

(1957) 03 OHC CK 0002

In the Orissa High Court

Case No : O.J.C. No"s. 211 and 455 of 1956

Ajoy Kumar Jagadev Mohapatra and Another

APPELLANT

Vs

Saila Behari Chowdhury and Others

RESPONDENT

Date of Decision : 12-03-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 226
Orissa Merged States (Laws) Act, 1950 — Section 4
Utkal University Act, 1943 — Section 1A, 8, 8(3), 9(3)

Citation : AIR 1957 Ori 159

Hon'ble Judges : Narasimham, C.J;P.V.B. Rao, J

Bench : Division Bench

Advocate : B.M. Patnaik and A.K. Roy, for the Appellant; B. Mohapatra and B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

P. V. B. Rao, J.—These two applications under Article 226 of the Constitution raise common questions of law, are heard together and are disposed of by this judgment.

2. O. J. C. No. 211 of 1956, filed on 4-4-56, is an application by the petitioners for issue of a Writ in the nature of quo warranto against opposite party Nos. 1 to 3 who have been elected as Fellows of the Utkal University from the registered graduates constituency, the result of which has been published under notification No. A. A/C-25343-(S. E.) /55 dated the 22nd February 1956 in Orissa Gazette dated 9-3-1956 under the authority of opposite party No. 4, the Vice-chancellor Utkal University as the returning officer, as opposite party Nos. 1 to 3 have no valid authority to hold the office of the Fellows of the Utkal University and for issue of a Writ in the nature of Mandamus against opposite party Nos. 4 and 5, the Vice Chancellor and the Registrar respectively of the Utkal University for quashing the election of opposite party Nos. 1 to 3.

3. O. J. C. No. 455 of 1956, filed on 27-11-56, is an application under Article 226

of the Constitution to direct the opposite party, the Registrar of the Utkal University not to implement the notification No. AD. 20547 (SE) 756 dated 12-11-1958 issued by him under Law 9(2) of Chapter XV of the Statutes of the Utkal University calling upon the registered graduates to file nominations in which it is stated that one at least should be a person belonging to the merged territories and to quash the said notification.

4. The two petitioners in O. J. C. No. 211 of 1956 are registered graduates of the Utkal University within the meaning of the Utkal University Act (Orissa Act No. XIII of 1943). Opposite party Nos. 1 to 3 have been elected as Fellows of the Utkal University from the registered graduates constituency, the election having been notified in the Orissa Gazette on the 9th March 1956.

The petitioners allege that the notification intimating the registered graduates to elect four representatives was issued by the Registrar of the Utkal University on the 6th February 1956, being Notification No. A. A/C-22731-(S.E.)/55 which is annexure A to the application along with a Ballot paper which is annexure B. In para. 3 of Annexure A, condition (II) is as follows: "One at least should be a person belonging to the Affiliated (merged) States". In pursuance of the said notification, opposite party Nos. 1 to 3 have been elected as Fellows of the Utkal University. The petitioner made a representation to the chancellor of the Utkal University contending that the reservation in the registered graduates constituency in favour of persons belonging to the Affiliated (merged) States is discriminatory and the aforesaid representation was received at the Chancellor's office on 5-12-55, a copy of which is Annexure C. Subsequently a reply was received from the Chancellor's office that the representation has been sent to the vice-chancellor for necessary action, but no further intimation was received either from the Vice-chancellor or the Chancellor and the elections were held in spite of the aforesaid objection.

The petitioners also allege that u/s 8(3) (iv) of the Utkal University Act, fourteen registered graduates are to be elected from and by the registered graduates of the Province of Orissa and of the merged territories, provided that at least four of such fourteen registered graduates shall be representatives of the merged territories, and in the statute made under the Act in Law 9 (3) (d) it is also provided in similar terms. The petitioners state that though a provision for representation from the Affiliated States is made, no test is laid therein as to who will represent the Affiliated States and that it is nowhere stated in either of them that the representatives of the Affiliated States must be persons belonging to the Affiliated (merged) States.

Consequently according to the petitioners, the notification issued by opposite party No. 5 the Registrar is ultra vires of the Utkal University Act and the Statutes made thereunder. The petitioners also submit that the reservation of seats in favour of persons belonging to the merged territories in the registered graduates constituency is hit by the Constitutional inhibition under Article 14 of the Constitution and that as the constituency is a constituency of graduates of

the University, there cannot be any reasonable classification on territorial basis as amongst the registered graduates and that the reservation of such seats in favour of persons belonging to the affiliated states has vitiated the entire election in consequence of. which the elections of opposite party Nos. 1 to 3 are not in accordance with law and they are not entitled to the office of the Fellows of the University.

