

(1970) 12 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 97 of 1970

B.N. Ahuja

APPELLANT

Vs

G.S. Pathak and Others

RESPONDENT

Date of Decision : 18-12-1970

Acts Referred:

Citation : (1970) ILR Delhi 438

Hon'ble Judges : H.R. Khanna, C.J.;V.S. Deshpande, J

Bench : Division Bench

Advocate : R.L. Aggarwal, V.P. Chaudhary Y.K. Mathur, Niren Dev, B. Dutt, Rishikesh, H.R. Gokhale, A.B. Lal and P.N. Lekhi, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) Dr. B. N. Ahuja by means of this petition under Article 226 of the Constitution of India has prayed for the issuance of a writ to quash the decision of the scrutiny officer whereby the nomination paper for the election of Shri G. S. Pathak, Vice-President of India, respondent No. 1, to the office of the Chancellor of the University of Delhi was held to be valid. Prayer has also been made in the petition for declaring Dr. Govind Rai Chaudhry, the only other contestant to the office, as having been duly elected to the said office. The respondents named in the petition, besides Shri Pathak, are the Vice-Chancellor and the Registrar of the University of Delhi.

(2) Delhi University was established under the provisions of the Delhi University Act, 1922 (Act No. Viii of 1922). Section 8 of that Act specifies the persons who shall be officers of the University. The Chancellor tops the list of those officers. Section 9 of the Act, as it originally stood, provided that the Chancellor would be the Governor General. The Act was amended by the Amending Act No. V of 1952 which came into force on March 1, 1952. According to section 7A, as introduced by the amending Act, the President of India shall be the Visitor of the University. Statutes have been made u/s 29(1) of the Act. According to Statute 11-C the

Chancellor shall, by virtue of his office, be the head of the University, and, if present, shall preside at the convocation of the University and at all meetings of the Court. Statue 11-B deals with the election of the Chancellor and reads asunder :-

"(1)The Chancellor shall be elected by the Court.

(2)The Chancellor shall hold office for a period of three years.

PROVIDED that, notwithstanding the expiry of the said period of three years, he shall continue to hold office until the election of his successor either at the next annual meeting or at any other meeting of the Court convened by the Vice Chancellor.

(3)In the case of a casual vacancy in the office of the Chancellor, the Pro-Chancellor shall exercise the functions of the Chancellor until a new Chancellor is elected."

(3) The office of the Chancellor of the University of Delhi fell vacant as the previous Chancellor, Shri V. V. Giri, resigned from this office on October, 14, 1969. A notice dated December 1/4, 1969, was issued by the Registrar respondent No. 3 calling a meeting of the University Court on December 20, 1969 in the Old Convocation Hall of the University. Item No. 5 of the Agenda, circulated for the meeting, read as under :-

"5,Election of the Chancellor of the University under statute fl-B(I) in the vacancy caused by the resignation of Shri V. V. Giri.

NOTE: The procedure for this election will be as follows :- Any member of the Court may propose the name of any person for election as Chancellor. All such proposals should be seconded by another member and should reach the Registrar before 4.00 P.M. of 13th December, 1969. The proposals received shall be intimated to the members one week before the election. If there is more than one name proposed for election to the office, the election will be held at the meeting of the Court and voting will be by ballots.

(4) The consent in writing of the candidate nominated may be obtained and sent to the Registrar Along with the nomination."

(5) Nomination paper, proposing the name of respondent No, 1 for election to the office of the Chancellor, was signed by Shri B. M. Johri as proposer and Shri H. Y. Mohanram as seconder. Both of them were members of the Court and mentioned December 6, 1969, as the date on which they signed the nomination paper. On December 8, 1969, Shri L. N. Welingkar, Registrar of the University, respondent No. 3, took the said nomination paper to the residence of respondent No. 1, who then signed the following declaration on the nomination paper :

"I agree to be a candidate for election as proposed and seconded above."

(6) The nomination paper was thereafter brought back by the Registrar and

deposited the same day with Shri R. V. Raman, Superintendent, Council Branch of the University. A nomination paper proposing the name of Dr. Govind Rai Choudhry was signed by Shri .Jagan Nath Mathur as proposer and the by the petitioner as seconder. Dr. Chaudhry signified his consent on the said nomination paper. The nomination paper was presented in the office of the Registrar before 4 P.M. on December 13, 1969.

