

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

C O R A M

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No.1840 of 2018

and

W.M.P.Nos.2288 to 2290 of 2018

Dr.M.Ilanchelian

...Petitioner

Vs.

1. The Registrar,
Bharathiar University,
Coimbatore - 641 046.
 2. The Secretary,
Bharathiar University Teachers' Association (BHUTA),
Bharathiar University,
Coimbatore - 641 046.
 3. The Election Officer,
Bharathiar University Teachers' Association (BHUTA),
Bharathiar University,
Coimbatore - 641 046.
- ...Respondents

Prayer: Petition filed under article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings vide Ref.No.:E7/2017/16435-7-1 dated 17.10.2017 and the consequential letter of the 2nd respondent dated 22.12.2017 on the basis of which elections to the Bharathiar University Teachers' Association (BHUTA) are being held on 29.01.2018 in violation of the Bylaws of the Bharathiar University Teachers' Association (BHUTA) and the General Body Resolution dated 27.04.2017, and quash the same and for a consequential direction to the respondents to conduct the Bharathiar University Teachers' Association (BHUTA) elections in accordance with the General Body Resolution dated 27.04.2017.

For Petitioner

... Ms.N.Kavitha Rameshwar

For Respondents

... Mr.S.Mukunth, for R1
for M/s.Sarvabhuman Associates
Mr.S.Umapathy for R2
Mr.S.Muthu Pandiya Rajan for R3

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent, dated 17.10.2017 and the consequential letter of the 2nd respondent dated 22.12.2017, on the basis of which election to the Bharathiar University Teachers' Association (BHUTA) was held on 29.01.2018, in violation of the By-laws of the Bharathiar University Teachers' Association (BHUTA) and the General Body Resolution dated 27.04.2017, and for a consequential direction to the respondents to conduct election for the Bharathiar University Teachers' Association (BHUTA) in accordance with the General Body Resolution, dated 27.04.2017.

2. The petitioner is one of the member of Bharathiar University Teachers' Association (hereinafter referred to as BHUTA). The said Association was formed in the year 1986 and it is stated that as on the date of disputed election, there were 173 members in the Association. It is not in dispute that the Association is a registered Association, in which, all the teaching staff of the Bharathiar University are members.

3. As per the By-laws of BHUTA, election to the Executive Committee of the Association shall be held not later than 31st August once in every two years. It is stated by the petitioner that election to the Association was announced on the basis of the resolution passed by the General Body in the meeting held on 27.04.2017, wherein, the following resolutions were passed:

"1. Resolved to issue letter to Dr.Parimelazhagan who was unanimously nominated by the GB to conduct BHUTA biennial elections.

2. Resolved to invite newly recruited teachers to join the BHUTA as per the decision taken by GB without voting rights for the forthcoming elections.

3. Resolved to finalize the voters list on payment of subscription fee for 2016-2017 by account transfer."

4. As per the By-laws of BHUTA, every staff of the University, who pays subscription can become a member of the Association. The General Body of the Association is the supreme body of the Association, which is authorised to conduct business annually. The ordinary and special General Body meetings are convened from time to time, as per the decision of the Executive Committee. As per Clause 18 of the By-laws of the Association, in all meetings of the General Body, the matters submitted before the General Body has to be decided by a majority vote of the members present. The

General Body meeting has to be convened by the President of the Executive Committee to consider policy matters of vital importance, affecting the interest of the Association in general. The General Secretary and members in particular can convene a Special General Body Meeting upon the receipt of requisition signed by at least 1/5 of the total members of the Association.

5. In view of the By-laws of the Association referred to above, it is seen that the resolution of the General Body dated 27.04.2017 to invite the newly recruited teachers to join BHUTA, without voting rights for the forthcoming elections is certainly contrary to the By-laws of the Society. It is to be seen that as per the By-laws of the Society, all the teachers of the University who subscribe to the objects of the Association are eligible to become members of the Association. No process of admission for membership is prescribed in the By-laws and no permission is required from the General Body of the Association before any staff in the University to get himself admitted as a member of the Association.