5. In O. J. C. No. 455 of 1956 which is filed subsequently with regard to a similar notification dated the 12th November 1956 calling upon the registered graduates to file nominations in which it is stated that one at least should be a person belonging to the merged territories. On similar allegations made in the other O. J. C. the petitioner asks for a writ on the Registrar not to implement the said notification and to quash the same.

6. The Utkal University Act (Orissa Act XIII of 1943) received the assent of the Governor on the 2nd August 1943 and was first published in the Orissa Gazette on the 6th August 1943, by virtue of which the Utkal University came into existence. At that time in 1943, the Feudatory States in Orissa were, not a part of the province and they had no colleges. After 1943 some colleges came into existence in some States as the States also are Oriya speaking States.

By Section 2 of Orissa Act IX of 1947, namely the Utkal University (Amendment) Act, 1947, Section 1-A was inserted in the Utkal University Act by which the territorial limits within which the powers conferred upon the University by the Act may be exercised were defined to comprise the whole of the province of Orissa and such other Oriya speaking States (hereinafter in this Act referred to as Affiliated States) as may be declared from time to time by notification of the Provincial Government as having agreed to affiliate their educational institutions to the University. It is by virtue of this amendment that the Utkal University got jurisdiction in the Affiliated States. The first contention of Mr. B. M. Fatnaik, the learned counsel for the petitioners, is that as contemplated by Section 1-A of the Utkal University Act. there was no notification made as required in that section after the Adaptation of Laws Order, 1950 under the Constitution of India and as such the notification of the Registrar to hold elections to the Senate u/s 8 (3) (iv) of the Act is not valid.

Section 1-A was passed at a time when the Affiliated States were not a part of the Province of Orissa. but subsequently the Orissa States were merged in the Province of Orissa and Mr. Fatnaik does not contend that there was no notification made after some colleges came into existence in the Affiliated States, in fact there were notifications made in 1947 and 1948, but his contention is that there was no fresh notification after the Constitution and the Adaptation of Laws Order. By Ordinance IV of 1949, the University Act, as amended, was made applicable to the merged States. The Orissa Merged States Act also by Section 4 extended the Utkal University Act as amended subsequently and is in force in the merged States since that time. Section 1-A of the Utkal University Act as adapted is as follows:

"Section 1-A. The territorial limits within which the powers conferred upon the University by this act may be exercised shall comprise--

(i) the territories included in the Province of Orissa on the 8th day of April, 1947, and

(ii) such other territories now included in the State of Orissa (hereinafter referred to as merged territories) as the State Government may specify by notification in the Official Gazette."

By Section 17 of the Adaptation of Laws Order, 1950, the provisions of that order which adapt or modify any law so as to alter the manner in which, the authority by which or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the appointed day, and u/s 20, nothing in that order shall affect the previous operation of, or anything duly done or suffered under, any. existing law. or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law. The Utkal University Act was an existing law at that time and was adapted with a modification of Section 1-A of the Act. Consequently, in my opinion, there is no force in the contention advanced by Mr. Patnaik.

7. Mr. Patnaik next contends that B. 8(3) (iv) of the Utkal University Act providing fourteen registered graduates to be elected from and by the registered graduates of the Province of Orissa and of the merged territories, of which four at least should be representatives of the merged territories is contrary to Article 14 of the Constitution. The constituency being a constituency of registered graduates to elect representatives to an educational body like the Senate, should not be restricted by the condition that four at least should represent the merged territories.

The condition that four at least should be representatives from the merged States is a territorial discrimination which is not warranted by the Constitution. Since the constituency is of registered graduates of the University, the classification on territorial basis is not reasonable.

8. Mr. Patnaik relied upon an observation made by His Lordship S. R. Das, C. J. in his judgment at page 26, in the case of Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others, .

"We do not, however find it necessary to express any opinion on the extreme contention urged by the learned Attorney-General, on the authority Of that decision, that a mere territorial classification, by itself and without anything else, is enough to place the law beyond the operation of the equal protection "clause."

But the decision of their Lordships in this case is against Mr. Patnaik's contention. It was held in this case.