(7) The Vice-Chancellor of the University, respondent No. 2, appointed Dr. P. K. Tripathi, Dean Faculty of Law, University of Delhi, to scrutinise the nomination papers. December 16, 1969 was fixed as the date of scrutiny of the nomination papers. At the time of the scrutiny besides Dr. Tripathi, Dr. Chaudhry and his proposer Shri Jagan Nath Mathur were present. An objection was taken to the nomination paper of respondent No. 1, Shri R. V. Raman then made the following affirmation:

"I affirm that the nomination paper proposing the name of Shri Gopal Swarup Pathak for election to the office of the Chancellor proposed by Prof. B. M. Johri and seconded by Prof. H. Y. Mohan Ram was brought by the Registrar and handed over in the office to me at 6.45 P.M. on 8th December, 1969.

(R.V. RAMAN),

Superintendent,

COUNCIL Branch."

(8) The affirmation was also signed by Shri L. N. Welinkgar, Registrar, Dr. Tripathi then declared the nomination paper of respondent No. 1 as valid. Copy of the nomination paper Along with the endorsement of Dr. Tripathi has been filed on behalf of respondent 2 and 3 as R-1 and the same reads as under :-

UNIVERSITY of Delhi

NOMINATIONPAPER

OFFICE for which election is sought : Chancellor of the Delhi University. NAME in full of the Candidate nominated : Shri Gopal Swar..p Pathak. DESIGNATION(if any) and address of the candidate : Vice-President of India, New Delhi.

NAME in full of the Election who proposes Nominated : B. M. Johri. DESIGNATION(if any) and Address : Professor and Head, Department of Botany, University of Delhi.

SIGNATURE of the Proposer : Sd (B. M. Johri) Date 6-12-1969, Name in full of the Elector who seconds the proposals : H. Y. Mohan Ram.

DESIGNATION(if any) and address of the Seconder : Proctor University of Delhi..

SIGNATURE of the Seconder : Sd (H. Y. Mohan) Date 6th December, 1969.

"(DECLARATIONBY The CANDIDATE)

I agree to be a candidate for election as proposed and seconded above. DATE 8th December, 1969. Sd(Gopal Swarup Pathak) (Signature of the candidate).

NOTE.-THE consent in writing of the candidate nominated may be sent separately by letter in time, where it is not possible to get it signed on the nomination paper itself.....

COPY of Endorsement dated 16-12-1969 of Professor P. K. Tripathi, (Dean, Faculty of Law. University of Delhi), Scrutiny Officer.

SCRUTINISED and found valid Affirmation by Mr. R. V. Raman and counter-signature by Mr. Welinkar, Registrar attached was accepted as proof of filing in time.

SD(P. K. Tripathi)."

(9) A notice dated December 17, 1969, was thereafter issued by the Registrar that the meeting of the University scheduled to be held on December 20, 1969, had been postponed. Dr. Chaudhry made representations to the Vice-Chancellor and the Visitor of the University for 9HC:D/70-2 setting aside the decision of the Scrutiny Officer. Dr. Chaudhry was then informed by the Vice-Chancellor that there was no reason for setting aside the decision of the Scrutiny Officer. On January 14, 1970 a notice was issued for holding the election of the Chancellor on January 24, 1970. It was mentioned in the notice that the names of Dr. G. S. Pathak and Dr. Govind Rai Chaudhry had been duly proposed and seconded. The petitioner thereupon filed the present petition on January 22, 1970. Along with the petition was filed an application for restraining respondents 2 and 3 from holding the election to the office of the Chancellor. The petition came up for preliminary hearing on January 23, 1970, when it was admitted. No order was, however, made for staying the election. The election to the office of the Chancellor accordingly took place in the meeting of the University Court held on January 24, 1970. Respondent No. 1 secured 121 Votes and was declared elected. Dr. Chaudhry secured 23 votes and was declared to be not elected. In view of the election having been held the petitioner has by means of an application for amendment sought to add a prayer for setting aside the election of respondent No. 1 to the office of the Chancellor.

