

(1996) 12 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 2535 of 1996

Arun Ghanvate and Others

APPELLANT

Vs

Hon"ble Chancellor Amravati University and Others

RESPONDENT

Date of Decision : 24-12-1996

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 34

Citation : (1997) 3 ALLMR 658 : (1997) 99 BOMLR 101 : (1997) 3 MhLj 266

Hon'ble Judges : S. Radhakrishan, J;M.B. Ghodeswar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Radhakrishan, J.—In all the above three Petitions, the common question involved is the challenge to the decision of the Chancellor of Amravati University dated 1.10.1996, setting aside the elections of the Heads of Departments to the Board of Studies held by the Amravati University on 12.2.1995 and directing the Vice-Chancellor to hold the elections afresh. There is also a challenge to the consequential notification dated 8.10.1996, issued by the Amravati University in pursuance of the above directives of the Chancellor, whereby the membership acquired by the elected Heads of Departments under Clause (b) of Sub-section (2) of Section 37 of Maharashtra Universities Act, 1994, on the respective Boards of studies shall stand ceased. The aforesaid consequential notification dated 6.10.96, also made it clear that those who had acquired memberships on the other Authorities of the University, by virtue of being member of Board of Studies also stood cancelled.

2. The main grounds of challenge of the above are as under:

(a) As there were no statutes governing the conduct of elections including the Board of Studies of the Amravati University, the Vice-Chancellor exercising his powers u/s 14(8) of Maharashtra Universities Act, 1994, issued directions in this behalf on 5.9.1994, wherein Vice-Chancellor has defined in 2(b), "Heads of

Department" means senior most teacher having not less than 10 years teaching experience, which directions cannot be superseded by the State Government issuing clarifications u/s 116 of Maharashtra Universities Act, 1994.

(b) The voters list of "Heads of Department" was prepared by Amravati University, in accordance with the above, there is no legal infirmity and the Chancellor ought not to have interfered with the same.

(c) Clarifications issued by the Government on 20.12.94 u/s 116 of Maharashtra University Act, 94 with regard to the above cannot run contrary to the directions issued by the Vice-Chancellor on 5.9.94, u/s 14(8) of Maharashtra Universities Act.

(d) The Chancellor while exercising the powers u/s 108 of Maharashtra Universities Act, 1994, cannot nullify the statute framed by the Vice-Chancellor, exercising his powers u/s 14(9) of the said Act on 5.9.91.

(e) The Chancellor before passing the orders on 1.10.96, ought to have given a reasonable hearing to the Petitioners, by not giving such a hearing has violated the principles of natural justice.

(f) Similarly even the Respondent No. 2 University was under an obligation to have given a hearing to the petitioners before issuing the order dated 8.10.96, whereby their membership to Board of Studies were cancelled and also membership acquired by them on other Authorities of the University, as a result of membership in the Board of Studies, thereby violating the principles of natural justice. (g) Both the orders dated 1.10.96 of the Chancellor and the one dated 8.10.96, issued by the Vice-Chancellor are without jurisdiction and ultra vires of the powers conferred under Maharashtra Universities Act, 1994.

3. At the outset, we asked the learned Counsel for the Petitioners whether they would prefer the matter to be remanded back to the Chancellor and Vice-Chancellor respectively so as to give the Petitioners a reasonable hearing, or whether they would prefer this Court itself to decide the issues after giving a full fledged hearing to the Petitioners, as the issues involved were only pure questions of law and interpretation of statutory provisions and there were no factual disputes. The learned Counsel for the Petitioners readily agreed that the matter need not be remanded back and this Court itself can decide the same, as such the issue of violation of principles of natural justice was not pressed.

4. To appreciate the rival contentions, the brief background of factual and legal matrix is as follows:

As per Section 37 of Maharashtra Universities Act, 1994. there shall be a Board of Studies for every subject or group of subjects. The relevant part of Section 37(2) reads as under:-

(2) The Board of Studies shall consist of -

(a) The head of the University Department or institution in the relevant subject.;

Provided that where there is no University Department in the subject, the Board shall at its first meeting to opt the Head of the Department from an affiliated College having post graduate teaching in that subject.

(b) Six Heads of Department in affiliated Colleges, other than Principals, having not less than ten years teaching experience, elected by the Heads of Departments in affiliated colleges from amongst themselves.

From the above, it is clear that those who are entitled to be elected on the Board of Studies, must be Heads of Departments with not less than ten years teaching experience. Whereas, as far as electorate are concerned, the above section only contemplates one should be a Head of a Department of an affiliated college and there is no minimum teaching experience prescribed.

5. The Petitioners are all elected members of the Board of Studies in various subjects of the Amravati University u/s 37(2)(b) of the Maharashtra Universities Act, 1994. The electoral list for the aforesaid election of Board of Studies was prepared in accordance with the directions issued by the Vice-Chancellor of Amravati University u/s 14(8) of the said Act. The relevant part of the said directions, as far as this case is concerned is 2(1), wherein "Head of the Department" is defined as under:-

(a) "Head of Department" means the senior most teacher having not less than ten years teaching experience in the department designated to be so by the Principal.

