
(2016) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8780 of 2015

Ajay

APPELLANT

Vs

Kuladhipati, Devi Ahilya Vishwavidyalaya and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 JabLJ 90 : (2016) 2 MPLJ 659

Hon'ble Judges : P.K. Jaiswal and J.K. Jain, JJ.

Bench : Division Bench

Advocate : Manohar Dalal, Learned Counsel, for the Appellant; S.C. Bagadiya, Learned Senior Counsel and Lokesh Mehta, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Jain, J.—1. This writ petition under Article 226 of the Constitution of India has been filed for quashment of the Notification dated 04.12.2015 by which a Committee for appointment of Kulpati of Devi Ahilya Vishwavidyalaya, Indore has been constituted, by the Kuladhipati while exercising the powers under Section 13(2) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 [for short "the Adhiniyam"].

2. Brief facts of this case are that on 10.08.2015, a vacancy for the post of Kulpati arose due resignation of Professor Dr. D.P. Singh Kulpati of Devi Ahilya Vishwavidyalaya, Indore [for short "DAVV, Indore"]. Thereafter, the procedure for the appointment for post of Kulpati started. In the meanwhile, the Kuladhipati appointed Dr. Ashutosh Mishra as acting Kulpati until the appointment of Kulpati. That on 27.08.2015 an advertisement inviting the applications for the post of Kulpati was published in the news papers. In response to the advertisement, Dr. P.K. Gupta, Professor Institute of Management Studies, DAVV, Indore (Respondent No. 3) and Dr. Ganesh Kavdiya, Professor and Head of School of Economics, DAVV, Indore submitted their applications on 07.09.2015 and 30.09.2015 respectively. As per the Provisions of Section 13(2) of the Adhiniyam,

for the appointment of Kulpati, the Kuladhipati has to constitute a Committee consisting of 3 persons, namely, (i) one person elected by the Executive Council; (ii) one person nominated by Chairman of University Grants Commission; and (iii) one person nominated by the Kuladhipati. That on 26.11.2015 a meeting was convened for electing a Member by Executive Council. Twelve Members including respondent No. 3 & 4 participated in the meeting, which was presided by acting Kulpati Dr. Ashutosh Mishra. In the meeting names of 4 persons, namely, Shri Ajay Chordiya (petitioner) Ex Member Executive Council of Rajiv Gandhi Praudyogiki Vishwavidyalaya, Bhopal and Awadhesh Pratap Vishwavidyalaya, Rewa; Professor R.P. Tiwari, Kulpati, Dr. Hari Singh Gaur Kendriya Vishwavidyalaya; Shri Gulab Sharma (Respondent No. 5) retired District Judge, and Professor Rajpal Singh were considered. That in the meeting unanimous decision could not be taken. Looking to the circumstances Dr. K.K. Tiwari withdrew the name of Professor Rajpal Singh. Thereafter, a secret voting was adopted but Acting Kulpati did not participated in the voting. Out of 10 votes, Shri Gulab Sharma got 6 votes; Professor R.P. Tiwari got 2 votes and Shri Ajay Chordiya also got 2 votes. Thus, on the basis of the voting, Shri Gulab Sharma was elected by the Executive Council. Thereafter, the Kuladhipati constituted a committee consisting of 3 persons including Shri Gulab Sharma. In this regard a notification was issued on 04.12.2015. The said Committee was directed to recommend a Panel of not less than 3 persons for appointment of Kulpati of DAVV, Indore. The petitioner being aggrieved with election of Shri Gulab Sharma has filed this petition on the ground that the Election process is biased and against the principal of natural justice and fair play as Respondent No. 3 & 4, who were the aspirants for the post of Kulpati participated in the said meeting held on 26.11.2015 being interested persons. Raising all such objections, the petitioner made a representation on 02.12.2015 to Kuladhipati. However, without considering the petitioner's representation, Kuladhipati issued impugned notification dated 04.12.2015. Therefore, quashment of notification dated 04.12.2015 is prayed in this Petition.