6. It is further stated that in view of the resolution passed by the General Body on 27.04.2017, the Association announced election to the office bearers for the year 2017-18, by its communication dated 02.08.2017, which was addressed to the Election Officer of the Association, and it is also stated that there are only 173 existing members who are eligible to cast their votes.

7. As per the notification issued by the Election Officer of the Association, dates for receipt of nomination and declaration of valid nomination were given and the date of election was fixed on 23.08.2017. It is at this stage, the University sent a letter to the Election Officer on 11.08.2017 requesting the Election Officer to provide certain details and to instruct the Election Officer to proceed with the election only after getting necessary approval from the University authorities. The said letter appears to be based on the representation of some other members of BHUTA, and a note order of the Vice Chancellor of the University dated 11.08.2017. Thereafter, the Election Officer by his communication dated 06.09.2017, informed the then office bearers of the Association about the nature of communication received from the Registrar of University and a reply sent by him on 17.08.2017. Since the Election Officer has not received any further communication from the University authorities, the Election Officer requested the office bearers of the University to take up the issue to the University authorities and get permission to conduct the election. From the communication dated 06.09.2017, it is clear that the Election Officer did not proceed with the election as per the election notification issued by him, but requested the office

bearers of the Association to approach the University and get permission for conducting the election. It was thereafter, by communication dated 16.09.2017, the Registrar of University informed the Secretary of the Association that a One Man Committee with a retired Judge has been constituted to enquire on the representations received from the faculty members alleging that functioning of the Association is undemocratic. In the same communication, the office bearers of the Society were informed that they are advised to postpone the meeting till the One Man Committee appointed by the University submits a report.

8. It was thereafter, it appears that the One-Man Committee conducted enquiry and after hearing the rival groups submitted its recommendation to the University. The University, thereafter, by a communication dated 17.10.2017, addressed to the President and the Election Officer, forwarded the recommendations of the One-Man Enquiry Committee to take necessary action. The following are the recommendations of the One-Man Committee:

"Issue No.1: The office bearers of BHUTA stated that all 68 newly recruited teachers had been inducted as BHUTA Members. The induction of newly recruited teachers was not objected by any members of BHUTA. In the General Body Meeting also it was unanimously resolved.

Issue No.2: In the General Body Meeting held on 27.04.2017 the voting right of newly recruited teachers was withheld for the forthcoming election. It is objected by the 1st complainant BHUTA Members. As per Section 13(C) of Byelaws of BHUTA all members in BHUTA will elect office bearers of the Association as mentioned in Section 11(B) (i) to (iv). I am of the opinion that the resolution passed in General Body Meeting that voting rights withheld to the newly recruited teachers for the forthcoming election is against Byelaws and Article 14 and 21 of Indian Constitution. Now all members and office bearers of BHUTA are accepting to give right to vote for the newly recruited teachers for the forthcoming office bearers election. For the reasons stated above my finding is that the newly recruited teachers who became members of BHUTA are having voting and contesting rights in the forthcoming election.

Issue No.3: It was represented by the Executive Committee office bearers that for the election of office bearers again a fresh General Body Meeting has to be convened. For the election of office bearers for the next tenure already a General Body Meeting was held on 27.04.2017. Consequently following the resolution of General Body Meeting the

Executive Committee had nominated an election officer. The election officer continued his election work as per Byelaws. For the reason of inducting newly recruited teachers as members in BHUTA and to finalize the lists of voters the election process was withdrawn by the Executive Committee. It is to be noted that election was not canceled or the nomination of the Election Officer was canceled. The nomination of election officer is still in force. The order of withdrawal is not final but the executive committee can direct the election officer to proceed with the election. If the executive committee permits the election officer to conduct election again from the beginning, he can have fix the election date and continue his election process as per Byelaws. For the reasons stated above my finding is that there is no need to convene one more General Body Meeting for the forthcoming election."

