge against the present nominations, since the same has already been resolved by the Senate.

7. Here, it is to be noticed that the party respondents and NIT have conflicting claims. The NIT claims that the proposal was placed before the Senate, and the petitioners objected to its consideration, when the matter is sub-judice. The party respondents contend however that the majority in the Senate has approved the nomination.

8. Ext.P2 is not looked into by this Court, as a binding procedure on the Senate. Ext.P2 is looked into only to understand how the Senate had dealt with the nominations earlier. The

nomination under Clause (f) of Section 11, which is also the subject matter in the present writ petition, was dealt with in Ext.P2 Minutes at Item No.S.29.3, which is extracted hereunder:

"S.29.1.Nomination of one Professor and one Assistant Professor or a Lecturer of the National Institute of Technology Calicut to the Board of Governors as per Section 11 clause (f) of the National Institutes of Technology Act 2007, and pursuant to the Letter from Ministry of Human Resources Development No.F.22-13/2007-TS III dated 13 December 2010.

Senate has taken on record the Letter from the Government of India Ministry of Human Resources Development, Department of Higher Education No. F.22-13/2007-TS III dated 13 December 2010 and resolved to nominate one Professor and one Assistant Professor or a Lecturer of the Institute to the Board of Governors of the Institute, as per Section 11 clause (f) of the National Institutes of Technology Act 2007. Senate resolved to identify the members of the faculty for nomination through an election using secret ballot. Senate approved the procedure for electing the members of the faculty whom Senate could nominate and also prescribed the modalities including the eligibility to participate in the nomination and the eligibility to get nominated."

9. This Court is inclined to hold that the same is the correct procedure and though Ext.P2, would not bind the present Senate, the same is the procedure as contemplated under the Statutes.

The Senate cannot have a contention that they could act in violation of the Statute; and could take a decision to make nominations, which would run contrary to the provisions in the Statutes.

10. With reference to the argument that Ext.R2(a) has not been challenged, there is nothing to show the date of Ext.R2(a) and the decision taken by the Senate as such. However, the petitioner has produced Ext.P12 Minutes of the 50th meeting of the Senate, which indicates that Ext.R2(a) is a part of the said meeting. The said meeting was held on 11.03.2015 and Ext.P3 is subsequent to that, hence a challenge to Ext.P3 would suffice. Further, even the decision only shows that the Chairman ruled that as per the old practice, there would not be an election and only nomination as envisaged under the Act. This Court is unable to find any such nomination envisaged under the Act, if there are more than two persons available, for the two nominated posts in the Board of Governors. If the Senate agrees unanimously on the two persons who are to be nominated, then the nomination would go through without an election. However, if there are more than

one person, for each of the posts; then necessarily the procedure of an election would have to be resorted to, even if the same is not specifically contemplated in the Statutes.

11. This is precisely why the first Statute provides for an invitation by the Registrar to the Senate, being a Body constituted to nominate persons to the Board of Governors, to make an invitation to the members of that Body, herein the Senate. On such invitation, any member desirous of getting nominated could offer himself for the same, but however the same would be ultimately the decision of the majority of the Senate members or in case of a unanimous decision, then the nomination would go through as such. Ext.P3, according to this Court, is an attempt by the Chairman to pre-empt the Senate members from offering themselves for nomination and ensuring to prohibit a collective decision taken by the Senate; on an evaluation of the competing qualifications of members offering themselves for nomination. The Chairman cannot decide for the Senate; when the nomination envisaged is of the body. In such circumstances, Ext.P3 would stand set aside.

12. The learned Standing Counsel appearing for the Institute would also put on record that if further delay is caused, there would be delay in issuance of Certificates to the students and the holding of a convocation. However, this Court is not unable to countenance that contention to permit the Senate to carry out a procedure, which is contrary to the Act and the first Statute. In any event, considering the expediency of the situation, the Registrar would immediately make an invitation as provided under the first Statute No.4(i) and immediately after the period prescribed or considering the urgency of the situation, the Registrar could also, call for a Senate immediately by Circulation and consider the nomination to the Board of Governors. It is made clear that this is only in the context of the submission made by the learned Standing Counsel for the Institute that a convocation is proposed to be held on 05.11.2015. It is hoped that atleast considering the urgency and the interest of the students, the Senate members would co-operate. It is also made clear that this Court has not made any observation about the capacity of respondents 6 and 7 to be nominated.

The writ petition would stand allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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P.A. to Judge.