

**(2011) 09 MP CK 0010**  
**In the Madhya Pradesh High Court**  
**Case No : W.A. No. 439 of 2011**

Anil Rajawat

APPELLANT

Vs

Dashrath Singh Gurjar and Others

RESPONDENT

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**Date of Decision :** 13-09-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96

Constitution of India, 1950 — Article 227

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 20, 20(1), 20(1)(3), 20(1)(xix), 20(3)

**Citation :** (2011) 4 MPJR 98

**Hon'ble Judges :** S.K. Gangele, J;Brij Kishore Dube, J

**Bench :** Division Bench

**Advocate :** Ajay S. Raizada and Mr. Prashant Sharma, for the Appellant; D.P. Singh, Advocate for respondents No. 1 to 3, Mr. M.P.S. Raghuvanshi, Advocate with Mr. Rajmani Bansal, Advocate for respondents No. 4, Mr. Vivek Khedkar, D.A.G. for State and Mr. Tapan Trivedi, Advocate for intervenor, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Gangele, J.—Appellant has filed this appeal against the order dated 21.07.2011 passed by learned Single Judge of this Court in Writ Petition No. 3578/11. Appellant is a registered graduate of the University, respondent No. 4, and eligible to contest election of Executive Council amongst the registered graduates to the University Court. The appellant further pleaded that he contested the previous election, however, he lost the election with narrow margin. The appellant is aggrieved by the order passed by the learned Single Judge of this Court because the learned Single Judge has held that respondents No. 1 to 3 are eligible to continue as Members of the University Court up to August 2012. Being aggrieved by the aforesaid order the appellant has filed this appeal, although the appellant was not made respondent before the writ Court

by the original petitioners (herein respondents No: 1 to 3).

2. The University, respondent No. 4, issued notification in June 2008 u/s 20 (1) (c) (XIX) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, hereinafter referred to as the "Act of 1973", for the purpose of election amongst registered graduates. Respondents No. 1 to 3 were elected as members of the Court of University and a notification has been issued by the Election Officer to this effect u/s 20 (1) (c) (XIX) of the Act of 1973 on 16th July 2008.

3. Respondents No. 1 to 3 were informed vide letter dated 19.05.2011 issued by the Registrar of the University informing that they were elected to the University Court vide notification dated 16th July 2008, hence, their period shall come to an end on 03.07.2011. Being aggrieved by the aforesaid letter the respondents filed petition before this Court contending that they are eligible to continue as members of the Court for a period of three years from 24.08.2009 because on the aforesaid date the Court of the University was not constituted. The learned Single Judge on the basis of the judgment of the Division Bench of this Court in the case of Surendra Sohane and Others Vs. Dr. Hari Singh Gour Vishwavidyalaya, Sagar and Others, , allowed the writ petition vide impugned order.

4. Learned Counsel for the appellant has contended that the appellant is an aggrieved person because due to the order passed by the learned Single Judge the right of appellant to contest election to the Court of University amongst registered graduates has been affected. Learned Counsel further submitted that the Court of University was not constituted on 24.08.2009, hence, respondents No. 1 to 3 have no right to continue for a period of three years from 24.08.2009 as held by the learned Single Judge. He further submitted that the decision of the University in regard to term of respondents No. 1 to 3 is in accordance with law.

5. Learned Counsel for respondents No. 1 to 3 has raised a preliminary objection in regard to maintainability of the appeal. He contended that the appeal filed by the appellant is not maintainable because the appellant was not a party before the writ Court nor the appellant is an affected person. Learned Counsel further contended that, the. Court of University was constituted vide letter dated 24.8.2009, hence, the respondents No. 1 to 3 are entitled to count period of their term of membership, which is three years, from 24.08.2009. In support of his contentions learned Counsel relied on a Division Bench judgment o this Court in the case of Surendra Sohane and Others Vs. Dr. Hari Singh Gour Vishwavidyalaya, Sagar and Others,

6. Shri Tapan Trivedi, learned Counsel appearing on behalf of intervenor, has adopted the arguments advanced by learned Counsel for appellant.

7. Section 20 of the Act of 1973 prescribes constitution of Court of an University. Section 20 (1) (xix) prescribes that there shall be five representatives to be elected by the registered graduates of the University. The relevant provision is as

under :-

20. Constitution of Court. (1)

(xix) five Representatives to be elected by the registered graduates of the University from amongst themselves.

8. Section 20 (3) of the Act of 1973 prescribes the term of office of members elected under Group C, which is as under:-

20. Constitution of Court. - (1)...

(3) The term of office of members nominated or elected, as the case may be, under Group B and Group C or included in Group E of sub section (1) shall be coterminous with the term of the Court which shall be three years.

