

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

WP(C) NO. 7958 OF 2023

PETITIONER:

I.B.SATHEESH M.L.A

AGED 52 YEARS

S/O.BALAKRISHNAN NAIR.P., ASWATHY BHAVAN, KANDALA.P.O.,
KOOVALASSERY, THIRUVANANTHAPURAM - 695512

BY ADVS.

LAKSHMI RAMADAS

M.R.SABU

APARNA RAJAN

SREEDHAR RAVINDRAN

ABHIRAM KARIYADATH

RESPONDENTS:

1 THE CHANCELLOR, A P J ABDUL KALAM TECHNOLOGICAL UNIVERSITY,
KERALA RAJ BHAVAN, THIRUVANANTHAPURAM, PIN - 695099

2 A P J ABDUL KALAM TECHNOLOGICAL UNIVERSITY, CET CAMPUS,
THIRUVANANTHAPURAM - 695016

REPRESENTED BY ITS REGISTRAR

3 THE VICE CHANCELLOR, A P J ABDUL KALAM TECHNOLOGICAL
UNIVERSITY, CET CAMPUS, THIRUVANANTHAPURAM, PIN - 695016

BY ADVS.

S.GOPAKUMARAN NAIR (SR.)

ELVIN PETER P.J., SC, APJ ABDUL KALAM TECH. UTY.

S.PRASANTH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Dated this the 17th day of March, 2023

J U D G M E N T

The petitioner is a member of the syndicate of the second respondent University. The writ petition is filed challenging Ext.P6 order of the first respondent-Chancellor, suspending Exts.P3 and P5 resolutions of the Syndicate and the Board of Governors, respectively.

2. As per Ext.P3 resolution, the syndicate resolved to constitute a, “Syndicate Standing Committee on University Administrative Affairs”. Ext.P3 states that the constitution of such Committee is to give administrative support to the Vice Chancellor and Registrar. Ext.P5 is the resolution of the Board of Governors, deferring the implementation of certain transfer orders of employees.

3. As per Ext.P6, the Chancellor, invoking the powers under Section 10(3) of the APJ Abdul Kalam

Technological University Act, 2015 (for short, “the Act”), suspended the operation of Exts.P3 and P5 resolutions, until further orders. The said order, Ext.P6, is assailed in this writ petition.

4. Heard learned Senior Counsel Sri.P.Ravindran on behalf of the petitioner, and the learned Senior Counsel Sri.S.Gopakumaran Nair on behalf of respondents 1 to 3.

5. The challenge against Ext.P6 order is on the ground of, violation of the mandates under Section 10(3) of the Act. The Section provides for grant of an opportunity to show-cause against any proposed order of suspension, prior to passing of such order. Ext.P6 was not preceded by a show-cause and hence is in violation of the said provision, is the contention.

6. Section 10(3) of the Act is extracted hereunder :-

“The Chancellor shall, after obtaining report in writing from the Vice-Chancellor, suspend or modify any resolution, order or proceedings of any authority, body, committee or officer, which

in the opinion of the Chancellor is not in conformity with this Ordinance, Statutes, Ordinances or Regulations or is against the interest of the University and the University, authority, body, committee and officer shall comply with the same.

Provided that, before making any such order, the Chancellor shall call upon the University, authority, body, committee or officer, as the case may be, to show cause within the period specified, why such an order should not be, to show cause within the period specified, why such an order should not be made, and if any cause is shown, the Chancellor shall consider the same and after consulting the Government wherever he deems it necessary, decide the action to be taken in the said matter, and such decision shall be final.”

The section empowers the Chancellor to suspend or modify any resolution of any authority which in his opinion is not in conformity with Ordinance, Statutes or Regulations, or is against the interest of the University. However, the proviso mandates that, before exercise of such power, the Chancellor shall call upon the authority to show-cause as to why such an order of suspension or modification should not be made.

7. In the case at hand, the learned Senior Counsel appearing for the respondents conceded that no such opportunity of show cause was given before passing of Ext.P6 order of suspension. However, the learned Senior Counsel would argue that, the resolutions which were suspended by the Chancellor were grossly illegal and warranted immediate action, which necessitated the issuance of Ext.P6 order. It was further argued that, even a post decisional show-cause notice would be sufficient. The petitioners would be issued with a show-cause notice to which they can give their explanations, and thereafter a final order could be passed by the first respondent, it is contended.

