

(2005) 05 AHC CK 0217
In the Allahabad High Court
Case No : Special Appeal No. 518 of 2005

Brij Bhushan Singh, Vijai Kumar and Prabhu Nath, Class IV
Employee Udit Narain Post Graduate College

APPELLANT

Vs

Regional Higher Education Officer, District Inspector of
Schools, Accounts Officer and Committee of Management
Udit Narain Post Graduate College

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 49, 50, 66

Citation : (2005) 5 AWC 5121 : (2005) 2 UPLBEC 1690

Hon'ble Judges : Ajoy Nath Ray, C.J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Shashi Nandan and H.C. Singh, for the Appellant; Ashok Khare and S.D. Shukla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The appeal is taken up and summarily disposed of.
2. Allegations in the stay petition cannot be taken to be admitted as we have not called for any counter affidavits.
3. The appellants are three class-III employees whose selection by the Selection Committee has been challenged by the Committee of Management of the College concerned in a writ application. The judgement impugned before us was passed in the writ matter by the Hon'ble Mr. Justice Sunil Ambwani on the 24th March 2005. By that order his Lordship has disapproved of the conclusions drawn by the Regional Higher Education Officer in his order dated 6.12.1996 which have the effect of validating the selection of the appellants.
4. There have been a lot of litigation in the past, but the point of controversy, which arises before us is short and simple.
5. The college concerned is affiliated to the Gorakhpur University. The University

statute, framed under the Uttar Pradesh State Universities Act, 1973 sets out in Statute 25.06, the following constitution of the Selection Committee; the Selection Committee for appointment to the remaining posts.....by direct recruitment or by promotion shall consist of:-(i) the head of the management or a member of the management nominated by him, who shall be the Chairman (ii) the Principal of the College (iii) the District Inspector of Schools (iv) the District Employment Officer or the officer authorised by him in this behalf.

6. It is an admitted position before us that the person, who fills the description of item (i) above, is the District Magistrate.

7. The Selection Committee which acted for the purpose of selecting the three appellants had in it the Principal of the College and the District Inspector of Schools, i.e two of the authorised persons named in the University Charter (iii). The admitted position is that the District Magistrate i.e Head of the Management did not attend; nor did the District Employment Officer or an officer authorised by. Thus only two members of the four authorised ones were present in the Selection Committee.

8. The Committee acted in or about the year 1992 for the purpose of selection of the three appellants. The further problem with the Committee was that the Manager of the college, who is not the person mentioned in item (i) above and who is an unauthorised person, admittedly participated in the Selection Committee, which found in favour of the (sic) three appellants.

9. The report of the Regional Director which has been set aside by the Hon''ble Single Judge proceeded to validate the appointment given to the three appellants on the basis of the decision of the above Selection Committee.

10. On behalf of the appellant it was submitted that u/s 66 of the U.P. State Universities Act, 1973 selection is not to be invalidated, unless there appears some defect of substance and not merely a defect of procedure.

11. The said Section 66 is set out below:

"Proceeding not to be invalidated by vacancies, etc.- No act or proceeding, of any authority or body or committee of the University shall be invalid merely by reason of-

(a) any vacancy or defect in the constitution thereof, or

(b) some person having taken part in the proceedings who was not entitled to do so, or

(c) any defect in the election, nomination or appointment of a person acting as member thereof, or

(d) any irregularity in its procedure not affecting the merits of the case."

12. Mr. Shashi Nandan, learned counsel appearing for the appellants was clear in his submission that this section does not apply in terms to the Selection