"While Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. The classification may be founded on different bases; namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

The learned counsel also referred us to a sentence in the quotation at page 66 from the case of *Southern Railway Co. v. Greene*, 1909-216 U.S. 400 (B) in the case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, to this effect,

"Arbitrary selection, it has been said cannot be justified by calling it classification."

His contention is that the representation given to the Affiliated States is an arbitrary selection. That case decided.

"A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it."

Next he referred us to an observation of Mahajan J. in the case of *The State of West Bengal Vs. Anwar Ali Sarkar*, .

"The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection."

In the instant case before us, it is not a mere arbitrary selection as I will show presently. The observation in the case of *Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others*, at p. 220 cited by Mr. Patnaik also does not apply to the present case. It was observed in the Judgment delivered by S. R. Das J. (as he then was) at page 193 in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, :

"It is now well established that while Article 14 forbids class legislation, it does not, forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

This observation, in my opinion, is not of any help to Mr. Patnaik as will hereafter be shown. Next he relied upon an observation made in the case of *Bidi Supply*

Co. Vs. The Union of India (UOI) and Others, . This is the same observation made by his Lordship S. B. Das C. J. as in the other case.

9. Clause (3) of Section 3 of the Utkal University Act says:

"The University shall be deemed to have been incorporated for the purposes, among others, of making provision for imparting education, of promoting " original research, of examining students and conferring degrees, of admitting educational institutions to its privileges, of inspecting the colleges and supervising all matters of education and discipline therein, of controlling the residence and discipline of the students of the University and of promoting their physical, mental and moral welfare."

Mr. Patnaik candidly admitted that the States which have merged into the Province of Orissa are as far as educational matters are concerned not so advanced as that of the original province of prissa. Section 1-A was inserted in the University Act in 1947 after certain colleges came into existence in certain feudatory states and as the purpose for which the University was incorporated is for making provision for imparting education, of examining students and conferring degrees, of inspecting colleges and supervising all matters of education . and discipline etc. and as at that time those States were not a part of the province and were on the other hand semi foreign States and as those States agreed to affiliate to the Utkal University, it is but reasonable that some territorial representation should be given to those States.

In accordance with the observations of their Lordships of the Supreme Court quoted above, such a geographical classification contained in Section 8(3) (iv) of the Act is, in my opinion, a reasonable classification and is not hit by Article 14 of the Constitution and is not discriminatory even after they became part of the State of Orissa. The number of graduates in the merged States is small. There are colleges. In accordance with the objects of the University Act, it is but necessary that some provision should be made in the Act that there is adequate representation from those States to the Senate from the registered graduates constituency.

Under Section 8(5) of the University Act, the Senate is the Supreme Governing Body of the University having power to review the actions of the Syndicate and of the Academic Council and so it is reasonable to provide representation for the merged States to the Senate. Under Article 15(4) of the Constitution, the State is not prevented from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Schedule Tribes. As already stated, the object of the University under the Act is also for making provision for imparting education. There is thus a nexus between the basis of classification and the object of the Utkal University Act which is impugned. In view of the reasons stated above. I am of opinion that Section 1-A is not hit by Article 14 of the Constitution.

10. The next contention of the learned counsel for the petitioners is that the

notification is- sued by the Registrar is not In accordance with Section 8(3) (iv) of the University Act and the Statutes framed by the University. Section 8(3) (iv) of the Act is as follows:

"(iv) fourteen registered graduates to be elected from and by the registered graduates of the province of Orissa and of the Affiliated States:

Provided that at least four of such fourteen registered graduates shall be representatives of the Affiliated States:

X X X X"

The relevant law in the Statutes in Law 9(3)(d) of Chapter XV to the effect:

"The Registrar shall call upon the registered graduates of the Province of Orissa and of the affiliated States to elect fourteen of their members of whom at least four shall be representatives of the Affiliated States....."

Under Law 2 of Chapter XV:

"It shall be the duty of the Vice-Chancellor, subject to the approval and concurrence of the Chancellor to arrange the time and date on which election shall take place in the case of a vacancy....."

Law 8. Part (2) of the same Chapter lays down that the Vice-Chancellor shall prescribe the forms for the conduct of elections in accordance with the provisions of the Act and the Statutes. Annexure A, the notification made by the Registrar for the elections in dispute under Law 9(3) of Chapter XV of the Statutes is as follows:

"1. This is to give notice that the Chancellor has been pleased to appoint Monday, the 31st December; 1956. 12 Noon as the date and hour for election of Representative Fellows of Class I(iv) of Sub-section (3) of Section 8 of the Utkal University Act to be elected by and from among the Registered Graduates of the Utkal University.