8. I am unable to agree with the submissions of the learned Senior Counsel for the respondents. The power to suspend Exts.P3 and P5 resolutions was traced to Section 10(3) of the Act. The proviso to Section 10(3) as noted above, in unambiguous terms stipulate for an opportunity

to show-cause “before making any such order”. When the power is traced under a statutory provision, compliance in terms thereof is the mandate. Where the law prescribes a thing to be done in a particular manner and following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure (*See Nazir Ahmad v. King Emperor (AIR 1936 PC 253), State of U.P. v. Singhara Singh (AIR 1964 SC 358), Cherukuni Mani v. Chief Secretary, Government of Andhra Pradesh, (2015) 13 SCC 722, Municipal Corporation of Greater Mumbai v. Abhilash Lal & Ors. (2020) 13 SCC 234, OPTO Circuit India Ltd. v. Axis Bank & Ors. (2021) 6 SCC 707, UOI v. Mahendra Singh (2022 SCC OnLine SC 909)*). The statutory prescription of grant of opportunity to show-cause having not preceded Ext.P6 order, the same is liable to be interfered with.

Resultantly, the writ petition is allowed. Ext.P6 order is quashed. However, this shall be without prejudice to the right to proceed afresh in accordance

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-: 6 :-

with Section 10(3) of the Act.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF WP(C) 7958/2023

PETITIONER EXHIBITS

Exhibit-P1	TRUE COPY OF THE GOVERNMENT ORDER NOMINATING THE PETITIONER AS A MEMBER OF THE SYNDICATE G.O.(RT) NO.883/2022/HEDN DATED 14.06.2022
Exhibit-P2	TRUE COPY OF THE NOTIFICATION OF THE APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY ELECTING THE PETITIONER TO THE BOARD OF GOVERNORS FROM MEMBERS OF THE KERALA LEGISLATIVE ASSEMBLY DATED 19.06.2022 NO.KTU/A/1583/2015
Exhibit-P3	TRUE COPY OF THE RELEVANT EXTRACT OF THE RESOLUTION OF THE APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY DATED 11.01.2023
Exhibit-P4	TRUE COPY OF THE COMPLAINT AGAINST THE ACTION OF THE VICE CHANCELLOR ISSUING TRANSFER ORDERS INDISCRIMINATELY ITEM NO.GB-01-RO1 DATED NIL
Exhibit-P5	TRUE COPY OF THE RELEVANT EXTRACT OF THE RESOLUTION OF THE APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY DATED 17.01.2023

RESPONDENT ANNEXURES

ANNEXURE R1 (A)	TRUE COPY OF THE NOTIFICATION NO. GS6-2838/2022 DATED 03.11.2022
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PETITIONER EXHIBITS

EXHIBIT-P6	TRUE COPY OF THE COMMUNICATION OF THE CHANCELLOR SUSPENDING EXT.P3 & P5 PROCEEDINGS OF THE SYNDICATE AND THE BOARD OF GOVERNORS DATED 27.02.2023
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RESPONDENT ANNEXURES

ANNEXURE R1 (F)	TRUE COPY OF THE E-MAIL COMMUNICATION DATED 26.01.2023
ANNEXURE R1 (B)	TRUE COPY OF THE PETITION DATED 09.11.2022
ANNEXURE R1 (H)	A COPY OF THE REPORT DATED 13.02.2023

ANNEXURE R1 (G)	TRUE COPY OF THE LETTER NO. GS6-3302/2022 DATED 09.02.2023
ANNEXURE R1 (I)	TRUE COPY OF THE LETTER NO. GS6-3302/2022 DATED 27.02.2023
ANNEXURE R1 (E)	TRUE COPY OF THE LETTER NO. GS6-3302/2022 DATED 06.01.2023
ANNEXURE R1 (D)	A COPY OF THE REPORT DATED 09.12.2022
ANNEXURE R1 (C)	TRUE COPY OF THE LETTER NO. GS6-3302/2022 DATED 25.11.2022