3. The stand of Respondent Nos. 1 and 2 is that Respondent Nos. 3 and 4 being member of Executive Council, have participated in the election process as there is no provision in the Adhiniyam and Rules which prohibits the aspirants for the post of Kulpati, from participating in the election process. It was further pleaded that Respondent No. 5 is not connected with the university or any college, therefore, he is competent to be a Member of Committee for appointment of Kulpati. Hence, he is elected in consonance with the provisions as contemplated in Section 13(2) of the Adhiniyam. Respondent No. 5 was elected with majority of votes as he secured 6 votes out of 10 votes and the victory margin of votes in favour of respondent No. 5 was more than 2, hence, the question of participation of Respondent Nos. 3 and 4 does not, in any way affects the result. It is also stated that the petitioner's name was proposed by one of the member of the Executive Council and during the election process that member has not raised any objection in regard to participation of Respondent No. 3 & 4. Therefore, now

the petitioner cannot raise such an objection regarding eligibility of casting of votes by Respondent Nos. 3 and 4. Hence, there is no merit in the petition.

4. The Respondent Nos. 3 and 4 have not filed any reply to this petition; whereas Respondent No. 5 in his reply pleaded that as per the provisions of the Adhiniyam, Respondent No. 5 is competent and has been duly elected by Executive Council by majority of votes. The Adhiniyam does not provide any specific qualification of the Member of the Committee. The only rider under Section 13(4) of the Adhiniyam is that such a person should not be connected with the University or any College. Hence, the election of Respondent No. 5 is as per the law and there is no violation of any of the provisions of the Adhiniyam and principles of natural justice. Hence, he pleaded for dismissal of the petition.

5. Learned counsel for the petitioner submits that Respondent Nos. 3 and 4 are aspirants for the post of Kulpati as they have submitted their applications on 07.09.2015 and 30.09.2015 respectively. Therefore, they are interested persons, hence, they should have not participated in the meeting which was held on 26.11.2015 for electing a member of the Committee constituted for selection of Kulpati. Though, there is no such provision in the Adhiniyam and Regulations but as per the principles of natural justice and fair play it was expected from aspirants for the post of Kulpati not to participate in a meeting. The Respondent Nos. 3, 4 & 5 all are the residents of Indore, then it is possible that respondent No. 3 and 4 may have influenced the result and that is why more competent person like Professor R.P. Tiwari, Kulpati and Educationist could not be elected. It is also possible that Respondent No. 5 may be biased as he has elected by the aspirants i.e. Respondent No. 3 and 4. In such a situation the whole process is unfair, biased and against the natural justice and fair play, therefore, the impugned notification dated 04.12.2015 be quashed.

6. On the other hand, learned Senior Counsel Shri S.C. Bagadiya for the Respondent Nos. 1 and 2 submits that learned counsel for the petitioner was unable to point out that in the election process, there is any violation of the provisions of the Adhiniyam or Rules. The Respondent No. 5 is an eligible person to be appointed as a Member of the Committee as he is not connected with the University or any of the college. Admittedly the Respondent No. 5 has been elected by the Executive Council and he got 6 votes. There is no bar that the persons who are aspirants for the post of Kulpati and also Member of the Executive Council cannot participate in the meeting of election of representative of Executive Council. Even for the sake of arguments, if it assumed that the Respondent Nos. 3 and 4 casted their votes in favour of Respondent No. 5, and if we deduct such votes, then also it would not affect the result. The decision taken by the Executive Council is an administrative decision which is not open for judicial review. It is pertinent to note that none of the members who participated in the meeting have raised the objection in regard to participation of respondent No. 3 & 4 in the election process. It is also submitted that even in the general election a candidate who is also a voter, can cast the vote. Therefore, there is no

violation of any of the principle of natural justice. It is further contended that principle of natural justice that no one should be condemned unheard is not applicable in this case. Learned Senior Counsel further submits that there is no material on record to infer that the decision of Executive Council is biased or unfair. Thus, there is no merit in this petition.