In view of the above directions, directions issued by the Vice-Chancellor on 5.9.94, only. Heads of Departments with at least 10 years teaching experience became eligible to be voters.

6. Whereas the State Government had issued clarifications on 20.12.94, u/s 16 of the said Act, with regard to the minimum eligibility of voters u/s 37(2)(b), as under:-

_____ Sr. No Points raised Clarification. _____

_____ 18. The Clause 2(b) of Section 37 states "the All Heads of Departments of candidates who stand for election should have affiliated and conducted ten years teaching experience" but the clause colleges can be voters. does not specify anything about the voters. _____

_____ 7. The elections to Board of Studies of Amravati University were held in accordance with the Electoral List as prepared as per the directions issued by the Vice-chancellor on 5.9.94, that is to say only Heads of Department with ten years teaching experience were made eligible as voters. In accordance with the above electoral list, the elections to various Boards of Studies of Amravati University were held on 12.2.1995.

8. Thereafter Shri S.S. Thakre, President of Amravati University Rural Teachers Forum, filed a Petition before the Chancellor, questioning the legality and validity of elections to Board of Studies held by the Amravati University, in accordance with the electoral list prepared as per the directions of Vice-Chancellor dated 5.9.94.

9. Ultimately the Chancellor by his order dated 1.10.96, had set aside the elections to all Board of Studies on the ground that the electoral list prepared in accordance with the Vice-chancellor's directions dated 5.9.94, was blatantly illegal and in total disregard to very clear provisions contained in Section 37(2) (b) of the said Act, thereby illegally depriving several Heads of Departments of various colleges affiliated to the Amravati University from their legal right of electing members of the concerned Board of Studies. The Chancellor has also observed in the aforesaid order that;

On 20th December, 1994 the State Government had issued a clarification under the powers conferred upon it by Section 116 of the Maharashtra Universities Act, 1994 on a reference made to it in this matter stating clearly that all Heads of Department of affiliated and conducted colleges can be voters u/s 37(2)(b) of the Act. Although this clarification of the State Government was brought to the notice of the Election Officer and the Vice-Chancellor of the Amravati University and objections were raised at various stages to the voters lists prepared in accordance with the provisions of the impugned Direction No. 2 L, the voters list for election to the Boards of Studies in the Amravati University were finalised. In accordance with the impugned directions 2-L by excluding all Heads of Departments not having less than ten years teaching experience.

It is also noticed that the Vice-Chancellor did not pass any order in respect of the appeals which seem to have been filed before him by the aggrieved persons against the final voters lists published on 12th January, 1995 wherein the names of Heads of Departments having less than ten years experience have been excluded.

Having regard to the facts stated above, to set right the blatant illegality resulting in miscarriage of justice, in total disregard to the provisions of the Universities Act, in exercise of the powers conferred upon me u/s 108 of the Act. I hereby set aside the elections of Heads of Departments to the Board of Studies held by the Amravati University on 12th February, 1995 and direct the Vice-Chancellor, Amravati University to hold elections afresh after revising the electoral roll in consonance with the provisions of Section 37(2)(b) as clarified by the Government of Maharashtra in its order passed u/s 16 of the Act, on 20th December, 1994.

10. The learned Counsel for the Petitioners strongly urged that the Government being the Executive in the guise of issuing clarification u/s 16 of the Maharashtra Universities Act, 1994, has in fact legislated, which it has no power. In that behalf, the learned Counsel relied on *Jalan Trading Co. (Private Ltd.) Vs.*

Mill Mazdoor Union, , wherein it was held that under the power of removal of difficulties, the executive cannot legislate. Mr. Gordey also strongly urged that as already the Vice-Chancellor had issued directions u/s 14(8) of the said Act, defining the voter for the election of Boards of Studies, on 5.9.1994, there was no need whatsoever for the State Government to issue clarifications on 20.12.1994, u/s 116 of the said Act. In any event, such clarifications cannot run contrary to the directions of the Vice-Chancellor u/s 14(8) of the said Act, which have the force of Statutes framed under the said Act. Mr. Gordey also contended that the Chancellor's ruling dated 1.10.1996, applies to only such Boards of Studies where actually elections were held and not in cases of Boards of Studies, where the number of valid nominations were equal to or less than the number required, accordingly in 34 Boards of Studies, where no actual elections were held and those who were validly nominated were declared elected without a contest. In this behalf, he also relied on a letter issued by the Secretary to the Chancellor dated 16.10.1996.