(10) The case, as set up in the petition by the petitioner, is that as the nomination paper of respondent No. 1, at the time it was originally received by the Registrar, did not contain the signatures of respondent No. 1 signifying his consent to be nominated as a candidate, it should have been rejected. It was not, it is alleged, within the competence of the Registrar to have gone to respondent No. 1 and obtained his consent. The election to the office of the Chancellor, it is further stated, is governed by the Rules for Elections to the Various Authorities of the University (hereinafter referred to as the Rules).

(11) The petition has been resisted by the respondents. The affidavits of Shri L. N. Welinkar, Registrar of the University, and Shri R. V. Raman have been filed on

behalf of respondents 2 and 3 in opposition to the petition. According to the affidavit of Shri Welinkgar, it was within his competence to have gone to respondent No. 1 for obtaining his consent. The election to the office of the Chancellor, it is further practice. It has been denied that the election to the office of the Chancellor is governed by the Rules relied upon by the petitioner. Shri Welinkgar adds that no rules and procedure have been prescribed for holding the said election. The Scrutiny Officer, it is stated, held a preliminary investigation to see that the nomination papers were duly signed and had been received within time. He had no authority to reject the nomination paper. The Court of the University was the Supreme authority and was the master of the procedure for holding the election. According further to the affidavit of Shri Welinkgar, the nomination paper of respondent No. 1 was not invalid. Plea has also been taken that there was no breach of any statutory provisions and the Court has no jurisdiction to interfere in the matter of election as it related to the internal management of the University.

(12) We have heard Messrs R. L. Aggarwal and V. P. Choudhry on behalf of the petitioner, the Attorney-General on behalf of respondent No. 1, Mr. Avadh Behari Lal on behalf of respondents 2 and 3 and Mr. P. N. Lekhi on behalf of Dr. Choudhry, who was allowed to intervene, and are of the opinion that the petition merits dismissal. Before dealing with other matters which arise for consideration, we may observe that a contention was raised on behalf of the petitioner that the nomination paper of respondent No. 1 did not bear the note as is contained in R-1 at the time the nomination paper was produced for scrutiny. According to the note, "the consent in writing of the candidate nominated may be sent separately by letter in time, where it is not possible to get it signed on the nomination paper itself." In order to show that the note had been subsequently interpolated, the petitioner filed an application for the production of the original nomination paper. Respondents 2 and 3 thereupon produced the said nomination paper as also two earlier nomination papers dated April 8, 1965 and August 9, 1967. The nomination paper of April 8, 1965 related to the nomination of Dr. Zakir Hussain, while that dated August 9, 1967 related to the nomination of Shri V. V. Giri. The nomination paper of respondent No. 1 as well as the two earlier nomination papers of Dr. Zakir Hussain and Shri V. V. Giri, all contained identical notes. The nomination paper of respondent No. 1 is on the lines of the nomination paper of Dr. Zakir Hussain and Shri Giri, and as the earlier nomination papers contained the note in question we see no reason to question the stand taken on behalf of the respondents that the nomination paper of respondent No. 1 also contained the said note at the time it was signed by respondent No. 1. It may also be observed that none of those, who were entrusted with the custody of the nomination paper of respondent No. 1 had any animus to make an interpolation in that nomination paper.

(13) It has been argued on behalf of the petitioner that the election to the office of Chancellor is governed by the Rules mentioned earlier. Those Rules constitute appendix Vii to the Ordinances. According to Rule Xi of those Rules, no person

shall be nominated as a candidate for election unless he signifies his consent on the nomination paper, and a nomination paper which does not comply with all the formalities required by the Rule shall be rejected. The above argument has been controverted on behalf of the respondents and it is urged on their behalf that the Rules in question do not apply to the election to the office of Chancellor. In this connection it would be pertinent to refer to some of the relevant provisions. Section 17 of the Delhi University Act specifies the authorities of the University. The first among the authorities is the Court, and the second is the Executive Council. According to section 18, the Court shall be the Supreme authority of the University and shall have the power to review the acts of the Executive Council and the Academic Council (save when these authorities have acted in accordance with the powers conferred upon them under the Act, the Statutes or the Ordinances) and shall exercise all the powers of the University not otherwise provided for by the Act or the Statutes. Section 21 deals with the Executive Council and provides that the said Council shall be the executive body of the University, and its constitution and the terms of office of its members, other than ex-officio members, shall be prescribed by the Statutes. Section 28 pertains to the Statutes. According to this section, the Statutes, subject to the provisions of the Act, may inter alia provide for :

