

(2011) 02 GUJ CK 0188

In the Gujarat High Court

Case No : Special Civil Application No. 1267 of 2011

Adesh Pal

APPELLANT

Vs

Chancellor, Hemchandracharya North Gujarat University and
Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Hemchandracharya North Gujarat University Act, 1986 — Section 10, 10(1), 10(2), 10(3), 8

Citation : (2011) 52 GLR 889

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : H.J. Nanavati, for the Appellant; Government Pleader, for the Respondent

Judgement

Ravi R. Tripathi, J.—The Petitioner is before this Court challenging order dated 29-11-2010 whereby the Chancellor, Hemchandracharya North Gujarat University, Patan and the Governor of Gujarat rejected the objections raised by one Dr. Manoj Soni and Dr. A.K. Singh, two members of the Search Committee and also the objections raised by the present Petitioner.

1.1. The Petitioner has also challenged the Notification dated 13-9-2010 issued by the Chancellor, Hemchandracharya North Gujarat University, Patan appointing Dr. Hemixa Rao as Vice-Chancellor of Hemchandracharya North Gujarat University, Patan.

2. Learned Advocate Mr. H.J. Nanavati for the Petitioner vehemently submitted that Section 8A of the Hemchandracharya North Gujarat University Act, 1986 (hereinafter referred as "the said Act" for short) provides eligibility of age-limit for appointment, nomination, co-option in various authorities and on various offices. He submitted that Clause (iii) of Sub-section (1) of Section 8A provides as under:

Section 8A(1)(iii): As a member of any of the authorities of the University any committee or any other body thereof, after he attains the age of 62 years;

x x x x

(Emphasis supplied)

2.1. Learned Advocate for the Petitioner submitted that the Chancellor appointed the Search Committee for appointment to the post of Vice-Chancellor u/s 10 of the said Act. Relevant provisions read as under:

Section 10(1): The Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government from amongst three persons recommended under Sub-section (3) by a committee appointed for the purpose under Sub-section (2).

(2)(a) For the purposes of Sub-section (1) the Chancellor shall appoint a committee which shall consist of the following members, namely:

(i) two members (not being persons connected with the University or with any affiliated college, recognised institution or approved institution) out of whom one shall be a person nominated in the manner prescribed by the Statutes by the Executive Council and the Academic Council jointly and the other shall be a person nominated in the manner prescribed by the Statutes by the Vice-Chancellors of all the Universities established by law in the State of Gujarat;

(ii) one member to be nominated by the Chancellor;

(iii) one member to be nominated by the Chairman of the University Grants Commission.

(b) The Chancellor shall appoint one of the four members of the committee as its Chairman.

(Emphasis supplied)

3. The Chancellor of the University appointed the Search Committee in the month of May, 2010. The details of the committee are found in the order dated 30-11-2010 at page 30. Relevant part of which reads as under:

1. Dr. Jaydipsinh K. Dodiya Chancellor's nominee

2. Dr. Ghanshyam Shah U.G.C. Nominee

3. Dr. Manoj Soni Vice-Chancellor's nominee

4. Dr. Avdhesh K. Singh Nominee of the Executive Council and the Academic Council

4. Learned Advocate for the Petitioner submitted that out of four members of the Search Committee, Dr. Manoj Soni and Dr. Avdhesh K. Singh did file their objections before the Chancellor which were considered by the Chancellor in the

very same order which is under challenge in this petition and produced at Annexure-A.

4.1. Learned Advocate for the Petitioner submitted that the fact that Legislature has put the words "any committee" in Clause (iii) of Sub-section (1) of Section 8A of the said Act the restriction of age provided by the said Section will be applicable to the "Search Committee" also, constituted under Sub-section (2) of Section 10 of the Act.

4.2. Learned Advocate for the Petitioner could not convince this Court on the point that "the Search Committee is at par with any other committee of the University". The "Search Committee" as the name itself suggests is appointed for the purpose of making "search" of the suitable candidates for being recommended, to be appointed, to the post of Vice-Chancellor. The important and distinguish factor is that the "Search Committee" has only "one time job" and that job will be over the moment they complete the search of the candidates which the committee is to recommend to the Chancellor for being appointed to the post of Vice-Chancellor.

5. Except this "one-time job" of "search" of candidates for being recommended, the "Search Committee" is not to discharge any other duty/function under the Act. Extending the scrutiny further, the Search Committee is not, drawing any remuneration and even on this count it is different than other committees. Therefore, for the age-limit prescribed in Clause (iii) of Sub-section (1) of Section 8A of the said Act cannot be made applicable to the "Search Committee". For all these reasons the Court is of the opinion that the submission of the learned Advocate cannot be accepted, and the challenge of the Petitioner falls to the ground.

5.1. Besides, the Court perused the order under challenge and found it to be well considered, taking care of every single contention and answering them by very convincing reasonings.