2. The number of vacancies in Class I(iv) of Sub-section (3) of Section 8 of the Utkal University Act is THREE--for filling which election will be held In (accordance with Law 9(3) of Chapter XV of the i Statutes.

3. Each elector is entitled to nominate in the prescribed form enclosed 3 (three) registered graduates as enlisted in the Electoral Roll for the Registered Graduates" Constituency, 1956-57 subject to the conditions given hereunder:

(a) Two at least should be persons who are not salaried servants of the State or the Central Governments;

(b) One at least should be a person belonging to Merged Territories; and

(c) One at least should be person belonging to the Faculty of Veterinary Science and Animal Husbandry.

X XXX"

The form for nomination prescribed under Law 9(3) of Chapter XV of the Statutes--senate Election Form D(2) is as follows:

"I-----A registered graduate of the Utkal University, do hereby nominate the persons named below to serve on the Senate as Representative Fellows from the Registered Graduates" Constituency."

The second column of the Table is headed "Name, qualifications and address as entered in the Electoral Roll". The sixth column is headed "Whether belongs to a merged territory":

11. Mr. Patnaik's contention is that the forms prescribed for the conduct of election in accordance with the provisions of the Act are not in accordance with the direction contained in Section 8 (3) (iv) of the Act. According to him, Section 8 (3) (iv) requires that at least four of such fourteen registered graduates shall be representatives of the Affiliated States and the notification of the Registrar and the forms by which that clause is to be brought into effect require that the representatives of the Affiliated States should belong to the States and as such are not in accordance with the Act. There can be no representation of the Affiliated States unless the Statutes are so framed as to see that those persons are nominated and elected by the registered graduates of the merged States. It is not necessary that the candidate should belong to the merged States.

Anyone of the registered graduates even if he belongs to the province and not the merged States can be elected as a representative of the merged States if the election is made as far as the merged States are concerned, by the registered graduates of the merged States. In that view of the matter Mr. Patnaik contends that the petitioners are prejudiced inasmuch as they were not by virtue of the notification entitled to be nominated as the representative of the merged States. The requirement in the notification that one at least should be a person belonging to the merged territories in order to satisfy the requirement of the Act is ultra vires inasmuch as the expression "belonging to" is vague and indefinite. It is not stated whether the expression "belonging to" refers to the birth in the merged territories or residence in the merged territories or domicile in the merged territories and no other qualifications are fixed.

He cited his own example that he was born in the merged States, but immediately after his birth he was never in the merged States" and though according to the notification he can be qualified to be elected as a representative of the merged States under no circumstance, can he be a representative of the merged States inasmuch as he never was in those States. According to him it is incumbent in order to carry out the provisions of the Act that the forms should be so prescribed as to include a real representative of the merged States whether he belongs to or does not belong to the merged States. Practically he visualises a primary election in the first instance from the registered graduates of the merged States and then election by the general constituency.

Mr. B. Mohapatra for the University contends that the only mode by which the requirement of Section 8(3) (iv) of the Act can be effectuated is by requiring that the representatives of the merged States should belong to the merged States and that the notification and the forms are in accordance with that and therefore the condition in the said notification and the form is not ultra vires of the Act. According to his contention, the constituency is a constituency of nil the registered graduates and as such all the registered graduates have the right to send representatives of the merged States to the State.

If a rule is made that the representatives of the merged States should be elected by the registered graduates of the merged States, then the constituency may be changed and it cannot be said to be a constituency of registered graduates who are entitled to send fourteen representatives to the Senate. He also places before us the form of registration to be entered on the roll of registered graduates maintained under Law (1-A) (c) (3) and (4) of Chapter XIV of the Statutes. The declaration in the form to be made by the graduates seeking registration is as follows:

"I declare that I am ordinarily resident in Orissa and/or the State under the jurisdiction of the Utkal University and am qualified to register my name in the Register of Graduates under Law (1-a)(c)(4) of Chapter XIV of the Statutes of the University."

The declaration in this form does not support the contention of Mr. Mohapatra. If one is born in the province of Orissa but was reading at the time of registration in the State under the jurisdiction of the Utkal University he can come as a person belonging to the State. If one is born in the State under the jurisdiction of the Utkal University but ordinarily resides in Orissa, he can also make the declaration required as per the form for registration of graduates.

