

(2012) 08 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 6095 of 2011

Adesh Pal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Hemchandracharya North Gujarat University Act, 1986 — Section 19, 19, 19(1)(x), 19(1)(x), 65, 65

Citation : (2012) 3 GLH 295

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Sudhir Nanavati, with Mr. Saurabh J. Mehta for Petitioner 1, for the Appellant; Pranav S. Dave, AGP for Respondent 1, Mr. Amit M. Panchal for Respondents 2-3 and Ms. Shivani Rajpurohit for Mr. Nachiket A. Dave for Respondent 4, for the Respondent

Judgement

Mr. K.S. Jhaveri, J.—This petition has been preferred against the action of respondents No. 2 & 3 in not nominating the petitioner herein as Member on the Executive Council of respondent No. 3, Hemchandracharya North Gujarat University (hereinafter referred to as "the University" for short) and also to quash and set aside the Circular dated 28.04.2011 issued by the In-charge Registrar of the respondent-University, nominating respondent No. 4 herein as Member on the Executive Council u/S. 19(1)(x) of the Hemchandracharya North Gujarat University Act, 1986 (hereinafter referred to as "the Act" for short). The controversy involved in the present petition is with regard to the appointment of Member on the Executive Council of the respondent-University u/S. 19(1)(x) of the Act. Section 19 of the Act pertains to constitution of Executive Council of the respondent-University. For the purpose: of the present petition, it would be relevant to refer to Section 19(1) of the Act, which reads thus;

19.(1) The Executive Council shall be the executive Authority of the University and shall consist of the following, namely;

(i) to (v)...

(vi) Two Deans of Faculties nominated by the Vice-Chancellor from amongst the Deans of Faculties by rotation in the manner prescribed by the Statutes;

(vii) to (viii)...

(ix) One University Professor not being a Dean of a Faculty nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes;

(x) One Reader nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes;

2. In the context of the above proviso, it would be relevant to refer to Statutes 65 & 66 of the Statutes framed under the Act, which reads thus;

Statute 65 : A list of University Professors shall be prepared according to the length of their service as Professors in the University. While nominating a Professor by rotation to the Executive Council, the order of Professors in that list shall be followed, provided that names of Professors who are Deans of Faculties shall be ignored according to Section 19(1)(ix). (Note : However, the above provision shall not apply to a Professor or Reader, who is on probation and has been already nominated to the Executive Council.) Statute 66 : The provisions contained in Statute 65 shall apply mutatis-mutandis to the nomination of a Reader on the Executive Council.

3. From the above provisos, it is clear that the Executive Council of the respondent-University is required to be constituted in accordance with the provisions of Section 19(1) of the Act. So far as nomination of Professors to the Executive Council is concerned, Statute 65 provides that a list of University Professors shall be prepared, according to their length of service, subject to the exception provided in Section 19(1)(ix) and that nomination has to be made by rotation. In other words, a senior-most Professor nominated as Member of the Executive Council ceases to be a Member on expiry of his tenure and thereafter, the person next in the seniority list shall be nominated on the basis of rotation. Here, it may be noted that the Statute does not attribute any specific meaning to the word "rotation", as appearing in Statute 65 and therefore, the word "rotation" has to be given its true meaning. Statute 66 provides that Statute 65 applies mutatis-mutandis to the nomination of Reader on the Executive Council.

4. It is the say of the petitioner that the earlier incumbent, one Dr. C. P. Bhasin, who was a Reader in the Chemistry Department of the respondent-University and who was senior to the petitioner, on the basis of the length of service, was the nominee Reader on the Executive Council. His tenure as Member on the Executive Council expired on 04.03.2011. Before expiry of his tenure, the petitioner had addressed a communication to the competent Authority of the respondent-University requesting to nominate the petitioner as Member on the Executive Council from the constituency of Reader, as the petitioner was the next senior most Reader in the respondent-University. However, the respondent-

University did not accept his request and being aggrieved thereby, the present petition has been preferred.

5. During the pendency of this petition, the respondents nominated one Dr. Dilip C. Patel as Member on the Executive Council. Therefore, the petitioner sought and was granted permission to join the said person as party-respondent No. 4 in the present proceedings. On service of Notice, respondent No. 4 appeared before the Court and is represented by learned Counsel Ms. Shivani Rajpurohit appearing on behalf of Mr. Nachiket A. Dave.

6. Mr. Sudhir Nanavati learned senior Counsel appearing with Mr. Saurabh Mehta for the petitioner submitted that under the provisions of Section 19(1)(x) of the Act r/w. Statutes 65 & 66, the petitioner was required to be nominated as Member on the Executive Council since he was the next senior most person in the respondent-University amongst the Readers. However, for reasons best known to the respondent-University, the petitioner was not nominated and instead the respondent-University nominated respondent No. 4 herein as Member though he is junior to the petitioner in service by almost fifteen years and has been placed at Sr. No. 5 in the seniority list. Therefore, the action of the respondents is arbitrary and illegal.