9. The elections of the University for representatives to be elected by the registered graduates to the Court of University were held in the year 2008. The respondents No. 1 to 3 were declared elected as members of Court of University vide notification dated 16th July 2008 issued by the Election Officer u/s 20 (1) (xix) of the Act of 1973. Thereafter, a letter was issued by the Registrar of the University dated 24.08.2009 mentioning the list of members of the Court of University in accordance with Section 20 (1) of the Act of 1973. At the bottom of the letter a note has been appended that the tenure of the members of the Court, who were declared elected, shall be from 04th July 2008.

10. Learned Counsel for respondents No. 1 to 3 contended that the term of the members of the Court of University elected amongst Group C in accordance with Section 20 (1) (3) of the Act of 1973 shall be of three years and it shall be coterminous with the term of the Court. The Division Bench of this Court in the case of Surendra Sohane and others vs. Dr. Hari Singh Gaur Vishwavidyalaya and others (supra) has considered the aforesaid provision of Section 20 (1) (3) and held that the members of the Court of University are eligible to continue up to the period of three years from the date of constitution of the Court.

11. In the present case, the main question for consideration before this Court is that when the Court of University was constituted. As per respondents No. 1 to 3 the Court of University was constituted vide letter dated 24.08.2009. The aforesaid letter has been issued by the Registrar and as per the aforesaid letter list of members of the Court of University u/s 20 (1) of the Act of 1973 has been notified. The learned Single Judge has relied on the aforesaid letter and held that respondents No. 1 to 3 are eligible to continue for a period of three years from the date of aforesaid letter because Court of University was constituted by the aforesaid letter.

12. Learned counsel appearing on behalf of the University has also produced a book named as "Annual Report Year 2008-2009. It has been mentioned in the aforesaid book that in accordance with the provisions of Section 20 (1) of the Act of 1973 following were the members of the Court of University. At serial No. 19

following members, who were representatives of the registered graduates, have been mentioned: -

(52) Shri Satyapal Singh Sikarwar (For full term)

(53) Shri Manendra Singh Solanki (For full term)

(54) Shri Dashrath Singh Gurjar (For full term)

(55) Shri K.P. Singh (For full term)

(56) Shri Rakesh Sharma (For full term)

13. It is submitted that these members were elected to the Court of University from the quota of registered graduates. It is clear from the aforesaid "Annual Report - Year 2008-2009" that the Court of University was constituted prior to 24.08.2009. In this list the names of the members, which were in existence as members from 4th July 2008 to 30th June 2009 have been mentioned. The aforesaid fact has not been brought by the University in the notice of the learned Single Judge. The learned Single Judge has relied on the letter dated 24.08.2009. This is a letter mentioning the fact that following are the members of the Court in accordance with Section 20 (1) of the Act of 1973, however, in the letter it has not been mentioned that the Court has been constituted w.e.f. 24.08.2009. However, in the note appended in the bottom of the letter it has been mentioned that the term of office of the elected members of the Court shall be from 4th July 2008 as notified. Respondents No. 1 to 3 were notified as elected members by the Election Officer vide notification dated 16 July 2008 issued u/s 20 (1) (xix) of the Act of 1973. This is the valid notification. It is not a case of the respondents No; 1 to 3 that prior to issuance of the letter dated 24.08.2009 the Court of University was not in existence. It is clear from the Annual Report of the University for the year 2008-2009 that the Court of University was in existence in the year 2008, which is clear from the list of the members of the Court from 4th July 2008 to 30th June 2009, mentioned in the aforesaid Annual Report of the year 2008-2009 and the names of respondents No. I to 3 have also been mentioned as elected members of the Court of University from the registered graduates quota. In such circumstances, it could not be held that the Court of University was constituted for the first time vide letter dated letter dated 24.08.2009.

14. It is an admitted fact that the tenure of the elected members of the Court of University from Group-C is three years and it is coterminous with the term of the Court, however, in the present case, the Court of University was in existence in the year 2008 and respondents No. 1 to 3 were the members of the Court, hence, the Division Bench decision of this Court in Surendra Sohane and others vs. Dr. Hari Singh Gaur Vishwavidyalaya and others (supra) is distinguishable on facts because in the aforesaid case the Court of University was not in existence at the time of election of the members of the Court. In such circumstances, the Division Bench of this Court has held that the term of office of members shall be

three years from the date of constitution of the Court.

15. In this view of the matter, in our opinion, the University has rightly held that the tenure of respondents No. 1 to 3 shall be three years and that is from the date of 16th July 2008 when the notification has been issued by the Election Officer to this effect.

16. In regard to maintainability of the writ appeal, it is a fact that the appellant has been registered with the University as registered graduate. He has a right to contest the election from the quota of registered graduates to the Court of University. Due to the impugned order passed by the learned Single Judge the appellant's right to contest the election of the Court of University has been adversely affected.