7. Learned counsel for the Respondent No. 5 while adopting the arguments of learned Senior Counsel Shri S.C. Bagadiya submits that in election of Respondent No. 5, Executive Council has not violated any of the provisions of the Adhiniyam and the principles of natural justice. It is also submitted that if petitioner has any grievance in regard to such election, as per the provisions of Adhiniyam he should have submitted the representation to the Kuladhipati who is the authority to decide such objections and without availing such remedy the petitioner has filed this petition. Therefore, the petition is not maintainable. The petition has no merit. Therefore, it be dismissed with costs.

8. In reply, learned counsel for the petitioner submits that no sooner he received the information that the Executive Council has elected the Respondent No. 5 as the Member of the Committee, he immediately sent a representation to the Kuladhipati by Speed Post and also sent a copy of the same to the Kulpati, but without considering his representation, impugned notification has been issued. In such a situation the petitioner has no remedy available except to file this petition. Hence, the objection taken by learned counsel for the Respondent No. 5 has no merit. Copy of representation is Annexure P/2.

9. During the course of arguments we directed the Respondent No. 1 & 2 to produce the original note sheets and minutes in regard to the process of appointment of Kulpati.

10. After hearing learned counsel for the parties, we have carefully examined the note-sheets and other relevant documents.

11. Admittedly due to resignation of Kulpati - Professor Dr. D.P. Singh on 10.08.2015 the vacancy occurred, therefore, the procedure for appointment of Kulpati was started and in continuation an advertisement inviting applications for the post has been published in news papers on 27.08.2015. In response to the advertisement, Dr. P.K. Gupta (Respondent No. 3) and Dr. Ganesh Kavdiya (Respondent No. 4) submitted their application for the post of Kulpati on 07.09.2015 and 30.09.2015 respectively. As per the Provision of Section 13(2) of the Adhiniyam, for the appointment of Kulpati, the Kuladhipati has to constitute 3 Members Committee which would consist of, one person elected by the Executive Council; one person nominated by the Chairman of the University Grants Commission; and one person nominated by the Kuladhipati. And hence for electing a Member of Executive Council of the University, a meeting was held on 26.11.2015. The meeting was presided by Acting Kulpati Dr. Ashutosh Mishra, total 11 members and Secretary were present in the meeting. In the meeting name of four persons, viz. Shri Ajay Chordiya; Dr. R.P. Tiwari; Shri Gulab Sharma

and Professor Rajpal Singh were considered, but there was no unanimous decision and the name of Professor Rajpal Singh was withdrawn. Therefore, only for remaining three persons, voting was held. In the said election Shri Gulab Sharma got 6 votes; whereas Professor R.P. Tiwari and Ajay Chordiya got 2 - 2 votes respectively.

12. It is to be seen that there is no provision in the Adhiniyam or in the Regulation that aspirants for the post of Kulpati cannot participate in the process of election of Member of the Committee. Hence we are convinced with the arguments of learned counsel for the Respondents that in electing a Member of Executive Council of University, the Council has not violated any of the provisions of the Adhiniyam or regulations made there under. Now we have to consider whether they have violated any of the principles of natural justice. A post of the Kulpati is a very prestigious and high dignitary post, therefore, it is necessary that for the appointment of such post, there should be a fair play of action and transparency.

13. Before we proceed further we would like to refer the various judgments on the principles of natural justice and bias. In this regard it is useful to refer the landmark judgment of the Hon'ble apex Court in the case of A.K. Kraipak vs. Union of India [, (1969) 2 SCC 262] wherein it has held that:-

"15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of

Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund."

14. The Hon"ble Apex Court in the case of Ratanlal Sharma vs. Managing Committee reported in [, AIR 1993 SC 2155] has held that deciding authority must be impartial and without bias. The test is whether there was a real likelihood of bias. Answer to the question whether there was a real likelihood of bias depends upon not what actually was done but upon what might appear to be done. In administrative law, rules of natural justice are foundational and fundamental concepts and law is now well settled that principles of natural justice are part of the legal and judicial procedures and are also applicable to administrative bodies in its decision making process having civil consequences.