6.1 Mr. Nanavati learned senior Counsel submitted that there is no valid justification on the part of the respondents in denying nomination of the petitioner on the Executive Council. He submitted that nomination on the Executive Council is made on the basis of a policy of rotation whereby, the senior most Reader or Professor, as the case may be, becomes the first nominee in the Executive Council. Therefore, as per the seniority list, the petitioner was required to be nominated, on expiry of the term of the earlier incumbent - Dr. C.P. Bhasin since the next two Readers in the seniority list, viz. Dr. Ambalal Prajapati had superannuated and Dr. V.L. Pandit had expired. The respondents have deliberately misinterpreted the provision in order to deny the petitioner nomination on the Executive Council.

6.2 Mr. Nanavati learned senior Counsel placed reliance upon a decision of this Court in the case of *Indravijaysinh Bhikhubha Gohil Vs. State of Gujarat and Others*, . In that case, the power of Vice-Chancellor to nominate a Member of Court of University as Member of Executive Council was under challenge. The Statute framed under the Bhavnagar University Act, 1978 required nomination on the basis of seniority of Teachers of the University, however, the Vice-Chancellor had nominated a junior to the Council contrary to the University Statutes and therefore, the Court held the action of the State Government of setting aside the nomination as just and legal.

7. Mr. Amit Panchal learned Counsel appearing on behalf of the respondents No. 2 & 3, who are the main contesting respondents, submitted that the petitioner has been nominated as Member on the Executive Council once in the past. He submitted that until the seniority list of Readers is exhausted on the basis of

rotation, the petitioner cannot be nominated on the Executive Council. Since the petitioner was already nominated once and respondent No. 4 herein had never been nominated, the respondent-University nominated respondent No. 4 as Member on the Executive Council. He, therefore, submitted that the petitioner shall have to wait for the next rotation for being again nominated on the Executive Council.

7.1 Learned Counsel Mr. Panchal submitted that the earlier incumbent, Dr. C. P. Bhasin, was nominated on the Executive Council for the 2nd time for the period from 05.03.2008 to 104.03.2011 by rotation. It was only during the pendency of the second nomination of said Dr. C. P. Bhasin that respondent No. 4 herein became eligible for nomination on the Executive Council. Further, respondent No. 4 herein was never nominated as Member on the Executive Council and therefore, his name was nominated.

7.2 Learned Counsel Mr. Panchal further submitted that the petitioner was not nominated since certain inquiries were pending against him at the time when his name had become due for consideration and also since the petitioner was under suspension at the relevant point of time. It was only after the period of suspension got over that the petitioner was nominated on the Executive Council, despite the fact that the petitioner had missed his turn for being nominated, which position has been accepted by the petitioner and has remain unchallenged. Me, therefore, submitted that the respondent-University was justified in nominating respondent No. 4 as Reader on the Executive Council of the respondent-University.

8. Learned AGP appearing on behalf of respondents No. 1 and learned Counsel Ms. Shivani appearing on behalf of Mr. Nachiket Dave for respondent No. 4 adopted the submissions made by learned Counsel Mr. Panchal and supported the action of respondents No. 1 to 3. It was submitted that respondent No. 4 herein has been nominated to the Executive Council as per the provisions of Section 19(1)(x) r/w. Statutes 65 & 66 and therefore, the present petition is devoid of any merits and deserves to be rejected.

9. Having heard learned Counsel for the respective parties, it appears that the dispute involved in this petition essentially revolves around the interpretation of Section 19(1)(x) r/w. Statutes 65 & 66 of the Statutes. Before interpreting the said proviso, it would be beneficial to high-light certain facts that are not in dispute.

(i) The petitioner was appointed as Reader in the English Department of the respondent-University on 23.08.1984 whereas, respondent No. 4 herein was appointed as Reader in the Sanskrit Department on 13.02.2009. Therefore, admittedly, the petitioner is senior to respondent No. 4 in service.

(ii) The petitioner was nominated as Member on the Executive Council in the past for the period from 05.03.2002 to 04.03.2005. Respondent No. 4 herein came to be nominated for the very first time with effect from 28.04.2011, after the filing

of the present petition.