Committee of the college concerned. The section would apply in terms only to any authority or body or Committee of the University but he argued that since the college is under the University, the rule and procedure which, is prescribed for the higher body i.e. University itself should be applicable to the college also. If only a matter substance is to rule the affairs of the University in a certain matter, then and in that event, matters of substance should also rule in similar matters, the affairs concerning the colleges affiliated to the University. The statute of particular Universities including that of the Gorakhpur University, which is before us, is framed u/s 49 read with Section 50 of the U.P. State Universities Act, 1973. These statutes are in the nature of subordinate legislation. In our opinion, when subordinate legislation falls to be construed, such construction is to be based on a "whole reading of the subordinate legislation itself. If the subordinate legislation is in conflict with the superior legislation under which it has been framed, then and in that event, the superior legislation shall prevail. But if there is no conflict and the subordinate legislation is a self contained whole, then it would be inappropriate to interpret it on the basis that it should be rendered similar to the superior legislation or parts or sections of it. This is a very simple consequence of giving plain meaning to the words of "statute" or "legislation", whichever rung on the hierarchy legislation might it be situated. Furthermore, from the angle of legislative intent, it should be borne in mind that the framers of the subordinate legislation are to be credited with full knowledge of the superior legislation itself; the normal assumption therefore would be that the subordinate legislation has been framed in the face of the superior legislation, notwithstanding any differences of procedure or rule which might exist for operation at the different levels, i.e. at the levels controlled by the superior legislation and levels controlled by the subordinate legislation.

13. We thus have to interpret the charter of the Gorakhpur University by itself without rendering it similar to Section 66 of the U.P. State Universities Act, 1973 by any judicial enforcement of similarity, which should not be done.

14. The next argument of Mr. Shashi Nandan was that two members of the valid Committee being present, it should be held that the Committee was fairly and subordinately constituted in accordance with the University statute. He also said that the District Magistrate habitually did not attend and thus from a practical point of view it would be quite proper to treat the two members present as a sufficient quorum for the purpose of validating the meeting.

15. In regard to the presence of the Manager of the college in the Selection Committee, his submission was that there is nothing to show that the Manager deliberated or participated in the selection process or influenced the decision of the two other authorised members of the Committee. It could not, however, be denied that the Manager acted as the Chairman of the Selection Committee.

16. Meeting these arguments Mr. Ashok Khare, learned Senior Counsel for the respondents first submitted that a mere 50% presence of an authorised Committee or body is, in general law, not a sufficient quorum for validating the

decisions taken by the half Committee. He gave us a passage from (sic), 4th Edition and placed before us paragraph 6-04 which is reproduced below.

"In the unlikely event of no quorum being prescribed in the regulations, the number in the case of a non-trading corporation would be the major part of the corporators. "The acts of a corporation are those of the major part of the corporators corporately assembled ... in the absence of special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution." The same rule appears to apply to an informal association such as a club.

Where the articles of association of a company do not prescribe the number of directors required to constitute a quorum (an unlikely event in modern circumstances), the number who usually act in conducting the business of the company will constitute a quorum.

In another old case, however, the articles stored that "the board shall mean the directors for the time being or, as the case may be, a quorum of such directors assembled at a meeting thereof." A quorum was never in fact appointed by the directors, and in the circumstances the quorum was declared to be the majority of the directors present at the meeting.

Where a board of directors delegates its powers to a committee, without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee."

17. He also gave us the case of Ishwar Chandra Vs. Satyanarain Sinha and Others, alternatively at Ishwar Chandra Vs. Satyanarain Sinha and Others, . At the end of paragraph 5 of . the judgement, the Lordship said as follows:

"If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid."

18. In our opinion, the rational of these rules is very simple and easy to see; if a majority is present and voting, then and in that event, the minority, even if present and voting to the contrary, could not have had a material effect. No doubt, if there had been deliberations made, in the full meeting of the authorised members, the present minority might, in the possibility of things have persuaded the majority to hold otherwise. But the law, in general does not go this far; it does in certain types of meetings, like meetings of company directors where absence of notice to a single director and his consequent absence might invalidate the meeting altogether. But in general, in the absence of indications to the contrary, and in the absence of reasons to the contrary, the body will be taken to have made validly and decided validly, if a majority of that body is present and voting.

19. This, in our opinion, is a correct proposition of general law.

20. If this law is applied here then we find that the two members did not constitute a majority. It is true that they did not constitute a minority either, but that does not help. If the other two had been present and had, theoretically assuming it to be so, voted otherwise, there would have been no selection but that there would have resulted a deadlock. On that basis the selection by the Selection Committee cannot be held to have been proper.

21. Further, in regard to the presence of the Manager, Mr. Ashok Khare submitted that his very presence in the meeting was a vitiating factor, liable to render the decision taken in the meeting invalid. He first gave us the case of Sunder Lal reported at (2000) 10 Supreme Court Cases 409 and showed the concluding portions of the short judgment where the Court held that there had been already present the Secretary, Legislative Department himself belonging to a Scheduled Caste, and thus the addition of the fourth member in the Committee was not justified.