15. The Hon"ble Apex Court in the case of State of West Bengal Vs. Shivananda Pathak reported in [, (1998) 5 SCC 513] held as under:-

"31. This Court has already, innumerable times, beginning with its classic decision in A.K. Kraipak v. Union of India [, (1969) 2 SCC 262 : AIR 1970 SC 150] laid down the need of "fair play" or "fair hearing" in quasi-judicial and administrative matters. The hearing has to be by a person sitting with an unbiased mind. To the same effect is the decision in S.P. Kapoor (Dr) v. State of H.P. [, (1981) 4 SCC 716 : 1982 SCC (L & S) 14 : AIR 1981 SC 2181] In an earlier decision in Mineral Development Ltd. v. State of Bihar [, AIR 1960 SC 468 : (1960) 2 MLJ (SC) 16] it was held that the Revenue Minister, who had cancelled the petitioner's licence or the lease of certain land, could not have taken part in the proceedings for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case

against the petitioner. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In *Financial Commr. (Taxation), Punjab v. Harbhajan Singh* [(1996) 9 SCC 281] the Settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The maxim *nemo debet esse judex in propria sua causa* was invoked in *Gurdip Singh v. State of Punjab* [(1997) 10 SCC 641 : 1997 SCC (L & S) 1742].

32. The above maxim as also the other principle based on the most frequently quoted dictum of Lord Hewart C.J. In *R.v. Suxxes JJ., ex. p. Mc Carthy* (1924) 1 KB 256, 159, that:

"It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."

Constitute the well-recognised Rule Against Bias.

33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". De Smith in *Judicial Review of Administrative Action*, 1980 Edn., 262, 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities."

16. In so far as the question whether the decision of the Committee is administrative or quasi-judicial function, we would again like to refer the observation of the Hon'ble Apex Court in *A.K. Kraipak's judgment* (Supra) wherein it has been held that:-

"13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of

quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power....."

17. Now we proceed to test the facts of this case on the touchstone of one of the principles of natural justice and bias. It is to be noted that where a complaint is made before a court that some principle of natural justice had been contravened the court has to decide that whether the observance of such rule was necessary for a just decision on the facts of that case. Admittedly in the present case the Respondent Nos. 3 and 4 have personal interest as they were the aspirants of the post of Kulpati and they were aware of this fact that on 26.11.2015 the meeting was held for election of one of the Member of the Committee, who has to inturn select the candidate for the post of Kulpati. Therefore, in all fairness respondent No. 3 & 4 should not have participated in such a meeting. They have consciously participated in the deliberation and express their views. They have exercised their right of vote. They were not silent spectators in the meeting and as per rules they were not prevented from voting, but their active participation in the meeting itself contaminated the whole process. Hence, the presence of the element of personal bias vitiates the entire proceedings and renders it null and void.

18. It is not possible to furnish actual proof of bias but there are reasons to believe that the Respondent No. 3 & 4 were in a position to influence the result of the Committee. Kindly refer to para 16 of A.K. Kraipak's judgment (supra).

19. It is also to be seen that the meeting was held on 26.11.2015. On 02.12.2015 petitioner has submitted his representation to the Kuladhipati with the request that the election of Respondent No. 5 is in violation of the principle of natural justice, therefore, such election be cancelled and the Executive Council be directed to again start fresh selection process. In the reply of the Petition, the Respondent Nos. 1 and 2 pleaded that the representation dated 02.12.2015 submitted by the petitioner has been duly considered by the Respondent No. 1 i.e. Kuladhipati and the same has been found sans merit, therefore, it has been filed. We have gone through the note-sheets but from the note-sheets it is not reflected that such representation has been considered.

20. It is to be seen that if the decision of the Executive Council is vitiated then the final recommendation of the Committee must also be vitiated, for they cannot be disassociated from the selections made by the Executive Council which is the foundation for the recommendations made by the Committee for the selection of Kulpati. Also the Hon'ble Apex Court in case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant reported in , (2001) 1 SCC 182 at page 201 held that:-

"The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom -- in

the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained....."

21. Moreover, it is to be seen that if the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable on administrative actions. Thus, we are of the considered view that the election of Respondent No. 5 as Member to the Committee for appointment of Kulpati is in violation of the principle of natural justice and fair play. Therefore, we have no option but to quash the notification issued by the Respondent No. 1 dated 04.12.2015.

Thus, the petition is allowed. No order as to costs.