
(1976) 01 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 184 of 1976

Anandrao Dinkarrao Shinde and Another

APPELLANT

Vs

P.G. Patil and Others

RESPONDENT

Date of Decision : 23-01-1976

Acts Referred:

Bombay General Clauses Act, 1904 — Section 7
Companies Act, 1956 — Section 253, 255, 285
Shivaji University Act, 1962 — Section 10
Shivaji University Act, 1974 — Section 12, 12(3), 12(4), 16, 17

Citation : AIR 1977 Bom 177 : (1976) 78 BOMLR 608

Hon'ble Judges : Mridul, J;Deshpande, J

Bench : Division Bench

Advocate : M.L. Pendse, for the Appellant; Raja S. Bhonsale and A.C. Agarwal, Asst. Government Pleader, for the Respondent

Judgement

Deshpande, J.—The petitioners were elected as Deans respectively for the Faculties of Commerce and Arts in the Shivaji University at Kolhapur on 10th November, 1972. These elections were held under the provisions of the Shivaji University Act of 1962 (hereinafter referred to as "the Repealed Act") and the Statutes framed thereunder. Section 25 thereof provided that there should be a Dean for each Faculty and that he should be elected by the Faculty from amongst its members. The term of the office of the Dean was left to be prescribed by the Statutes. Under Statute 104, the term of the Dean was limited to three years. It was, however, open for the Dean to seek re-election. On 31st May, 1974, the 1962 Act was repealed by the Shivaji University Act of 1974 (referred to hereinafter as "the new Act"). u/s 12 of the new Act also, a Dean for each Faculty is to be elected by the Faculty from amongst its members other than the student members. Under Sub-section (3) itself the term of the office of the Dean is limited to three years and Sub-section (4) prevents any person from holding the office of the Dean for two consecutive terms.

2. The Registrar of the Shivaji University issued a notice on 5th January, 1975,

calling upon the members of all Faculties to elect Deans for the respective Faculties. Under the said notice such elections were to be held on 27th January, 1976, and nominations were invited before 10th January, 1976, last date for withdrawal of the nominations being fixed on 13th January, 1976. The said notice also indicated that the persons holding office of the Dean at the commencement of the 1974 Act would not be eligible to contest the election to the said office.

3. It appears that some doubt had arisen about the true import of Section 12 (4) and the eligibility of existing Deans to contest elections, even before the issuance of the above notice. The Vice-Chancellor referred this question of interpretation to the Chancellor u/s 86 of the new Act. The Chancellor declared that the prohibition u/s 12 (4) also applied to the Deans, elected under the repealed Act and, holding such offices at the commencement of the new Act. Direction in the notice to the above effect is based on this decision of the Chancellor. Validity of this decision and the above direction in the notice is challenged in this Special Civil Application by the above petitioners, who desire to contest elections.

4. Mr. Pendse, the learned advocate for petitioners contends that the reference by the Vice-Chancellor to the Chancellor without the requisition of not less than 25 members of senate is not competent as also the decision thereon. It is not disputed before us that the reference was made by the Vice-Chancellor suo motu u/s 86 without such requisition and the letter dated 19-2-1975 conveys the Chancellor such a decision thereon. It was also not disputed that prohibition, stipulated in the notice of the Registrar against the existing Deans from contesting the election afresh, is based on this decision. Close reading of Section 86 indicates that it enable the Vice-Chancellor to make reference to the Chancellor on the question of interpretations detailed therein either (1) on the motion of any person or body directly attracted or (2) suo motu. Making of such reference, however, appears to be discretionary and entirely a matter of his choice. This is what the word "may" should indicate. The proviso to this section, however, makes it obligatory on him to make such reference when there is a requisition. This is what the word "shall" indicates. Thus the main section and its proviso are respectively directory and mandatory provisions, the obligatory situation arising, only when there is a requisition for the same. Looked at this way, it should be difficult to hold that the reference made by the Vice-Chancellor suo motu was in any manner irregular or incompetent. It is, however, not necessary to pursue this point further as the decision is not conclusive and is open to examination in this writ petition on its own merits.

5. As indicated earlier, it was open for the petitioners to contest the election afresh after the expiry of the term of three year period, under the repealed Section 2s read with statute 104, Section 12 (4) of the Act, however, prevents holding of the office for two consecutive terms, thereby prohibiting the then holder of the office from contesting such election afresh. Ordinarily the words "consecutive terms" would mean the terms undergone and worked out under the new Act and the term held under the repealed Act would be as much irrelevant

as such terms of Dean held under other enactments and in other Universities. The words cannot include such terms without some indication of any such Legislative intent.