22. In more elaborating reasoned judgment in the Supreme Court, though delivered earlier in point of time, the Hon^{ble} Mr. Justice Jaswant Singh speaking for the Bench said (in the case of Commissioner of Wealth Tax, W. Bengal Vs. Bishwanath Chatterjee and Others, as follows:

"Again as held by this Court in A.K. Kraipak's case, reiterated in S. Parthasarthi v. State of Andhra Pradesh and followed by the High Court of Jammu and Kashmir in Farooq Ahmad Pandey v. Principal, Regional Engineering College, the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others, more so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner."

23. We respectfully agree and follow as indeed, we must.

24. We would however, with respect, add a few observations, which we hope and believe one good law.

25. The laws of natural justice were formulated for the purposes of showing that justice is not merely being done, but it is manifest to the public that justice is being done. That is why, although a person having a personal interest in the matter might very fairly deal with his own case, he is yet allowed to take up a judicial position because it would not be manifest to the public, that justice was being done by a person deciding a matter which involved his own interest.

26. The presence of a person who is not authorised to sit in a particular Committee raises the same problem. It does not matter so much to show whether he actually deliberated or not, or to show whether he influenced the decision of the authorised members or not, but it generally suffices to demonstrate the very presence of the unauthorised member. This is because in the ordinary course of human conduct and assumptions, a reasonable person looking at the thing, is entitled to assume that in the meeting all present those who were had a say; this reasonable assumption, whether factually correct or not, makes the very presence of an unauthorised member a vitiating factor.

27. On this basis the law rules that the presence of the Manager of the College rendered the Selection Committee an unauthorised body for undertaking the process of selection.

28. We would also refer to a third case given by Mr. Ashok Khare in this regard being the case of Union of India . The Court in a single sentence said in the judgment at page 279 as follows:

"This Court on interpretation of Article 319(c) of the Constitution came to hold that such a retired member of the Union Public Service Commission is ineligible to act as the Chairman of another Selection Board and. therefore, the selection made by such Selection Board gets vitiated."

29. The high flown and interesting law in regard to committee meeting in general is very appealing but we also have to pay attention to the long gap which has occurred from 1992 until now.

30. Mr. Ashok Khare showed us that the new Committee has been consistently objecting to the three appellants; the first, the approval of the three appellants granted on 11.3.1992 was cancelled on 29.5.1992 itself. In 1996 again the Committee challenged the functioning of the three appellants and an interim order was obtained in aid of the writ which, by several extensions continued to operate until February, 2005. It is only then that the stay was vacated and the appellants have got their salary for only two months this year.

31. Furthermore, there have been other selections made by the new Committee to the same posts and those persons are working. It is true that their appointment is also subject to the decision which is being rendered by us today and that for their appointment also litigation is pending. They are not parties before us. But they are allegedly regularly working. Again, as set out in the impugned judgment. A Division Bench then presided over by the Hon'ble the Chief Justice D.P. Mahapatra had ordered as on 21.8.1996 as follows:

"Even assuming that the District Magistrate was sent the information that on a particular date he is to participate in the selection or nominate any person to participate in such selection and if he failed to perform his duty as provided in the statute and the bye-laws of the committee of management, the selection held in his absence cannot be held to be valid. In case he fails to discharge his

duty it is only the Vice President who under the bye-laws can preside over the meeting and perform his duty on the basis of delegation of power by the President to him. The Manager of the college has not been entrusted with any power under the bye-laws or under the provisions of the statute to participate in the selection committee. The Regional Higher Education Officer did not consider these aspects of the matter. The petitioner-respondents can claim of appointment only when they establish that their selection was made by a duly constituted selection committee as provided under statute 25.06 of the first statute of the Gorakhpur University".

32. On the above basis, we find that we are not really doing away with 13 years of service of the three appellants, although their first approval came 13 years ago in 1992; in such a factual situation the Court with a free conscience can apply the correct law. Once the correct law is applied, there can be no two opinions about the result. The appeal is dismissed. We respectfully upheld the judgment of the Hon"ble Mr. Justice Sunil Ambwani.