(A) the constitution, powers and duties of the Court, the Executive Council, the Academic Council, the Finance Committee and such other bodies as may be deemed necessary to constitute from time to time;

"(B) the election and continuance in office of the members of the said bodies, including the continuance in office of the first members, and the filling of vacancies of members, and all other matters relative to those bodies for which it may be necessary or desirable to provide:"

SECTION 29 gives the procedure of making the Statutes and provides that the Court may, from time to time, make new or additional Statutes or may amend or repeal the existing Statutes in the manner provided in the section. Section 30 relates to the Ordinances, and according to section 31 the said Ordinances may be amended, repealed or added to at any time by the Executive Council.

(14) Statute 2 provides that the Court shall consist of a number of persons. Chancellor, Pro-Chancellor, Vice-Chancellor and some others are the ex-officio members of the Court. The other members of the Court are the representatives of departments and colleges, as also University teachers other than professors. In addition to them are the representatives of professions, Industry, Commerce, Legislatures, Municipal Bodies and Educational Boards. Provision is also made for some nominated members. According to Para (4) of the said Statute the method of election of members shall be as laid down in the Ordinances. The contention advanced on behalf of the petitioner is that as the Chancellor is a Member of the Court and as Para (4) of Statute 2 provides that the method of election of members shall be as laid down in the Ordinances, and further as the Rules, relied upon by the petitioner are a part of the Ordinances, the election of the

Chancellor has to be governed by the Rules. Reference has also been made in this connection to the resolution which was passed by the Executive Council of the University at its meeting held on March 27, 1953. The resolution reads as under :-

"305.The Council referred to Statutes 11-B and 11-D and considered the procedure to be adopted for the election of the Chancellor and the Pro-Chancellor.

(15) It was agreed that the usual procedure for elections will have to be followed in respect of the elections of these officers also.

(16) It was decided that following procedure be adopted:

ANY member of the Court may propose the name of any person for election as Chancellor or as Pro-Chancellor. All such proposals should be seconded by another member and reach the Registrar by the 15th April. The proposals received should be included in the revised Agenda or intimated to the Members one week before the election. If there is more than one name proposed for election to the office, the election shall be held at the meeting of the Court and voting shall be by ballots."

(17) The contention that the election to the office of the Chancellor is governed by the Rules, relied upon by the petitioner, in our opinion, is not well-founded. Para (4) of Statute 2 relates to the method of election of members of the Court. The Chancellor is not elected member of the Court. He is elected as Chancellor and by virtue of that office he becomes the ex-officio member of the Court. It is Statute 11-B which relates to the election of the Chancellor as does Statute 11-D in respect of the election of the Pro-Chancellor. The elections of the Chancellor and the Pro-Chancellor are not dealt with by Statute 2 which makes provision for the election of a number of representatives of various Bodies and Associations as members of the Court. According to clause (xiii) of Para (1) of Statute 2, ten representatives shall be elected to the Court by the Alumni Association. Clause (.xiv) provides for the election of not more than ten persons by the Court belonging to the professions of Law, Medicine Engineering and Technology, and Auditing and Accountancy. According to clause (xv), not more than six persons representing Industry and Commerce shall be elected by the Court. It .is, in our opinion, for the election of such members that Para (4) of Statute 2 makes provision. This is also made clear by Rule 1 of the Rules relied upon by the petitioner. The relevant part of Rule 1 reads as under :-

"1.Election to the following Authorities of the University will be held on the system of single transferable vote in accordance with these Rules :

(I)Election of representatives of the Alumni Association to the Court, as envisaged by Statute 2(1) (xiii).

(II)Election of persons representing Learned Professions and Industry and Commerce to the Court, as envisaged by Statute 2(1) (xiv) & 2(1) (xv)."

