
(1989) 03 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 491 of 1989

Ashok Sahare

APPELLANT

Vs

Nagpur University and Another

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Nagpur University Act, 1974 — Section 20(3), 80

Citation : (1989) 3 BomCR 143 : (1990) MhLj 629

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

Bench : Division Bench

Advocate : R.K. Borkar, for the Appellant; S.K. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Deshpande, J.—Rule returnable forthwith. Heard.

The petitioner who is a member of the Municipal Council, Gondia was elected as a member of the University Senate as a representative from amongst the Municipal Councils from Bhandara district and his name was notified in the Nagpur University Notification dated 18-10-1985. Earlier the election form amongst the Municipal Councillors of the Municipal Councils of the districts Bhandara, Chandrapur, Nagpur, Wardha and Gadchiroli took place on 10-4-1982 and the term of the office of the representatives so elected on 10-4-1982, according to the petitioner was to be of six years as per the provisions of section 20(3) of the Nagpur University Act. The Municipal Councils came to be dissolved throughout Maharashtra on 1-4-1985 and those who were elected to be the representatives on the Senate of the Nagpur University could not enjoy the full term and their term came to an end with the dissolution of the Municipal Councils on 1-4-1985. In the Notification issued on 18-10-1985 Annexure "A", the term of the petitioner was shown as ending on 11th April, 1988 According to the petitioner he was entitled to continue to be a member of the Senate until the year 1991 till the expiry of the period of six years. Since the respondent No. 1 Nagpur University stopped sending notices of the meetings of the Senate from

11-4-1988, he sought a clarification and was informed that his term had come to an end. This position is being challenged by the petitioner by this writ petition.

2. There is no dispute about the factual position that the second hexennial elections of the Nagpur University Senate were conducted on 10th April, 1982 and one Shri S.V. Gaurkar was elected on the Senate u/s 20(1)(B)(xii) of the Nagpur University Act from Bhandara district. Since the Municipal Councils came to be superseded from 1-4-1985, Shri Gaurkar ceased to be a member of the Senate by virtue of the proviso to section 20(1)(B) of the Nagpur University Act.

3. The respondent's contention is that by virtue of the provisions of section 80 of the Nagpur University Act, the petitioner's election could be only for the remainder of the term of six years for which Shri Gaurkar had been elected and section 20(3) which provides that the term of the office of the elected members, other than the Heads of the recognised institutions, shall be six years, will not apply to the present situation. On behalf of the petitioner it is contended that section 80 would not apply. Section 80 provides as follows:---

"80. Whenever any vacancy occurs in the office of a member, other than an ex-officio member, of any authority or other body of the University before the expiry of his term, the vacancy shall be filled, as soon as may be, by the election, nomination, appointment or co. option, as the case may be, of a member who shall hold office so long only as the member in whose place he has been elected, nominated, appointed or co. opted would have held it, if the vacancy had not occurred."

The proviso which enables not holding the election is not relevant for the present purpose. Proviso to sub-clause (i) to (xvi) of clause (b) of section 20(1) provides that a person elected under sub-clause (i) to (xvi) of clause (B) shall cease to be a member of the Senate as soon as he ceases to be a member of the electing body or bodies, as the case may be. There is no dispute about the fact that this proviso applies to the case of the petitioner and that it applied also to Shri Gaurkar when the vacancy occurred. In view of this proviso which governs the class of cases to which sub-clauses (i) to (xvi) have application, it is clear to us that the longer period provided by sub-section (3) of section 20 will have no application to the present case. The petitioner's case clearly fell u/s 80 of the Act and he could have represented on the Senate by virtue of being a member of the Municipal Council only for the remainder of the period after Shri Gaurkar ceased to be a member.

4. In view of this position, we see no merit in this writ petition and it is dismissed summarily. Rule discharged.