

(1999) 03 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 7066, 7067 and 7671 of 1999

B. Suresh and Another

APPELLANT

Vs

Bangalore University and Others

RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Karnataka State Universities Act, 1976 — Section 14, 15, 18, 19, 20

Citation : AIR 1999 Kar 422 : (1999) 6 KarLJ 625

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri Krishna S. Dixit and S.N. Manjunath, for the Appellant; Sri N.K. Patil, Sri B.M. Baliga and Sri Ashok N. Nayak, Government Pleader, for the Respondent

Judgement

1. The petitioners in these petitions claim that they and several others were elected to the Senate from the Graduate Constituencies in December 1995, vide notification dated 24-12-1995. As a consequence of such election, the Senate of the Bangalore University was reconstituted u/s 21 read with Section 33(3) of the Karnataka State Universities Act, 1976 ("the Act" for short), vide notification dated 4-1-1996. Subsequently, the petitioners were elected by the Senate to the Syndicate u/s 24(vi) of the Act, vide notification dated 14-5-1996.

2. They contend that fresh elections have not been held in regard to the membership of Senate under Sections 21(1), 14, 15, 18, 19, 20 and 21 of the Act. They submit that having regard to the provisions of sub-sections (1) and (2) of Section 33 of the Act, even though the term of office of elected members of the Senate and Syndicate is three years, as the Senate and Syndicate have not been reconstituted, they are entitled to continue as members of the Senate/Syndicate until the next reconstitution.

3. The University issued a Notification No. SYN:S1:SEN:REC:1:98-99 dated 3-3-1999 on the basis of a letter dated 1-3-1999 from the Chancellor, stating that the elected members of the Senate of the Bangalore University (including

the petitioners) cease to be the members of the Senate with immediate effect consequent upon completing their term of three years. Consequently, another Notification No. SYN:SI:SYN:RECN:I:98-99 dated 3-3-1999 has been issued by the University stating that the petitioners ceased to be the members of the Syndicate as they had ceased to be the members of the Senate. Feeling aggrieved, petitioners have filed these petitions for quashing the said notifications of the University dated 3-3-1999 regarding cessation of membership of Senate/Syndicate referred to above. They have also sought a declaration that they are entitled to continue to hold office as members of Senate/Syndicate even beyond three years, upto the next reconstitution of the Senate/Syndicate by the University in accordance with law.

4. In its objections, the University contends that Section 33(1) of the Act, lays down that the term of office of elected members of Senate/Syndicate "shall" be three years; that as the section uses the word "shall", irrespective of whether the Senate/Syndicate is/are reconstituted or not, the term of office of elected members of Senate/Syndicate, comes to an end at the expiry of three years; and a harmonious construction of sub-sections (1) and (2) of Section 33, will lead to the conclusion that the term of office of the elected members of the Senate/Syndicate will come to an end on the expiry of three years or on reconstitution of the respective bodies, whichever is earlier. It is stated that the term of office of the petitioners to the Senate commenced on 4-1-1996 and their term therefore came to an end at the end of 3-1-1999. Further having regard to the provisions of Section 46(2), the term of office of petitioners as Members of Syndicate came to an end, when they ceased to be the members of the Senate; and therefore they also ceased to be the members of the Syndicate with effect from 4-1-1999. The University also contends that neither the functioning of the Senate, nor that of the Syndicate will in any way be impeded, on account of these elected members ceasing to be the members, as even without these members, the Senate/Syndicate will have sufficient quorum to conduct its affairs. The University has also stated that it has taken steps to hold elections and the calendar of events is to be published shortly and in the circumstances petitioners have no right to claim that they continue to be the members of the Senate/Syndicate till reconstitution of the said bodies.

5. Section 33 relating to office of members of the Senate, Syndicate and Academic Council, is extracted below.--

"33. Term of office of members of the Senate, Syndicate and Academic Council.--

(1) Save as otherwise provided the term of office of the members, other than the ex officio members, of the Senate, Syndicate and Academic Council shall be three years.

(2) Save as otherwise provided in this Act, the Senate, the Syndicate and the Academic Council shall be reconstituted at or about the same time and the members of the said Authorities shall, except in the case of ex officio members, hold office as members thereof up to the date of next reconstitution:

Provided that the term of a member appointed to fill a casual vacancy shall be the residuary term of his predecessor.