Mr. Mohapatra also frankly conceded that the register of graduates maintained by the University does not show whether the registered graduates belong to the merged States or to the province of Orissa. On these facts, it appears that the Statutes made in connection with Section 8(3) (iv) and the notification issued thereunder are not definite so as to bring in at least four representatives of the merged States to the Senate.

12. Mr. Mohapatra also contended that the expression "belonging to" means "of" and if a person is born in the merged States, he is of the merged States and therefore he is a representative of the Affiliated States. In Ramanatha Iyer's Law Lexicon at page 899. "belonging to" is given as a meaning of "of". But the expression "belonging to" has a greater legal significance. At page 128 of the Law Lexicon, it is stated that

"The term "belong" in Section 400 (I. P. C.) implied something more than the idea of casual association: it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected was

identified himself with a band, the common purpose of which is the habitual commission of dacoity."

(See *Bachchu v. Emperor* AIR 1930 Oudh 455 (H)). From this it appears that "belonging to a territory" connotes something more than mere birth in the territory and there must be some association or intimate connection with the persons of the State. The expression "ordinarily resides" may be a better expression to satisfy the requirements of Section 8(3) (iv) of the Act. In my opinion, therefore, there is some force in Mr. Patnalk's contention that the Statutes framed in connection with Section 8(3)(iv) of the Act as also the forms prescribed and the notification made are not in accordance with the section of the Act. But it cannot be definitely held that the expression "belonging to" in the notification is ultra vires of Section 8(3) (iv) of the Act as such construction of Section 8(3)(iv) is also possible. It is desirable that the statutes and the notifications etc. made u/s 8(3) (iv) are so altered as to be consistent with the object of Section 8 (3) (iv) of the Act, in unambiguous terms.

13. Mr. B. Mohapatra then contends that the petitioner are not entitled to maintain the application for issue of a writ in the nature of a quo warranto, as the petitioners are private individuals. In the case of *King v. Speyer* (1916) 1 KB 595 (I), it was held:

"An information in the nature of quo warranto will lie at the instance of a private relator against a member of the Privy Council whose appointment is alleged to be invalid."

In the course of the judgment. Lord Reading C. J. observed after quoting the opinion of Tindal C. J.:

"It establishes that, whereas formerly a quo warranto was held to lie only where there was usurpation of a prerogative of the Crown or of a right of franchise, a proceeding by information in the nature of a quo warranto has long since been extended beyond that limit and is a remedy available to private persons within the limits stated by Tindal C. J. and subject always to the discretion of the Court to refuse or grant it.""

14. In the two applications before us, the petitioners never contested for a seat in the Senate, did not file any nomination paper and had nothing to do with the election except being on the roll of the registered graduates of the University. Though they are entitled to file an application for a Writ in the nature of a quo warranto. they are not in any way prejudiced by the elections held by virtue of the notifications issued by the Registrar, according to the rules and forms prescribed by the Statutes;

They are not also residents of the merged States so as to come under the category of the persons aggrieved. The elections are already held. The person elected to represent the merged territories is opposite party No. 3 Shri Pratap Kesari Deb, M. L. A. Maharaja of Kalahandi. It is undisputed that he not only

belongs to the merged States, but also resides in the merged States and represents the merged States. He is not a person who is simply born in a merged State and afterwards residing in the province. He was the Ruler of the State of Kalahandi and now resides at Kalahandi owning properties.

In the very decision cited by Mr. Patnaik as an authority for the position that he is entitled to file an application in the nature of a quo warranto Lord Reading C. J. observed at page 609 that the issuance of a Writ in the nature of Quo warranto is always subject to the discretion of the Court to refuse or grant it. We do not think we should exercise our discretion under the circumstances present in this case to issue such a Writ.

15. Before closing the judgment, I may observe that it is regrettable the authorities concerned did not reply finally to the representations made by the petitioners contending that the reservation in registered graduates constituency in favour of persons belonging to the Affiliated (merged) States is discriminatory. The representation was received in the Chancellor's office on 5-12-55. A reply was received from the Chancellor's office that the representation had been sent to the Vice-Chancellor for necessary action but no further intimation was received and the elections were held subsequently without disposing of the objections.