6. Mr. Bhonsale and Mr. Agarwal, the learned Advocates for the respondents, contend that acts done, elections and offices held, including elections of offices of Deans under the repealed Act, are deemed to have been done and held under the new Act by virtue of saving provisions of the new Act. Reliance was placed on Section 91 (ii) (a) and 91 (xi) of the Act in support of this contention. It is obvious that in the event of there being any legislative fiction, of the offices held under the repealed Act being treated as under the new Act, the fiction shall have to be given effect to, and in that case by virtue of such fiction the Deans elected under the Repealed Act and holding office at the commencement of the Act would be deemed to have been prevented from contesting the election afresh. In that case by seeking election, they would -virtually be trying to hold office for consecutive terms prohibited u/s 12 (4) of the Act. This necessitates close examination of the two clauses of Section 91.

7. Section 91 (ii) (a) is as follows;

"All members of the Senate, the members of the Syndicate and the Academic Council, the Boards of Studies and other authorities, bodies and committees of the University constituted under the said Act, and in office immediately before the commencement of this Act, shall be deemed to be respectively the members of the Senate, of the Executive and Academic Councils, the Boards of Studies and other corresponding authorities, bodies and committees of the University, and shall, until the date, being not later than six months from the date on which this Act comes into force, on which the Vice-Chancellor declares that the Senate has been duly constituted, exercise all the powers and perform all the duties conferred on the authorities, bodies and committees under this Act;"

Under Sections 17 and 22 of the repealed Act, Deans of all the Faculties were the ex-officio members of the Senate, and the Academic Council respectively. Under the above clause, the Deans like other members of these two bodies, are deemed to have become the members of corresponding bodies under the new Act, and also are enabled to exercise the powers conferred on them as such members under the new Act. It however does not save, their elections to the offices, or their holding of the office on the strength thereof, or continuity therein. In other words, the clause only saves the membership of the Deans of the above two bodies and of other bodies in which membership is held by them ex-officio, obviously to ensure the continuity and functioning of such bodies till the same are reconstituted under the new Act. The clause, however, presupposes that such membership is otherwise subsisting and the holders of the offices of Deans are otherwise enabled to hold them under some other provision. This clause does not require the elections of these Deans held under the repealed Act to be deemed to have been held under this Act, nor does it enable the Deans to discharge and perform, their several other statutory functions as such Deans.

The Deans cannot also be considered to be "authorities" referred to in this clause, as they are not one of the authorities notified u/s 16 of the repealed Act and Section 19 of the new Act, though ordinarily Deans could have easily been held to be such authorities. There is also much substance in the contention of Mr. Pendse that Deans cannot appropriately be brought under the connotation of the word "bodies" sought to be saved under this clause. Section 91 (ii) (a), therefore, cannot be pressed into service for deeming the Deans elected under the repealed Act to have been elected under this Act.

8. Section 91 (xi) is as follows:

"The appointment of the Registrar and all other officers and employees of the University constituted under the said Act, and validly made under that Act, and subsisting immediately, before the commencement of this Act, shall be deemed to have been made under and for the purposes of this Act; and the Registrar and such other officers and employees shall continue to hold office and to act, subject to the conditions governing the terms of their office or employment, except in so far as such conditions may be altered by a competent authority."

This clause is aimed at saving the appointment of the Registrar and all other officers and employees, provided (1) the same are validly made under the repealed Act, and (2) the same were subsisting at the commencement of the Act. Such appointments made under the repealed Act are required, under this clause, to have been "under and for the purposes of this Act", u/s 10 of the repealed Act and u/s 8 of the new Act, Deans are expressly shown to be the "officers" of the University along with the Vice-Chancellor and the Registrar and others. This clause thus ensures continuity of the Deans elected under the repealed Act, even after its repeal. The clause creates a fiction of their having been appointed under the new Act and for its purposes.