(18) There is nothing in the Rules to indicate that they also apply to the election to the office of Chancellor. We are also not impressed by the argument advanced on behalf of the petitioner that the words "usual procedure" in the resolution of March 27, 1953, reproduced earlier, refer to the procedure laid down in the Rules. If that had been the intention of those passing the above resolution, the resolution would have contained some reference to the Rules. There could have been in that event no purpose in laying down the procedure which is contained in the concluding part of the resolution. The resolution referred only to Statutes 11-B and 11-D which deal with the elections to the offices of the Chancellor and the Pro-Chancellor. It cannot,, in our opinion, be inferred from the resolution that the Rules prescribed for election of the Members to the Court were made applicable to the election to the office of Chancellor. As such, Rule 11, relied upon by the petitioner, cannot be of much avail to him.

(19) It is not very clear from the material on record as to when the Registrar received the nomination paper of respondent No. 1. All that can be said is that the nomination paper was signed by the proposer and the seconder on December 6, 1969 and the Registrar received it before he took it to the residence of respondent No. 1 on December 8, 1969, when respondent No. 1. signed the declaration about his agreeing to be a candidate. The affidavit of Shri Welingkar shows that later on that day he handed over the said nomination paper to Shri R. V. Rman, Superintendent. Council Branch, for being kept in deposit. The case of the respondents is that the nomination paper of respondent No. 1 should be considered to have been presented in the office of the Registrar on December 8, 1969, after the said respondent had given his consent. The learned counsel for the petitioner has questioned the propriety of the act of the Registrar in taking the nomination paper to the residence of respondent No. 1 for obtaining his signatures. We are of the view that there is a good deal of force in the submission of the learned counsel in this respect. The Registrar has justified his act by referring to the past practice. According to the affidavit of the Registrar, Dr. S. Radhakrishnan was first elected as Chancellor of the University and held the office for three terms as detailed below:-

(I)First elected for the period 25-4-53 to 24-4-56.

(II)Re-elected for the period 25-4-56 to 24-4-59.

(III)Re-elected for the period 25-4-59 to 24-4-62.

(20) When Dr. Radhakrishnan became President of India, the office of Chancellor fell vacant. Dr. Zakir Hussain was elected as the Chancellor in his place and he continued to hold the office from April 28, 1962 to April 27, 1965, in the first instance. Dr. Zakir Hussain was re-elected as Chancellor and continued to hold the office from May 3, 1965 to May 21, 1967. Dr. Zakir Hussain thereafter became the President of India and Shri V. V. girl became the Chancellor of the University and remained as such from August 21, 1967 to October 14, 1969. On each of those occasions the Registrar approached the Vice President of India

personally and requested him to give his consent for election to the office of the Chancellor. The University Court on each of those occasions unanimously elected the Vice-President as the Chancellor of the University. It is further stated by the Registrar that having regard to the previous practice it should be deemed to be implied that the proposer and the seconder intended that the Registrar should obtain the acceptance of the candidate before the nomination paper was treated as filed.

(21) The past practice referred to by the Registrar, in our opinion, was far from desirable. The relevant provisions of the Delhi University Act and the Statutes have made the office of the Chancellor to be elective. There was in this respect a departure from the earlier position when the Governor-General by virtue of his office used to be the Chancellor of the University. As election has been envisaged since 1952 for the office of the Chancellor, it is, in our opinion, essential that those like the Registrar, who are concerned with the holding of that election, should remain neutral and should appear to be neutral. They should not show any interest by going to the residence of a candidate to obtain his signatures. This has to be so, irrespective of the position and status of the candidate, and the adherence to the above rule should not be affected by any consideration of respect for the candidate. It is no doubt true that the election to the office of the Chancellor in the past was uncontested. It is also true that on December 8, 1969, when the Registrar went to the residence of respondent No. 1 for obtaining his signatures, there was no other contestant and the Registrar might well have taken that the election on this occasion too would be without a contest. Despite all these facts, we are of the opinion that there should have been strict adherence to and no departure from the norms of elections.