In the counter-affidavit on behalf of the Vice-Chancellor and the Registrar, opposite party Nos. 4 and 5, the Registrar stated that no reply was given to the petitioners as the revised programme of election with the approval of the Chancellor was issued on 6-2-1956. In my opinion, this does not explain why the objections were not enquired into and necessary action taken as directed by the Chancellor and a reply given to the objections raised. The objections are not so frivolous as to be ignored.

Some reply ought to have been given by the Vice-Chancellor to the representation as the Chancellor forwarded it to the Vice-Chancellor for necessary action, and Intimated the same to the petitioners.

16. The applications are accordingly dismissed, but in the circumstances without costs.

Narasimham, C.J.

17. I agree that the application should be dismissed without costs.

18. The main question for consideration is whether the notification (annexure A) issued by the Registrar under Law 9(3) of Chapter XV for election of registered graduates from the merged territories (affiliated States) is ultra vires Section 8(3) (iv) of the Utkal University Act and the statutes framed under that Act. Section 8(3) (iv) of the Act is as follows:

"(iv) fourteen registered graduates to be elected from and by the registered graduates of the Province of Orissa and of the merged territories: Provided that

at least four of such fourteen registered graduates shall be representatives of the merged territories."

It will be noticed that this provision leaves many matters in a vague and uncertain conditions. For instance, it does not say whether the registered graduates of the merged territories should form a separate electorate as it were elect four persons as their representatives whereas the Registered Graduates of the State of Orissa excluding the merged territories would elect the remaining ten representatives. It is also not clear as to whether even though four seats were reserved for the merged territories, the registered graduates of the merged territories were eligible to vote for the election of the remaining ten graduates from the State of Orissa.

Again it is arguable that on a mere construction of the provision, even a registered graduate from the State of Orissa may be elected as a representative of the merged territories if the graduates of the merged territories so desired. The question as to whether two separate electorates were constituted for election from the two areas, or else whether there was only one electorate with mere reservation of seats for the registered graduates of the merged area cannot be easily answered from a mere construction of the statutory provisions; and the various alternative methods of election mentioned above may all be justified as following from a mere construction of the same. Apparently the legislature left it to the Senate to make the necessary provision in the Statutes for implementing the provision of the Act. Clauses (a) and (f) of Sub-section (1) of Section 19 of the Act leave these matters to be regulated by the Statutes.

19. The relevant provisions in the Statutes dealing with the preparation and maintenance of the Register of registered graduates and the holding of elections are contained in Chapters XIV and XV of the Statutes.

They seem to contemplate the maintenance of only one register and not two registers one for the merged area and one for the non-merged area. There is also no provision to the effect that the voters of each of the two areas form a separate, electorate, as it were, and elect their own representatives having no right to vote for the representatives of the other area. There is also no clear provision either in the statutes or in the forms prescribed for enrolment or nomination, as to the circumstances under which a person can be said to "belong" to the merged area.

There is nothing to indicate as to whether the place of birth or the place of permanent residence will be the decisive factor, or what will be the minimum number of years of residence for the purpose of justifying a person's claim to belong to a particular area. There is, therefore, some justification for Mr. Patnaik's contention that, in the absence of detailed provision in respect of these matters the Registrar's notification calling upon persons "belonging to the merged area" to elect their representatives may cause some ambiguity.

But a discussion of these matters is academic in the present case inasmuch as

the person who was nominated to represent the merged area viz., Shri Pratap Kesari Deb, Maharaja of Kalahandi, undoubtedly belongs to the merged area whatever may be the meaning to be given to the expression "belong". If the nomination of any other candidate who had applied for this reserved seat on the ground that he belonged to the merged area had been rejected by the authorities there might be some justification for us to look in the matter in greater detail.

But it was fairly conceded by Mr. Patnaik that the petitioners were not the rival candidates, nor was any other nomination from the merged area lejected. Hence, so long as the representative from the merged area undoubtedly belongs to that area, it seems futile to examine this question further. It is sufficient to say that the method of election for the merged area followed by the Registrar is one of the various alternative methods that will be permissible from a strict construction of Section 8(3) (iv) of the Act and hence it cannot be held to be ultra vires.

20. We however trust, that with a view to avoid future difficulty, the Senate would amend the Statutes and make detailed provisions so as to leave no room for ambiguity regarding (i) the method of electing people from the merged area & (ii) the qualifications necessary for a person claiming to represent the merged area.