9. Mr. Pendse, however, contends that the clause is essentially aimed at saving, the appointments of salaried servants and not of elected honorary officers. He firstly relies on the use of the expression "appointment" and emphasises how inappropriate it is to warrant inclusion therein of the elected officials like the Deans, The contention is, no doubt, attractive and plausible. It, however, loses its edge once it is borne in mind that officers under both the enactments include even such elected Deans along with salaried servants like Registrar and Librarians. The Deans ordinarily would answer the connotation of the word "authority" whose constitution under the repealed Act is to be deemed to have been continued under the Act by force of clause (ii) (a) of Section 91. We had to reject such contention because of his being excluded from the purview of the "authorities" u/s 19 of the Act and corresponding Section 16 of the repealed Act, For this very reason, Deans cannot be excluded from the purviews of Officers covered by clause (xi) of Section 91. It is true that ordinarily person elected to an office is not described as being appointed thereto. Even so, such expression cannot be said to be wholly inappropriate and unknown to the legal dictionary to indicate occupation of post by process of election. According to Oxford English

Dictionary, Volume I, page 409, item 8, the word "appointment" includes the process of "nominating to, or placing in. an office". A person can be placed in office as such effectively by nomination, selection, promotion as by election, and each one of these processes can be described broadly by the word "appointment", Provisions of Sections 253, 255, 285 (b) of the Companies Act 1956 are instances in point which speak of appointment of Directors, though majority of them are elected. 10. Secondly, salaried "officers" also happen to be "employees". It was not necessary to introduce the word "officers", if clause were intended to cover only salaried employees. Reliance was also placed on the words of the clause indicating that officers and employees were to continue to hold offices and act "subject to conditions governing the term of their offices or employment" till the same are altered by competent authority. Apparently, this gives an impression as though the clause seeks to protect the service conditions of the salaried employees. But there is nothing to exclude, the reference being even to the terms of offices of the Deans.

11. It was also argued that even when the Vice-Chancellor and the Registrar are included in the list of "officers" under both the enactments, the term of each one of them is specifically saved under clauses (i) and (xi). Absence of such specific reference, according to Mr. Pendse, indicates the legislative intendment of not saving the elections of the Deans held under the repealed Act. We are unable to see any merit in this contention. Both these officers are of undoubted importance to the functioning of the University and Legislature seems to have made specific provision for their continuance, out of abundant precautions. In fact, clauses (ii) and (xi) in between them exhaust all the Committees, authorities, bodies and officers and employees whose appointments and constitutions under the repealed Act are sought to be saved and continued under the new Act It is difficult to find any good reason or basis as to why the legislature could have intended to exclude Deans alone from the saving clauses. The circumstance that the membership of all the members, including that of the Deans of the Senate and the Council, is saved, indicates the legislative intendment to ensure continuance and saving of even the holder of the said offices.

12. This apart, under clause (b) of Section 7 of the Bombay General Clauses Act, repeal of any enactment does not "affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder". This would be of course so, as indicated in the opening part of this section "unless a different intention appears". We have already discussed above how there was no trace of any such different intention in the new Act to affect operation of the repealed Act adversely against the continuance of so elected Deans or the election held for the said office. In fact, the intention to keep such offices going is what is indicated by the sweeping provisions of Sub-clauses (ii) and (xi) of Section 91. The Deans elected under the repealed Act and holding offices at the commencement of the new Act would attract the prohibition against the eligibility to contest election for the next consecutive term. The decision of the Chancellor and the notice of the Registrar, both are thus valid.

13. Mr. Pendse then contends that such deeming provisions may at the most save the elections held under the repealed Act and enable the incumbents to hold office till the elections under the new Act are held. But, contends Mr. Pendse, these cannot have the drastic effect of importing any prohibition against the right to stand for election. The contention is devoid of any merit. As held in *East End Dwellings Co. Ltd. v. Pinsbury Borough Council* (1952) AC 109, the Courts are bound to give full effect to the legislative fictions within their limits and corollaries and direct consequences thereof also need to be recognised as part of the said fiction. One such plain consequence of the election under the repealed Act being deemed to have been held under the new Act, and for its purposes, would be to prevent the so elected person from contesting the election under the new Act, the term under which would amount to a consecutive term within the mischief of Section 12 (4) of the new Act.

14. Mr. Pendse also faintly suggested that any such interpretation would result in giving retrospective effect to Section 12 (4) without any basis of warrant therefore in the new Act. Reliance was placed in this connection on the judgment in the case of *Re: A Solicitor's Clerk* (1957) 3 All ER 617. We are unable to see how the question of any retrospectively arises herein at all. Ratio of the above case itself militates against any such contention. Disqualification of the Solicitor's Clerk on the basis of a provisions introduced in 1956 for conviction for larceny and embezzlement suffered in 1953, was held to be valid, it being found to have involved no question of retrospectively .The case thus does not help. Drawing on reenactment ,acts and omissions of any individual, for the requisites of disqualification does not involve giving retrospective effect to such enactment.

15. There is thus no merit in this petition.

16. Rule discharged.

17. There will be no order as to costs in the circumstance of this case.

18. Petition dismissed.