(iii) According to the seniority list prepared by the respondent-University, Dr. C. P. Bhasin is placed at Sr. No. 1, Dr. Ambalal Prajapati at Sr. No. 2, Dr. V.L. Pandit at Sr. No. 3 and the petitioner is placed at Sr. No. 4. Whereas, respondent No. 4 herein is placed at Sr. No. 7. However, out of the three persons who are senior to the petitioner, Dr. Ambalal Prajapati superannuated on 31.12.2002 whereas, Dr. V.L. Pandit expired on 13.10.1998. Therefore, effectively, the petitioner is now placed at Sr. No. 2 in the seniority list after Dr. C. P. Bhasin whereas, respondent No. 4 is placed at Sr. No. 5.

10. We shall now consider the aforesaid facts in light of the provisions of Section 19 of the Act read with Statutes 65 & 66. As discussed herein above, Section 19(1)(x) provides that the Executive Council shall have one Reader nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statute.

11. To get an insight into the controversy on hand, it would be relevant to refer to the dictionary meaning of the terra "rotation". The Oxford University Dictionary defines the word "rotation" as "the act or an instance of rotating or being rotated; a recurrence; a recurrent series or period; a regular succession of various members of a group in office, etc " In the decision rendered in *Indravijaysinh Bhikhubha Gohil's* case (supra) also, this Court has discussed the meaning of the term "rotation".

12. It is well known that any word appearing in any provision has to be understood by its definite or proximal meaning. Section 19 of the Act specifically provides that nomination has to be made by "rotation" in the manner prescribed in the Statutes. There is no dispute between the parties so far as the procedure of nomination is concerned. The dispute is with regard to the interpretation of the term "rotation", as appearing in the provision.

13. On the facts of the case, the respondent-University has interpreted the term "rotation" to mean that respondent No. 4 herein became "eligible" for nomination as Member since all other persons named in the seniority list had already been nominated once to the Executive Council in the past whereas, respondent No. 4 had never been nominated. In my considered opinion, the interpretation made by the respondent-University is lame, unfounded and unacceptable. In fact, it would not be wrong to say that by nominating respondent No. 4 as Member on the Executive Council, the respondent-University has given a complete go-bye or has kept a blinded-eye to the relevant provisions since the procedure of nomination has been completely flouted.

14. The object of the provision is to ensure that every Reader gets an opportunity to serve as Member on the Executive Council on the basis of his seniority in service. If the interpretation made by the respondent-University is accepted, then every new appointee will be nominated as Member immediately after his appointment, which is not the object of the provision and the Statute. Such appointee has to wait till his turn becomes due on expiry of the tenure of

his senior colleagues but, he cannot be nominated on out-of-turn basis by jumping over his senior colleagues.

15. Statute 65 does not attribute any specific meaning to the word "rotation" and therefore, it has to be given its true meaning. If we adopt the interpretation given by the respondent-University, then it would amount to acting contrary to the provision of Section 19(1)(x) of the Act.

16. The appointment of respondent No. 4 is in flagrant violation of the provisions of Section 19(1)(x) of the Act. There is no dispute that respondent No. 4 is qualified for being nominated as Member on the Executive Council. However, at this juncture, respondent No. 4 is not eligible for being so nominated since the petitioner herein, who is senior to him in service, is eligible to be nominated first in point of time, in view of the provisions of Section 19(1)(x) and Statutes 65 & 66. Merely because the petitioner was nominated as Member in the past, he cannot be denied nomination again, if he is, otherwise, eligible for the same.

17. The respondent-University has not pleaded any kind of "disqualification" against the petitioner, which would disentitle him from being nominated as Member. It is not even the case of the respondent-University that the petitioner is not "eligible" for being nominated as Member. Thus, there is no dispute about the fact that the petitioner is "eligible" for being nominated as Member on the Executive Council. However, so far as respondent No. 4 herein is concerned, he is clearly ineligible for nomination since he is not the "senior-most Reader" in the respondent-University, which is the basic requirement.

18. At this stage, the senior-most Reader in the respondent-University is the petitioner herein. As per the rotation policy prescribed in Section 19(1)(x) of the Act, the petitioner is the next "eligible" person for being nominated as Member on the Executive Council on expiry of the tenure of earlier incumbent - Dr. C. P. Bhasin. The petitioner has also not been "disqualified" by the respondent-University, on any ground whatsoever, which would dis-entitle him for being so nominated. Thus, there was no valid and justifiable reasons on the part of the respondents for denying the petitioner nomination as Member on the Executive Council. In view of the above discussion, the petition is allowed. The impugned Circular dated 28.04.2011 issued by the In-charge Registrar of the respondent-University, nominating respondent No. 4 herein as Member on the Executive Council u/S. 19(1)(x) of the Act, is quashed and set aside. The respondents are directed to nominate the petitioner herein as Member on the Executive Council of the respondent-University within a period of Three Weeks from the date of receipt of writ of this order. The petition stands disposed of accordingly. Rule is made absolute.