9. It was based on the recommendations of the One Man Enquiry Committee, the Association, by communication dated 22.12.2017 issued communication to all the members of the Association informing the nature of recommendation of the One-Man Enquiry Committee and further action proposed by the Association. As per the communication, dated 22.12.2017, the Association has agreed to accept the recommendations. The contents of the letter, dated 22.12.2017, addressed to the Members of Association is extracted below for convenience:

"With reference to the above please find attached the copy of the One-Man Enquiry Committee Recommendations, and as per the same, BHUTA has initiated the following:

1. To admit the newly-recruited members of staff as members of BHUTA with immediate effect.

2. To include, as per the recommendations of the One-Man Enquiry Committee, the newly-recruited members of staff on the list of voters for the forthcoming elections of office bearers during January 2018.

3. To request the Election Officer to announce the election date and proceed with the process of elections by including the fresh list of voters."

10. Thereafter, the Election Officer by a communication dated 02.01.2018, informed the petitioner that the election for the office bearers of BHUTA for the period 2017-19 would be conducted as per the By-laws. In the said communication, the Election Officer has given the dates for receipt of nominations, declaration of valid nomination, date of election

etc. It is based on the election notice issued by the Election Officer dated 02.01.2018, the petitioner and others participated in the election.

11. It is to be seen that the election as scheduled was conducted on 29.01.2018 and the result of the election was also announced on the same day. However, it is to be seen that some of the members of the Association, by a communication dated 12.01.2018, requested the Secretary of the Association to stop the election process as the new election schedule is against the General Body's resolution dated 27.04.2017. It is pointed out that 32 members of the Association have signed the communication, in its letter, dated 12.01.2018 addressed to the Secretary of BHUTA.

12. The petitioner has come forward with this Writ Petition challenging the proceedings of the first respondent, dated 17.10.2017 and the consequential letter of the second respondent, dated 22.12.2017, after consciously participated in the election, pursuant to the recommendations of the first respondent and the consequential letter of the second respondent on accepting the recommendations.

13. The learned counsel for the petitioner challenged the impugned communications mainly on the ground that the first respondent or any other University authorities have no jurisdiction or authority to interfere in the internal affairs of the Association. It is further stated that the impugned orders are in violation of the By-laws of the Association, which clearly says that the General Body of the Association is the supreme body of the Association. It is stated that it is legally unsustainable to permit an outside authority or body to take a controversial decision without even placing the same before the General Body of the Association and ignoring the resolution passed by the Association, dated 27.04.2017. It is also stated by the petitioner that the process of election is riddled with irregularities and violation of By-laws.

14. As against the contentions raised by the learned counsel appearing for the petitioner, the second respondent has filed a detailed counter affidavit repudiating the allegations in the affidavit and pleadings of the petitioner, filed in support of the Writ Petition. As it appears from the counter affidavit, there appears to be a dissenting view among the members of BHUTA, when the office bearers and members of the General Body took a decision to withhold the rights of the newly recruited teachers, contrary to the By-laws of the Society. It is only on receipt of certain complaints, the One-Man Committee was appointed and the second respondent Association convened an Executive Committee Meeting on 22.12.2017 and placed the report.

15. It is further stated by the second respondent that it was resolved as per the recommendations of the One-Man Enquiry Committee to include the newly recruited members of the staff in the list of voters for the forthcoming election. It is also stated by the second respondent that the decision of the Executive Committee,

dated 22.12.2017, was duly communicated to all the members of the Association through email and further it is stated that the said communication sent to the petitioner was acknowledged by him and thereafter, the petitioner participated in the election. The sum and substance of the case of the second respondent is that the petitioner very well had the knowledge and accepted the One-Man Committee's report and now he is not entitled to challenge the election process.

16. It is further stated that out of the total number of 235 members of the Association, only 32 members have sent a representation to conduct election as per the decision of the General Body of the Society. However, after recommendation of the One-Man Committee, pursuant to enquiry, it is stated that 226 members of the Association participated in the election. Hence, it is the case of University that majority of the members have consciously participated in the election as they knew that the decision of the General Body denying voting right to the newly recruited members of the Association is contrary to the By-laws of the Society.