(22) We have already held above that the Rules, relied upon the petitioner, are not applicable to the election in question. No "other rules have been prescribed and no statutory provisions have been enacted for the form and other details of the nomination paper as also those pertaining to the other formalities for the election. In the circumstances it cannot be said that there has been any violation of any statutory provisions or rules on the subject. Although we are of the opinion that the Registrar should not have gone to the residence of respondent No. 1 and obtained his signatures on the nomination paper, we cannot lose sight of the fact that the signatures of respondent No. 1 had been obtained and were there on his nomination paper in token of his consent to be nominated as a candidate before it was deposited by the Registrar with the Superintendent of Council Branch. It is significant that the nomination paper was deposited on December 8, 1969, while the last day for filing the nomination paper was December 13, 1969. There was yet an interval of five days to file another nomination paper in case one felt that the earlier nomination paper was invalid. The analogy of cases decided under the Representation of the People Act, 1951 (43 of 1951) to which reference has been made on behalf of the petitioner, does not hold good. The said Act prescribes in section 33 the requirements for a valid nomination paper and the necessity of its presentation. Section 36 of the Act

deals with the scrutiny of nominations by the Returning Officer and empowers him, inter alia, to reject the nomination in case he finds that there has been a failure to comply with any of the provisions of section 33 the requirements for a valid nomination paper and the necessity of its presentation. Section 36. Section 81 of the Act makes provision for the filing of an election petition, calling in question an election. Two of the grounds for declaring the election to be void, as given in section 100, are that a nomination has been improperly rejected or that the result of the election has been materially affected by the improper acceptance of a nomination. As against that, no particular proforma has been prescribed and no requirements have been laid down for filling in the nomination paper for election to the office of the Chancellor, nor is there any provision for its rejection by the Scrutiny Officer. There is also no corresponding provision for filing a petition to set aside the election. As such, the petitioner, in our opinion, can not derive much assistance from the cases decided under the Representation of the People Act. It may be mentioned that the Agenda, which was issued by the Registrar in connection with the election to the office of the Chancellor, stated that the consent in writing of the candidate nominated might be obtained and sent to the Registrar Along with the nomination. There is nothing to show that the above note of the Registrar in the Agenda was in conformity with any statutory requirements non-compliance with which would entail serious consequences.

(23) The resume of facts given above would show that respondent No. 1 was declared elected by overwhelming majority in a meeting of the Court held on January 24, 1970. No objection, it would appear from the affidavit of Shri Welinkar, was raised with regard to the nomination of respondent No. 1 in that meeting. The nomination paper of respondent No. 1, as mentioned earlier, signed by the proposer and seconder as well as by respondent No. 1 himself, had been deposited in the office of the Registrar on December 8, 1969 long before the prescribed date. In view of all the circumstances, the fact that it was the Registrar and not the proposer or seconder or someone on their behalf who went to respondent No. 1 to obtain his signatures on nomination paper would not induce us to set aside the election of respondent No. 1 in this position under Article 226, more so when there has been no breach of any statutory provisions. In this context we may refer to the decision of a Division Bench of the Allahabad High Court in the case of Prem Narain Tandon Vs. State of Uttar Pradesh and Another, The learned Judges in that case dealt with a writ petition which had been. filed in connection with an election of the members of the Court of Lucknow University. V. D. Bhargava, J., as he then was, speaking for the Bench, observed :

"UNIVERSITIES are autonomous bodies and the Courts should be reluctant, as far as possible to interfere with the internal administration of the University. There should be no occasion for any interference unless there is a palpable violation of law, which has occasioned injustice in a broad and general sense. In the present case we do not think that the rights of the petitioners were such which needed

any interference by this Court, when their terms were determined."

(24) With due deference we entirely agree with those observations. The election to the office of the Chancellor, though prescribed by the Statute, is a matter essentially for the University Court which is the Supreme body of the University. The Courts of law would as far as possible be loath to interfere in the internal affairs of the University which is an autonomous body. When, as in the present case, a candidate has been elected by overwhelming majority and there has been a substantial compliance with the requirements of such elections and no breach of any Statutory provisions is proved, the Court would decline to interfere with the" election in a petition under Article 226.

(25) The result is that the petition fails and is dismissed but in the circumstances without costs.