11. Mr. Bal Apte, the learned Additional Advocate General and Mr. J.P. Gilde, Government Pleader, appeared on behalf of the Chancellor and State Government respectively, Mr. Apte, cogently argued that the directions issued by the Vice-Chancellor on 5.9.1994. u/s 14(8) of the said Act, especially 2(1) of the directions with which we are concerned, is patently contrary to Section 37(2)(b) of the said Act. According to Mr. Apte, Section 37(2)(b) of the said Act itself makes it clear that the requirement of ten years teaching experience is only to those who want to get elected. The said ten years teaching experience is not requires for those who want only to vote and not get elected. Accordingly, Mr. Apte analysed and read Section 37(2)(b) of the said Act. He also contended that in various new colleges, the Heads of Departments may not have ten years teaching experience, but are being wrongly denied the right to vote, Mr. Gilde appearing for the State Government relied and adopted the arguments of Mr. Apte and also relied on two Supreme Court Judgments, to distinguish the Supreme Court Judgment cited by Mr. Gordey. Mr. Gilde relied on *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, where the provisions of Section 34 of Contract Labour (Regulation and Abolition) Act, 1970, which are part materia similar to Section 116 of the said Act were considered. In that case, the Supreme Court has upheld the power of the Central Government to issue directions, which may amount to legislation, and have distinguished the earlier Supreme Court Judgment reported in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, .* Mr. Gilde also relied upon *Madeva Upendra Sinai and Others Vs. Union of India (UOI) and Others*, to justify the power of State Government to issue the necessary directions.

12. After giving a deep thought to these rival contentions, we agree with Mr. Apte that Section 37(2)(b) of the said Act itself makes a distinction and it is clear that those who are entitled to be elected on the Boards of Studies, must be Heads of Departments with not less than ten years teaching experience. Whereas, as far as the electorate of the Boards of Studies are concerned, the said Section only

postulates one should be a Head of a Department of an affiliated College and there is no minimum teaching experience prescribed. In the light of Section 37(2) (b) of the Act itself making a clear distinction, the Vice-Chancellor's directions dated 5.9.94, u/s 14(8) of the said Act, especially 2L, cannot stand, as the same is contrary to the existing provisions of the Act. Whereas the clarifications issued by the State Government in this behalf on 20.12.1994 u/s 116 of the said Act is absolutely in consonance with the correct interpretation of Section 37(2)(b) of the said Act. Mr. Gilda is right in distinguishing *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , by relying upon a later Supreme Court Judgment reported in *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, wherein the Supreme Court had considered Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970, which is pan materia similar to that of Section 116 of the said Act. In the aforesaid Judgment of Supreme Court reported in AIR 1974 SC 360, the Supreme Court considered its earlier Judgment in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , and in paragraph 38, clearly pointed out the distinctions in the sense, in the earlier case, the Supreme Court was dealing with a provision which empowered the Government to alter the provisions and also give a finality to it, whereas u/s 34 of Contract Labour (Regulation and Abolition) Act, 1970 there was no such power and it was very much similar to Section 116 of the said Act. Therefore, we find nothing wrong in State Government exercising its power to issue clarification on 20.12.1994, as far as Section 37(2)(b) of the Act is concerned. This power to issue such clarification has become a necessity nowadays, as has been pointed out by the Supreme Court in *Madeva Upendra Sinai and Others Vs. Union of India (UOI) and Others*, , as under:-

To keep pace with the rapidly increasing responsibilities of a welfare-democratic State, the legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the legislature and the endurance and skill of the draftsmen, it is well high impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a Statute, by going through the time consuming amendatory process the legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adoptions and peripheral adjustments in the Statute, for making its implementation effective, without touching its substance. That is why the "removal of difficulty clause", once frowned upon and nick-named as "Henry VIII Clause" in scornful commemoration of the absolute ways in which that English King got the difficulties in enforcing his autocracies will

removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity in several Indian Statutes of post-independence era.

13. As rightly pointed out by Mr. Khapare, the learned Counsel appearing for one of the Respondents, all elections based on an electoral roll prepared on the basis of an illegal interpretation, are totally vitiated, as reported in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, . Therefore, we do not agree with Mr. Gordey that the Chancellor's ruling on 1.10.1996 does not apply to 34 Boards of Studies where there was no actual elections, as the number of valid nominations were within the prescribed number. Even though there may not be actual elections, they were also declared elected .Therefore, legally speaking the said ruling of the Chancellor applies to all Boards of Studies. The communication of the Secretary to the Chancellor dated 16.10.1996 is of no consequence, as the same has no legal sanctity, and incorrect in law.

14. In the light of the above, the grounds of challenge as mentioned in paragraph 2(a) and (f) hereinabove, do not survive for the reasons set out in paragraph 3 hereinabove. For the detailed reasons hereinabove, grounds of challenge in paragraph 2(a), (b)(c)(d) and (g) also fail.

15. In the result, we uphold the ruling of Chancellor dated 1.10.1996 and the consequential notification of the Vice-Chancellor dated 6.10.1996. All the above Writ Petitions are dismissed with no order as to costs. The Vice-Chancellor of Amravati University is directed to proceed with the elections afresh with regard to all Boards of Studies of the University.