(3) Notwithstanding anything contained in Sections 21, 24 and 26 or in any law or judgment or decree or order of any Court, the Senate or the Syndicate or the Academic Council shall be deemed to have been duly constituted or reconstituted, when it is constituted or reconstituted with not less than three-fourth of the total number of members thereof.

Section 46(2) of the Act reads as follows:

"No member of any Authority or body of the University who is elected, appointed or nominated in his capacity as a member of a particular electorate or body or as a teacher or, where expressly stated so, as the holder of a particular appointment, shall continue to be a member of such Authority or body on his ceasing to be a member of the particular electorate or body or a teacher or the holder of the particular appointment".

6. Sub-section (1) of Section 33 provides that the term of office of the elected members of Senate/Syndicate shall be three years. Sub-section (1) should be read with sub-section (2). Sub-section (2) provides that the members of the Senate and Syndicate, except ex officio members, hold office as members thereof upto the date of next reconstitution. When read together, it is clear that there shall be elections once in three years and members once elected will continue to hold office for three years or upto the date of next reconstitution, whichever is later. To read these sub-sections otherwise, would render sub-section (2) of Section 33 otiose. If the term of office ends exactly three years after the date of election, then the provision that they shall hold office until next reconstitution will become meaningless and redundant.

7. It is contended by respondents that sub-section (2) is intended to operate only in a situation where there is a reconstitution before expiry of three years. But there is no indication in the Act, that sub-section (2) of Section 33 is intended to operate only if there is a reconstitution before expiry of three years. Further such an interpretation would render sub-section (1) providing that the term of office shall be three years, otiose.

8. The learned Counsel for the respondents contended that if the section is to be interpreted as permitting continuation beyond three years, till the next reconstitution, it would render the term of office specified in sub-section (1) ineffective. The learned Counsel for the impleading respondent in W.P. Nos. 7066 and 7067 of 1999 contended that the members of the Syndicate, who are at the helm of affairs, can delay the process of elections so that they can continue in office and thereby defeat the provisions of Section 33(1), taking advantage of their own omissions. It is pointed out that even though the specified term of office of petitioners expired on 3-1-1999, no steps have been taken by the Vice-Chancellor to hold elections and the members of the Syndicate ought to have prevailed upon the Vice-Chancellor to hold such elections; and not having done

so, they cannot claim any right to continue in office beyond three years u/s 33(2) of the Act.

9. The right to be elected to the Senate and Syndicate and the right to hold such office for a specified period is purely governed by the Statute, i.e., the provisions of Section 33 of the Act. The provisions of sub-sections (1) and (2) of Section 33 will have to be read and interpreted harmoniously so as to avoid repugnancy, or rendering of any provision otiose. When sub-section (2) clearly provides that the elected members of the Senate and Syndicate shall hold office as members thereof up to the date of next reconstitution, it cannot be contended that as at the end of three years, they cease to hold office. If the legislature had intended that at the end of three years, the elected members should cease to be members, it would not have made a provision for continuation till reconstitution.

9.1 To illustrate, the contrast between the Articles 83(2), 172(1), 243-E(1) and 243-U(1) of the Constitution of India, where the intention that there should be no continuation beyond the specified period is made clear, and Articles 56 and 67 where the intention that there should be continuation beyond the specified period, may be referred. Articles 83(2) and 172(1) provide that the Parliament and State Legislature unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House. Articles 243-E(1) and 243-U(1) provide that "every panchayat / municipality, unless sooner dissolved under any law for the time being the force, shall continue for five years from the date appointed for its first meeting and no longer". On the other hand, Articles 56 and 67 provide that the term of office of the President and Vice-President shall be five years from the date when they enter their office, provided that they shall, notwithstanding the expiration of their term, continue to hold office until his successor enters upon their office.

9.2 A provision somewhat similar to Section 33(1) and (2) came up for consideration before the Madhya Pradesh High Court. Section 8 of the Advocates Act, 1961 dealing with the term of office of members of State Bar Council reads as follows:

"(1) The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in Section 54) shall be five years from the date of publication of the result of his election.

(2) An outgoing member shall continue in office until the publication of the result of the election of his successor".

