

(1967) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 50 of 1967

Bhagwati Dhar Bajpai

APPELLANT

Vs

Jabalpur University and Others

RESPONDENT

Date of Decision : 18-04-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Jabalpur University Act, 1967 — Section 18(1), 18(2), 23(3)
Jabalpur University Regulations — Regulation 11
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1967 MP 239 : (1970) ILR (MP) 765 : (1967) JLJ 618

Hon'ble Judges : S.P. Bhargava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; M. Adhikari, for the Respondent

Final Decision : Allowed

Judgement

Bhargava, J.—The petitioner Shri Bhagwati Dhar Bajpai has filed this petition under Article 226 of the Constitution of India against the Jabalpur University (respondent No. 1), Dr. Dharendra Verma, Vice-Chancellor of the said University (respondent No. 2). Shri B. L. Pande, Rector of the said University (respondent No 3), Shri S. C. Seth. Registrar of the said University (respondent No. 4) and Shri V. G. Pathak. Assistant Registrar of the said University (respondent No 5). praying that the ruling given at the meeting of the University Court on 25-1-1967 by the third respondent to the effect that the presentation of the notice by the petitioner to the fifth respondent, Shri V. G. Pathak on 34-1-1967 was not proper as the said notice had not been delivered to the Registrar according to the requirements of Section 18(1) of the Jabalpur University Act (hereinafter called the Act) be quashed The petitioner further seeks a writ of mandamus to be issued to the third respondent who was Chairman of that meeting to re-commence the meeting for the purpose of duties in relation to the said notice whereby a no-confidence motion was sought to be brought against the second

respondent, namely, the Vice-Chancellor of the University. It is also prayed that all other proceedings by the meeting be declared to be void and illegal and such other writ or direction may be issued as may appear to be just and proper in the circumstances of the case.

2. The facts are simple. The petitioner is a member of the University Court of the Jabalpur University. On 25-1-1967 an annual meeting of the University was scheduled to be held at 1 p.m. The petitioner desired to move a motion of no-confidence against Dr. Dharendra Verma, Vice-Chancellor of the University. He therefore, went to the office of the Registrar of the University on 24-1-1967 at about 12 noon to deliver a written notice of his intention to move the motion of no-confidence at the meeting of the Court on the day following, namely, on 25-1-1967.

When he went there, he was informed by the Assistant Registrar of the University, Shri Pathak (respondent No 5), that the officiating Registrar, Shri S. C. Seth (respondent No. 4), had suddenly taken ill and had been removed to the Medical College Hospital. He was also told that the Deputy Registrar, Shri Kailas was on leave 11 is urged in the petition that Shri Pathak was in actual charge of the office as the senior most officer in the Registry and as he was ready and willing to accept the aforesaid notice with the enclosures intended to be delivered to the Registrar and addressed to him, the petitioner delivered the same to the said Shri Pathali when there were yet 24 hours for the commencement of the meeting on the following day at 12 noon and Shri Pathak transmitted the notice which he had received to the Vice Chancellor.

3. When the Court met on 25-1-1967 at 1 p.m., the no-confidence motion was included in the meeting and therefore in accordance with Section 18(4) of the Act the Vice-Chancellor who would have normally presided at the meeting if the no-confidence motion was not there against him did not enter the house and did not preside at the meeting. The meeting thus commenced under the Chairmanship of Shri B. L. Pande, Rector of the University.

4. Immediately on the commencement of the meeting one of the members of the Court raised a point of order to the effect that the notice not having been delivered to the Registrar as stated in Section 18(1) of the Act and having been delivered to the Assistant Registrar, there was no valid notice and consequently the motion of no-confidence could not be moved at the meeting.

5. It is urged in the petition that the point of order so raised was debated in the house and views for and against were expressed and the members opposing the point of order had pointed out that the Vice-Chancellor did not make any specific provision on 24-1-1967 for the discharge of the duties of the Registrar and that the said notice of no-confidence motion had been received without any objection and protest by Shri Pathak when the functions of the Registrar were being performed by him. It was urged in the petition that the working of the University in such manner on 24-1-1967 amounted to appointment of Shri Pathak as the

Registrar by the Vice-Chancellor in the exercise of his emergency powers. It was also urged that if the Vice-Chancellor did not make any express orders to this effect, his omission to do so was mala fide and was intended to or calculated to bring about the prevention of the motion for discussion in the meeting.