17. Section 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, prescribes provision of appeal to the Division Bench. The aforesaid provision is as under:-

2. Appeal to the Division Bench of the High Court from a Judgment or order of one Judge of the High Court made in exercise of original jurisdiction.- (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India in a Division Bench Comprising of two judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

In the aforesaid section there is no mention to the effect that who can file an appeal. It has only been mentioned that an appeal shall lie from the order or judgment passed by the Single Bench to the Division Bench.

18. The Hon''ble Supreme Court in the case of Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., has held as under in regard to right to file an appeal:-

It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

19. Hon''ble the Supreme Court in the case of State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, has held as under: -

83. There is nothing in the Act or the Rules framed thereunder or in the Tenancy Act saying as to who can file an appeal or revision against the decision or order of the Collector exercising jurisdiction u/s 18. But in view of the long array of judicial decisions including that of the Financial Commissioner, there can be no doubt that the State Government or its Department can, if aggrieved, or prejudiced by such a decision, go in appeal or revision against it. 84. Firstly there is a catena of authorities which, following the doctrine of Lindley, L. J., in re Securities Insurance Co., (1894) 2 Ch 410 have laid down the rule that a person

who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex nominee a party - see *The Province of Bombay Vs. Western India Automobile Association, Heersingh and Others Vs. Veerka and Another*, ; *Executive Officer, Sri Padmanabhaswamy Temple Vs. Raghavan Pillai and Another, an Infant* (1958) QB 12; *S. Govinda Menon Vs. K. Madhavan Nair and Others*,

Hence, it is clear from the aforesaid judgments of Hon"ble the Supreme Court that an aggrieved person can file an appeal even though he was not a party in the original proceedings.

20. Hon"ble the Supreme Court in the case of *Maharaj Singh Vs. State of Uttar Pradesh and Others*, has held as under in regard to "person aggrieved:-

18. Aside from this stand, it is easy to take the view that the 1st plaintiff, is a person aggrieved and has the competent to carry an appeal against the dismissal of the suit. Of course, he who has a proprietary right, which has been or is threatened to be violated, is surely and aggrieved person". A legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the Court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lies and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. "A person aggrieved" is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges:

Law necessarily has to carry within if the impress of the past traditions, the capacity to respond to the needs of the present and enough resilience to cope with the demands of the future. A code of law, especially in the social fields, is not a document for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people.

18. The classical concept of a "person aggrieved" is delineated in *Re; Sidebothan ex p. Sidebotham*, ((1880) 14 Ch D 258). But the amplitude of "legal grievance" has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected groups or any member of them. New movements like consumerism, new people's organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat "their golden wings in the void" but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated

gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expanding with persons and organisations not personally injured but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

19. In this wider perspective, who is a person aggrieved? Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, gives the updated answer:

The test is whether the words person aggrieved include "a person who has a genuine grievance because an order has been made which prejudicially affects his interest.

(p. 315 of SCR) = (at p. 2098 of AIR)

American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of "locus standi", such a course could not have been justified (see p. 807 - New York University Law Review, Vol. 46, 1971). In fact, citizen organisation have recently been campaigning for using legal actions for protection of community interest, broadening the scope of "standing" in legal proceedings (see p. 403 - Boston University Law Review, Vol. 51, 1971).

In the well-known case of Attorney General of the Gambia v. Peirra Serr N'Jie, (161), Lord Denning observed about the Attorney-General's standing thus:

.....The word "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest." (pp. 324-325 of SCR) = (at p. 2105 of AIR).

20. Where a wrong against community interest is done, "no locus standi" will not always be a plea to non-suit an interested public body chasing the wrong-doer in court. In the case before us, Government, in the spacious sense of "person aggrieved" is comfortably placed. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management Committee and is liable to be divested without ado any time. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self governing units will be frustrated, if the State, the watchdog of the whole project, is to be a helpless spectator of its purposeful bounty being wasted or lost. It must act, out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use. Long argument is otiose to make out a legal grievance in such a situation of peril and, after all, the star of processual actions pro bono publico has to be on the ascendant in a society where supineness must be substituted by

activism if the dynamic rule of law is to fulfill itself. Locus standi has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old. The legal dogmas of the quiet past are no longer adequate to assail the social injustices of the stormy present. Therefore, the State, in the present case, is entitled to appeal u/s 96 of the Code of Civil Procedure,"

21. On the basis of the aforesaid principle of law laid down by Hon"ble the Supreme Court, in our Opinion, the appellant is an aggrieved person and the appeal filed by the appellant is maintainable. Consequently, the appeal filed by the appellant is hereby allowed. The impugned order passed by the learned Single Judge is hereby quashed. No order as to costs.