
(1995) 07 RAJ CK 0029
In the Rajasthan High Court
Case No : CWrit Petition No. 2135 of 1994

Ashok Chand Singhvi

APPELLANT

Vs

J.N.V. University and Others

RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Raj 94 : (1996) WLC 412

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Om Mehta, for the Appellant; L.M. Lodha, for the Respondent

Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks to quash the order of the respondents quashing the nomination papers filed by the petitioner for Academic Council as the petitioner left entries blank.

2. It is pertinent to note that nomination papers of some of the candidates were also rejected on the same grounds. Out of them, three candidates filed writ petitions in this Court. Miss Kusum Bhandari filed writ petition bearing No. 1857/94 against the respondent-University and others which was allowed by the learned single Judge on 31-8-94 holding that "the petitioner's nomination paper be accepted and if petitioner secures more or equal votes to the person who is last elected, the petitioner will be declared as elected and will be inducted as a member of the Academic Council". One joint writ petition bearing No. 1856/94 was also filed by Dr. A. K. Gupta and Dr. B. L. Vaishnav on 13-4-94 which was allowed by another Single Bench on 13-9-94 in terms of the aforesaid decision to hold election for the Academic Council within one month from the date of order. The petitioners for re-election and the University filed special appeals bearing Nos. 653/94, 654/94 and 128/95 respectively. Dr. A. K. Gupta and Dr. B. L. Vaishnav filed special appeal bearing No. 654/94 on 13-4-94 which came to be decided on 25-4-95 by a Division Bench, observing that "the learned single Judge has observed that if few more members are added to the Academic Council, it

will not materially alter its construction. The learned Judges ordered that this order on the facts and circumstances of the case is totally just and proper and we are not inclined to interfere with this judgment and three months" time was granted to complete the election process" and in pursuance of which, the elections are to be held on 23-7-95 for three candidates. It is also relevant that the special appeal filed by the University was dismissed by another Division Bench on 26-4-95 as having become infructuous in view of decision of the Division Bench passed in D.B.C. Special Appeal No. 653/94.

3. Mr. Mehta, learned Counsel for the petitioner has submitted that the petitioner's case may kindly be allowed in terms of the decisions of Single Bench which have been affirmed by Division Bench and the petitioner's name may kindly be ordered to be added as IVth candidate in the election going to take place on 23rd July, 1995 in view of Court's decision and he may be allowed to contest the election.

4. Mr. Lodha, learned Counsel appearing on behalf of the respondents has contended that the election process for three candidates has already been started vide notification dt. 28-6-95 and elections are going to be held on 23-7-95, which is to be completed within three months which is to expire on 25-7-95, therefore, the petitioner's name cannot now be added as a contesting candidate in the election as the petitioner is guilty of not pursuing his case nor he made any request before the Division Bench also.

5. Though this matter is pending since 29-4-94 at admission stage and for the first time it was listed on 4-6-94 and it was ordered that this case be listed along with the connected case No. 1856/94. The case was listed in the Court and it was ordered as under:--

"After hearing the learned Counsel for the petitioner, I was not inclined to admit the writ petition. Then request has been made by the learned Counsel that the case may be taken up on 6th March, 1995.

On this special request, list the case on 6th March, 1995."

On 6th March, 1995, the case was adjourned for a week. On 11-7-95, this Court issued notice to show cause on 17-7-95, Mr. L. M. Lodha appeared in pursuance of the notice issued by this Court and filed reply on 18-7-95 along with R-1 and R-2. Looking to the urgency the case has been ordered to be listed on 19-7-95.

6. I have heard learned Counsel for the parties and perused the material on record carefully.

7. Undoubtedly, this Court is bound to follow the decision of the Division Bench and it is also true that similarly situated persons should be treated alike. Following the aforesaid decisions of Single Bench and the Division Bench, the petitioner's claim so far as the illegal rejection of nomination paper is concerned, the same is accepted. Now the question is whether on the basis of above decisions, the petitioner may be allowed to contest the election even when the

new election process has already been started and elections will be held on 23rd July and will be finished by 25th July, 1995 as per the order of the Division Bench of this Court. My answer is that the petitioner cannot be allowed to participate in this election of Academic Council for the reasons that the matter was pending but the petitioner never bothered for the last more than one year and now when the process for three candidates is already started from 1st July, 1995 in pursuance of the notification D/- 28-6-95. Once the election process is commenced, Court should not interfere that too at this belated stage without any such prayer to permit him to contest the election in the writ petition. It is not out of place to mention here that amongst teaching staff 15 members of the Academic Council have already been elected in pursuance of the original notification D/- 31-3-94 and working for the last 14 months against three year term. The observations made by the learned single Judge in the case of Miss Kusum Bhandari (supra) which has been affirmed by the Division Bench "that if new members are added to the Academic Council, it will not materially alter its construction". The learned single Judge also directed the respondents to accept the nomination papers and ordered that if the petitioner secures more or equal votes to the person who is last elected, the petitioner will be declared as elected and will be inducted as a member of the Academic Council and if petitioner gets less votes, than the last elected person then the petitioner will not be made a member of the Academic Council, without fixing number of seats, which in my opinion, will create problem in case the petitioner is also allowed to contest the election at this stage particularly when the learned Judges have observed that "this judgment will not form any precedent as the judgment has been given in very peculiar circumstances of the case". Under these circumstances as per above observations, the petitioner is not entitled to contest the election. More so, the petitioner has not availed the provision whereby the validity of election can be challenged within 15 days before the Chancellor. Apart from that it cannot be brushed aside that whether this Court can increase the number of members of Academic Council limit of which as per Statute is only 15 in number. As the election of Academic Council amongst teachers as per University notification is to be held by single transferable vote and theory of elimination will be applicable wherein a particular man can be elected if he gets required "quota" otherwise also as minimum vote eliminating the persons up to last man of the total candidate and the quota will be worked out on the basis of number of valid votes divided by number of seats -- plus one and the value of vote will be its division adding one accordingly. If the petitioner is allowed to contest the election along with three persons as already ordered in which almost same number of voters are to cast vote the quotient i.e. "quota" sufficient to secure return of a candidate at the election will be different in comparison to the "quota" earlier held for electing 15 persons held on 1-5-94. In view of this, the petitioner is bound to get more votes than the 15th person who is last elected and it will further increase number of seats beyond the statutory limit, which cannot be the intention of the Court particularly when in the judgment of Division Bench on which the petitioner relies it has been observed that this judgment will not form

a precedent. Under these circumstances, in my opinion, no relief regarding contesting election can be granted even on the basis of Division Bench decision and in the absence of any prayer in the writ petition. However, since, the petitioner's nomination paper was wrongly rejected to that extent the petitioner is free to claim damages against the persons who scrutinised and rejected nomination paper at the point of time, according to law.

8. With the above observations, the writ petition stands disposed of. No order as to costs.