17. Though the election was conducted on the basis of recommendation of One-Man Committee, it is to be seen that the members and office bearers of the Society including the petitioner accepted the decision on the basis of recommendation of the One-Man Committee to conduct the election by including the newly recruited staff in the electoral roll. It was only because of the decision taken by majority of the members, the election notification was published by the Election Officer and election was also held, pursuant to the recommendation of the One-Man Committee, which was never challenged by any one. The petitioner after participating in the election has filed the above Writ Petition, since he was not elected.

18. It is not in dispute that the petitioner contested for the post of President as well as for the post of Secretary, but he was not elected by the General Body of the BHUTA. The petitioner appears to have filed the Writ Petition out of frustration. From the above facts, it is obvious that originally the General Body probably by the influence of office bearers or by the persons interested has passed the resolution on 27.04.2017 to invite the newly recruited teachers to join the Association without giving them the voting right in the forthcoming election. Once the newly recruited staff become members by paying subscription, they cannot be prevented by any one to exercise their voting right as per the By-laws of the Society. This resolution appears to have propelled several members to make representations before the University pointing out the undemocratic way, in which, the election was decided to be conducted. After the Society is formed, administration of the Society should be in accordance with the By-laws of the Society.

19. It is in the above said context, the decision of the University to appoint One-Man Committee to go into the disputed issue cannot be faulted. No one has challenged the

decision of the University to appoint the One-Man Committee to enquire into the controversy at the relevant point of time. Therefore, the election was conducted, pursuant to the recommendation of the One-Man Committee. Even the notification was not challenged and the petitioner and others participated in the election. As stated earlier, the petitioner contested for the post of President as well as to the post of Secretary. After consciously participating in the election knowing that the newly recruited staffs are also going to exercise their voting right as per the By-laws, the petitioner has filed this Writ Petition. The bonafides of the petitioner coming to this court in the above Writ Petition is therefore cannot be accepted.

20. Though this Court has elaborately discussed the issue regarding the validity and about the conduct of the election, the observation and findings of this Court is only for the purpose of this case. The issue regarding validity of the election has been examined by this Court as it is necessary in the present context. However, that does not mean that this Court has finally decided any issue as to the validity of the election or the legality of the resolution passed by the General Body on 27.04.2017. Though no other factual issues were raised before this Court, this court find that necessary parties are not before this Court. It is to be seen that the elected office bearers or the members of the Executive Committee are not before this Court. Hence, this Court cannot adjudicate the validity of the election of the newly elected office bearers and members of the Executive Committee. Hence, when there is a dispute regarding the conduct of election or regarding the administration of the Society, the Civil Court alone is competent to decide the issue.

21. The petitioner has stated that the University has no jurisdiction or power to interfere or involve itself in the internal affairs of the Society. The petitioner has filed the Writ Petition only for adjudication of certain issues relating to the affairs of the Society, without even impleading the necessary parties, who are likely to be affected by the order of this Court. The elected office bearers are not before this Court.

22. As a result, this Court is of the view that there is no merit in the Writ Petition and hence, the Writ Petition is dismissed. However, liberty is given to the petitioner to file a Civil Suit, if he is still interested in challenging the election results. It is noticed that this Court at the time of admission granted interim injunction and thereafter, the interim order was extended periodically. Finally, the respondents are directed to maintain status quo by way of interim orders. Having regard to the nature of order passed by this Court, the interim order is vacated and the miscellaneous petitions are closed. In view of the observations and conclusion of this Court, on the merits of the case, the newly elected office bearers can assume office immediately, if they

were not allowed or could not assume office in view of the interim orders of this Court. No costs.

gsi/pvs

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Registrar,
Bharathiar University,
Coimbatore - 641 046.

2. The Secretary,
Bharathiar University
Teachers' Association (BHUTA),
Bharathiar University,
Coimbatore - 641 046.

3. The Election Officer,
Bharathiar University
Teachers' Association (BHUTA),
Bharathiar University,
Coimbatore - 641 046.

+ 1 cc to M/s.N.Kavitha Rameshwar, Advocate Sr 66350
+ 1 cc to Mr.S.Umapathy, Advocate Sr 66181
+ 1 cc to Mr.S.Muthu Pandiya Rajan, Advocate Sr 66182

KR/12/11/18

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