6. The Chairman of the meeting gave his ruling on the point of order that delivering the notice by the petitioner to the Assistant Registrar, Shri Pathak could not be held to be complying with the requirement of Section 18(1) of the Act and consequently he ruled out the motion. As already said, relief against this ruling is being sought in this Court in the present petition.

7. Shri R. S. Dabir, learned counsel for the petitioner, urged before us that in the reception of notice u/s 18(1) of the Act, the Registrar is required to do nothing but to transmit the notice to the Vice Chancellor. His function therefore is purely of administrative character and could be validly performed by any one who was attending to the duties of the Registrar on that day; that Section 18(1) should be construed in such a manner as not to make its provisions nugatory on account of things which may happen accidentally or by design, and that no statute being impossible even when the persons who should be so interpreted as to make its work-wanted to take benefit of the provision had done all that lay in his power to abide by the relevant provision. Lastly it was urged that if Section 18(1) is interpreted in the way it has been by the third respondent, it would create great hardship and inconvenience and may bring into play fraud which has to be avoided.

On the aforesaid considerations, the learned counsel urged that these words "deliver to the Registrar" occurring in Section 18(1) could only mean "deliver to the registry or left in the office of the Registrar" and cannot be interpreted to mean that the delivery of the notice could be made to the Registrar only to the exclusion of any other officer who was discharging his duties at the time.

8. On the other hand, the contention advanced by Shri M. Adhikari is that a statute has to be construed according to its plain language and the language used in Section 18(1) is plain enough to indicate that the notice can be received by no other person but the Registrar only. That the question of hardship or inconvenience particularly when it is a creation of the petitioner himself in the sense that he went so late that he did not even care to ask the Vice-Chancellor as to who had been appointed to perform the duties of the Registrar who had been removed to the hospital having taken ill, is absolutely irrelevant in interpreting Section 18(1). He further urged that even if it were accepted that the said notice could be handed over to the Assistant Registrar, the writ jurisdiction of the Court cannot be attracted to set aside or quash the decision of the Chairman on the point of order which has been given finally under Regulation 11 (a) of Chapter VI (Page 652 of the Jabalpur University Calendar) as his decision was clearly within the jurisdiction and he was not deciding any rights of the parties but was merely performing administrative duties in presiding at the meeting and deciding the point of order.

Lastly it was urged that u/s 23(3) of the Act the petitioner was not remediless because under that provision on a requisition in writing signed by not less than 30 members of the University Court, the Vice-Chancellor is bound to convene a special meeting of the Court within 46 days of the receipt of such a requisition.

9. For appreciating the controversy raised before us, it would be convenient to reproduce Section 18(1) and (2).

"18(1). Any member of the Court may, at least twenty-four hours before the time toed for the commencement of the meeting of the Court, deliver to the Registrar a written notice of his intention to move at the meeting of the Court a motion of no-confidence against the Vice-Chancellor on the ground of misbehaviour or incapacity together with a copy of the motion containing particulars of misbehaviour or incapacity, as the case may be, proposed to be moved.

(2) At the commencement of the meeting of the Court, the Presiding Officer shall read the notice and the text of the proposed motion delivered under Sub-section (1) and call upon the members of the Court who are in favour of the motion being discussed to rise in their seats."

10. On consideration of the arguments advanced before us, we have formed the opinion that the handing over of the notice to the Assistant Registrar. Shri Pathak, should have been held to be valid u/s 18(1). In the first place our view is that Section 18(1) cannot be so read as to require the delivery of the written notice for moving a: motion of no-confidence against the Vice-Chancellor to the Registrar personally If that were the idea underlying the provision, after the words "the Registrar" the word "personally" would have been used to make that meaning clear It is also pertinent to note that the receipt of the written notice in the office of the Registrar was merely a ministerial or executive act, the sole purpose being to bring it to the notice of the Vice-Chancellor. It is significant to note that after the said notice was received, the motion of no-confidence was even included in the agenda of the meeting which was to be held on the following day and there is no grievance that the notice was not delivered by the Assistant Registrar to the Vice-Chancellor.