Interpreting the said provision, the Madhya Pradesh High Court in Bhupendra Kumar Jain Vs. Y.S. Dharmadhikari and Others, , held:

". . . but from sub-section (2) of the said section it is clear that a member of the State Bar Council does not automatically cease to hold office on the expiry of his term and, notwithstanding the expiration of his term of office, he continues to

hold office until the publication of the result of the election of his successor....".

9.3 There are certain elected offices where continuation of elected member, even after the expiry of the term of office, until the next elected member takes over, is felt necessary in the interest of continuity and to avoid a vacuum in the management of the affairs of the Authority/Body. Legislature has thought fit to provide for such continuation in the case of members of Senate and Syndicate in Section 33(2).

10. If sub-sections (1) and (2) of Section 33 are harmoniously read, the position will be as follows.--

(a) The term of office of the elected members of Senate, Syndicate and Academic Council shall be three years; steps should be taken for holding fresh elections keeping in view the fact that the term of office is three years.

(b) Section 33(2) is a proviso to Section 33(1) and it comes into effect, if the election of new members to Senate, Syndicate and Academic Council are not completed and the said bodies are not reconstituted within 3 years. Having regard to unexpected delays or contingencies, the elected members shall however continue till the date of next reconstitution, to ensure continuity in management of the affairs of the University.

(c) If the elections are not held to enable reconstitution at the end of three years, the affected persons may approach the Chancellor or Courts to ensure that elections are held promptly and to ensure that the elected members do not continue in office by their own default/omission.

11. This Court in K.M. Maheshwara Swami Vs. The Governor and Chancellor and Others, , considered the effect of Section 46(2) of the Act on Section 33(2) and held as follows:

"....There is in my opinion considerable merit in that submission. It is clear on a plain reading of the provision extracted above that a member of any authority or body of the University, elected or nominated in his capacity as a member of any electorate or body cannot continue to be a member of such an authority or body if he ceases to be a member of the electorate or body from which he was elected. It is not disputed that the petitioner's election to the Syndicate was relatable only to his being a member of the Senate. It is also not disputed by Mr. Gurumath that the petitioner has ceased to be a member of the Senate. There is therefore no escape from the conclusion that in terms of Section 46(2), the petitioner would cease to be a member of the Syndicate no sooner he ceased to be a member of the Senate. Reliance upon the provisions of Section 33 by Mr. Gurumath does not appear to be well placed. Section 33(2) starts with the all important words "save or otherwise provided". In other words, Section 33 would be subservient to Section 46(2), which makes a provision contrary to that made in Section 33(2)...".

In this case, petitioners do not dispute that if they cease to be members of

Senate, they cease to be the members of the Syndicate. The contention in these cases is that the petitioners continue to be the members of the Senate and consequently they are entitled to continue as members of the Syndicate.

12. In this case the petitioners became members of Senate on 4-1-1996. The petitioners became members of Syndicate on 14-5-1996. The elected members of the Senate as per notification dated 4-1-1996 will hold office until the next the reconstitution of the Senate. The elected members of Syndicate under the notification dated 14-5-1996, will also hold office until the date of next reconstitution of the Syndicate or the next reconstitution of the Senate whichever is earlier, having regard to Section 46(2) read with Section 33(2) and the decision in Maheshwara Swami's case, supra.

13. In view of the above these petitions are allowed as follows:

(a) It is declared that the petitioners are entitled to continue as members of the Senate of Bangalore University till the next reconstitution of the Senate.

(b) The Notification dated 3-3-1999 (Annexure-D) is quashed insofar as elected members of the Senate are concerned.

(c) The petitioners who are elected members of the Syndicate shall be entitled to continue in such office till the next reconstitution of the Syndicate or the next reconstitution of the Senate, whichever is earlier.

14. Having regard to the facts and circumstances of the case, and the submission on behalf of the University that process of elections will be commenced shortly, the relief to be granted has to be suitably moulded by also directing the Vice-Chancellor of the Bangalore University to hold elections to the Senate as provided under the Statute pertaining to the elections to the authorities of the University expeditiously so that the petitioners and other elected members do not continue by default. The Vice-Chancellor is accordingly directed to initiate necessary action for holding elections so as to ensure that the elections are completed within a period of two months from the date of receipt of this order.