6. One of the grounds on which objections are rejected is the Search Committee was constituted somewhere in the month of May, 2010, and thereafter, it started its meetings and as is recorded in the order, the objection was raised by two members of the committee in its 6th meeting. These details are found in Paragraph 3 of the order which reads as under:

3. The Search Committee had held six meetings as shown below:

Sr.	No.	Search Committee	Date of Meeting	Place
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1	2	3	4	
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1.	Search Committee (First)	25-5-2010	Rajkot	
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2.	Search Committee (Second)	24-6-2010	Ahmedahad	
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3.	Search Committee (Third)	5-7-2010	Delhi	
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4. Search Committee (Fourth) 19-7-2010 Simla
5. Search Committee (Fifth) 1-8-2010 Ahmedabad
6. Search Committee (Sixth) 16-8-2010 Delhi

The objection of over-age in case of University Grants Commission's nominee Dr. Ghanshyam Shah was raised by Dr. A.K. Singh and Dr. Manoj Soni two members of the Search Committee during the 6th meeting of the Committee. The Committee's job and given agenda was to prepare a panel. It was not its function to decide over the eligibility criteria of the Committee members. If the Committee members had doubt about the eligibility of Dr. Ghanshyam Shah, the University Grants Commission's nominee, they should have raised this objection in the very first meeting of the Committee.

It is improper to overpower or undermine the authority of the University Grants Commission which is a Central statutory body duly constituted under the Act of Parliament by quoting the rules of a local State University. Since, higher education is a concurrent subject under the Constitution of India and since the Act of Parliament and statutory bodies established by that Act prevail over all other State Acts the age limit prescribed u/s 8A of the University Act cannot be made applicable in case of the University Grants Commission's nominee.

7. The order then records in Paragraph 5 another reason for which the provision of Section 8 of the said Act is held to be not applicable to the Search Committee. For ready perusal, Paragraph 5 is also reproduced:

5. According to the provision of Section 8 of the Hemchandracharya North Gujarat University Act, 1986 the following are the officers of the University:

1. The Chancellor
2. The Vice-Chancellor
3. The Pro-Vice-Chancellor
4. The Deans of Faculties
5. The Registrar
6. The University Librarian
7. Such other officers in the service of the University as may be declared by the Statutes to be officers of the University.

Section 8A of the University Act provides for eligibility criteria of age-limit for the appointment of nomination, co-option in various authorities and on various officers of the University. It has a specific provision that no person shall be appointed, nominated or as the case may be co-opted on the post of officers as per Section 8, on the post of a University teacher or as a member of any of the authorities of the University, any Committee or any other body thereof after he

attains age of 62 years. There is no mention of Search Committee. In other words the existing legislation does not emphatically say that this ceiling on the age-limit should also be applicable to the members of the Search Committee. From the above, it is clear that provisions of Section 8A of the Act are applicable in a limited area and do not include the Search Committee.

8. Learned Advocate for the Petitioner invited attention of the Court to the decision of the Division Bench of this Court in the matter of Ramanial P. Shah and Another Vs. State of Gujarat and Others, and relied upon the observations made in Paragraph 26 of the judgment. Relevant part of which reads as under:

26. ...In order to see that an independent member who will not have any connection with any of these institutions over which the Vice-Chancellor may have control, the Legislature thought it fit, in order to maintain the purity of the high office of the Vice-Chancellorship to recommend two out of three members of the Search Committee to be a member who is not a person connected with the University or with affiliated College, recognised institution or approved institution. The argument of the learned Advocate General that if the said provision is read as mandatory and the constitution of such Committee is questioned on that basis, the performance of the duty by the said Committee would be set aside, and thereby, inconvenience and injustice would be caused to persons and public who have no control over them, cannot be countenanced for the simple reason that the damage that would be caused by the decision of such an illegal Committee in spoiling the purity of the high office of the Vice-Chancellor will be greater.

9. Learned Advocate for the Petitioner submitted that the observations made by the Division Bench in Paragraph 27 are also relevant for our purpose. Paragraph 27 reads as under:

27. In view of the aforesaid principles and considering the legislative intent in the present case, as also the manner and method in which Section 10(2)(a)(i) is couched, it is amply established of that the direction contained therein for the purpose of selecting two members is mandatory in character.

10. This Court is unable to accept the submission made by learned Advocate for the Petitioner. In the opinion of this Court, the said decision has no application to the facts of the present case and the question about applicability of the provisions of Section 8 of the said Act to the Search Committee appointed under Sub-section (2) of Section 10 of the said Act is rightly decided by the Chancellor and this Court is in full agreement with the said decision. Even, this Court is of the opinion that the provisions of Section 8 of the said Act for the reasons mentioned hereinabove will have no application to the Search Committee constituted under Sub-section (2) of Section 10 of the said Act.

11. Learned Advocate for the Petitioner next relied upon a decision of this Court in the matter of Kantilal Chaturbhai Patel and Others Vs. Chancellor, North Gujarat University and Others, The Court, on perusal, found that the said

decision is also of no help to the Petitioner because in that decision, what was considered by the Court was power of the Chancellor to remand the matter to the Search Committee. So far as the case on and is concerned, there is no challenge to the power of Chancellor. The submission of the learned Advocate for the Petitioner is that the Chancellor ought to have considered the matter and should have reconstituted the committee. If, at all, this submission is to be accepted, then it will mean that the Chancellor had a discretion which could have been exercised. It is a settled law that unless the exercise of discretion or non-exercise of the same is such which can be held to be mala fide no interference at the hands of the Court is called for.

12.1. In the case on hand, even remotely, it cannot be argued and held that discretion is not exercised and that it is mala fide. Therefore, there is no question of issuing writ of mandamus directing the Chancellor to exercise the discretion in a particular manner.

13. In the result, the petition fails and the same is dismissed.