11. In the same connection, the language of Section 80 of the CPC was emphasized before us on behalf of the respondents where, in case of notices which are required to be delivered to particular public officers stated m that section, the language used is that the notice shall be delivered to him or left at his office. By contrast of the language it was sought to be urged that the words "or left at his office" are missing in Section 18(1), the only meaning that could be given to the language used was that the notice should have been handed over personally to the Registrar. In our opinion, the words "or left at his office" as used in Section 80, C.P.C., have merely been used by way of abundant caution and even if those words were not there, it could not be insisted that the notice should have been delivered to the public officer concerned personally.

12. It cannot be disputed that a written notice u/s 18(1) could be sent to the

Registrar by post. In that case, the registered letter could be received by any one who normally receives the letters in his office of the Registry and it could not be a valid objection that the registered envelope containing a motion of no-confidence was delivered by the postal peon to a clerk or other officer of the Registry and not to the Registrar. It has also not been challenged that the letters addressed to the Registrar are not received by subordinate officers in his office. Again, it is significant to note that Shri Pathak was discharging the duties of the Registrar in his office and the Vice-Chancellor had made no other arrangement for the discharge of the duties of the Registrar on 24-1-1967.

13. The minutes of the annual meeting of the University held on 26-1-1967 (annexure R-1) clearly show that the Chairman of the meeting, namely respondent No. 3 himself, realised that in the eventualities similar to those which had happened on 24-1-1967 where it was extremely difficult or impossible to personally hand over the written notice of the no-confidence motion to the Registrar, the provisions of Section 18(1) would, to a considerable extent, be made nugatory and would result in the no confidence motion not being moved or discussed at the meeting which was held 24 hours after the delivery of the notice. He, however, came to the conclusion that Section 18(1) suffered from a lacuna which compelled him to hold that the notice of no-confidence motion should have been delivered to the Registrar personally. We are, however, of the view that on a proper construction being put on the language used in Section 18(1) it is capable only of being construed reasonably in the manner indicated above and it was not necessary that the notice of motion should have been handed over to the Registrar personally.

Considering the fact that even according to the ordinary practice letters addressed to the Registrar are received in his office by the subordinate employees or subordinate officers of his office and the notice in question was received in fact by Shri Pathak without ass abjection, we are of the view that Section 18 should be so construed as to result in the adoption of a just, reasonable and sensible construction of the section and not in a sense which would offend the sense of justice.

14. Merely on the strength of the definite article "the" in our opinion it was wrong to insist that the notice could only be delivered to the Registrar personally. Placing too much emphasis on the definite article "the" in the sense of particularizing the person gives rise to an anomalous construction and should have been avoided. As the apparent purpose of the provision would have been defeated and some inconvenience, hardship or absurdity was likely to result from the interpretation put by the Chairman of the meeting on the said Section 18(1) for which in our opinion the petitioner could not be blamed because the law clearly gave him the choice to file the written notice of the motion of no-confidence before 24 hours of the commencement of the meeting in which that motion had to be moved, we are of the view that the interpretation put by the Chairman is not correct.

It was stressed by Shri Adhikari a great deal that the hardship or inconvenience of which the petitioner complains should not be allowed to alter the meaning of the language employed by the Legislature if that meaning is clear on the face of the statute. We have already said that merely by the use of the definite article "the" it cannot be inferred that the notice was required to be delivered personally to the Registrar. In our view, the words "the Registrar" as used in Section 18(1) simply particularize the office but not the person and therefore it would be a valid compliance of the provisions made in Section 18(1) if the notice of no-confidence motion against the Vice-Chancellor were delivered in the Registry or left in the office of the Registrar who could normally receive the letters addressed to the Registrar.

15. In the same connection, we may further emphasize that in any case the Chairman should have held that there had been substantial compliance of the requirement of Section 18(1) as the object of the notice was to inform the Vice-Chancellor at least 24 hours before the commencement of the meeting about the motion which was desired to be moved at the meeting, On this principle with regard to notices u/s 80, Civil Procedure Code, it has been held that when a notice is addressed even to a wrong person but is forwarded to the right person, the object of the section--if achieved and notice is valid--see Governor-General of India in Council representing the Great Indian Peninsula Railway Administration Vs. Smt. Bhanwari Devi, and Union of India v. Chanan Shah Mahesh Dass, AIR 1055 Pepsu 51. The present case stands on much better footing because the notice was correctly addressed and was also duly presented in the office of the Registrar and reached the hands of the Vice-Chancellor. To construe the notice in any other manner would be to scrutinize it in a pedantic manner and it is the consistent rule of interpretation that notices u/s 80, Civil Procedure Code, and wider Section 106, Transfer of Property Act, which in our opinion stand on a similar footing, should not be construed in a pedantic manner. Notices must be so construed as to advance the purposes for which they are given and not to retard or defeat them. We do not see any strong reason based on authority or principle to take a contrary view.

16. In Chandra Mohan v. State of Uttar Pradesh AIR 1966 SC 1987, para 14, rule of construction has been stated by their Lordships in the following words:

"But, if, however, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical convenience or make well established provisions of existing law nugatory". We, therefore, in substance accept the arguments advanced on behalf of the petitioner in so far as the interpretation of Section 18(1) is concerned.

17. The next point which was urged on behalf of the respondents is that as under Regulation 11(a) of Chapter VI of the Regulations of the University, the decision of the Chairman on the point as to whether proper notice of the resolution had been given has finality, the said question could not be urged in these proceedings

We are unable to accept this contention. No Tribunal or Authority can, in our opinion, decide the matter erroneously and assume jurisdiction or refuse jurisdiction by deciding a collateral fact wrongly nor can a statutory duty as in Section 18(2) reproduced above be avoided by erroneous decision as to the collateral fact. u/s 18(2) a statutory right is conferred on the mover of the resolution to have his resolution read by the Presiding Officer. It is clear that corresponding statutory duty is imposed on the Presiding Officer of the meeting to read the notice and the text of the proposed motion.

In our opinion, this right and duty cannot be avoided on a wrong or erroneous interpretation of a collateral fact of delivery of notice wider Section 18(1) to the Registrar personally. The error committed by the third respondent in upholding the point of order in cur opinion is a manifest error apparent on the face of the proceedings and therefore can be corrected by a writ of certiorari. The cardinal rule for the construction of a rule is that it should be construed according to the intention expressed in the statute itself and in order to understand the words and the subject matter with respect to which they are used and the object in view must be borne in mind We have no doubt in our mind that if Section 18 had been construed with reference to its intended scope and purpose and in order to carry out this purpose rather than to defeat it, the point of order raised in the meeting of 26-1-1967 could not be upheld. We therefore overrule the contention that the special writ jurisdiction of this Court is not attracted.

18. It was also urged that the petitioner had an equally efficacious and speedy remedy by following the provisions of Section 23(3) of the Act Under that provision, on a requisition in writing signed by not less than 36 members of the University Court, the Vice-Chancellor is bound to convene a special meeting of the Court within 46 days of the receipt of such a requisition. Though the petitioner cannot be said to be remediless by virtue of the provisions contained in Section 23(3), yet in our opinion the said remedy cannot be said to be equally efficacious and speedy.

19. However, we do not consider it necessary to issue a writ of mandamus to the third respondent who was Chairman of that meeting to recommence the meeting for the purpose of duties in relation to the said notice. In our opinion, the said purpose can be fully achieved by directing that the notice delivered by the petitioner on 24-1-1967 to the fifth respondent shall be taken to be validly presented and on that basis would be considered at the next appropriate meeting of the University Court.

20. In the result, this writ petition is allowed and the decision of the third respondent holding that the notice u/s 18(1) of the Act had not been validly delivered because it was delivered to the Assistant Registrar and not to the Registrar personally, is quashed. It is directed that the said notice shall be taken to be a validly delivered notice and would be considered at the next appropriate meeting of the University Court according to the requirements of law. The petitioner shall get his costs which we assess at Rs. 100 from the respondents.

The security amount shall be refunded to the petitioner.