
(1985) 10 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 2267 of 1985

B.S. Choube

APPELLANT

Vs

Nagpur University, Nagpur and Another

RESPONDENT

Date of Decision : 25-10-1985

Acts Referred:

Nagpur University Act, 1974 — Section 20(I)(B), 23(I)

Citation : AIR 1986 Bom 223 : (1986) 2 BomCR 254 : (1986) MhLj 804

Hon'ble Judges : V.A. Mohta, J; B.G. Deo, J

Bench : Division Bench

Advocate : K.H. Deshpande and D.K. Deshmukh, for the Appellant; S.K. Sanyal and S.G. Aney, for the Respondent

Judgement

V.A. Mohta, J.—Yesterday, this matter was placed before us for admission and stay. Shri Sanyal voluntarily took notice for the respondents. We had thus the advantage of hearing both the sides at the stage of admission. After hearing the matter for quite some time, we indicated our inclination to stay of the Election to the membership of the Executive Council of Nagpur University scheduled for tomorrow. Both the parties submitted that as the facts are undisputed and a pure question of law is almost wholly argued, it would be better that the matter itself is finally decided. Accepting that joint request, we have made the rule returnable forthwith consideration is true import of S. 23(1)(viii) of the Nagpur University Act, 1974 ("the Act").

2. Dr. B. S. Choube the petitioner was, in the year 1982, a Professor of Medicine in the Government Medical College and Hospital, Nagpur, which is affiliated to the Nagpur University. He was then duly elected as a member of the Senate of the University for a period of six years as a "Teacher" from Teachers' constituency as contemplated under S. 20(1)(b)(iii) of the Act. Senate is one of the Authorities of the University enumerated in S. 19. Constitution of Senate is given in S. 20. Membership can be broadly classified into three categories : (A) Ex officio Members (B) Elected Members, and (C) Other Members. In (B) category, there

are as many as seventeen constituencies, the first being of Principals of affiliated, constituent, conducted and autonomous colleges as provided under S. 20(1)(B) (i) which reads thus :-

"One-third of the total number of Principals of affiliated, constituent, conducted and autonomous college at a time by rotation, or five such Principals, whichever is more, For the purposes of such rotation, the colleges shall be arranged into six groups, consisting as far as possible of an equal number of colleges, and the Principles, from one of the groups shall retire after the first year and have another term for one year at the end of the period of six years, and the Principals from the remaining groups shall retire after every two years, in the manner prescribed by the statutes."

The University did make statue No. 1 as required under the above provision prescribing the groups of various colleges for rotating representation through principals for a period of two years. In April 1983, the petitioner was appointed as Dean of the Government Medical College and Hospital and in that ex officio capacity also, by operation of statute No. 1, he came to be appointed as a Senator for a period of two years from Oct 1984. As a result, presently, he is a Senator in two capacities - one as a "Principal" under S. 20(1)(B)(iii) which reads as under :-

"twenty-five Teachers, other than Principals of autonomous, conducted, constituent or affiliated Colleges, Heads of recognised institutions. or Heads of University Departments, from amongst themselves."

3. Executive Council is the other Authority of the University. Its constitution is given in S. 23 of the Act. The term of office of the elected and nominated members of the Executive Council is for a period of three years as per S. 23(3). Membership consists of various categories including two Principals (23)(1)(vii), two Teachers, other than Principals and Heads of University Departments (23)(1)(viii) and seven person, other than Principals, Teachers and student members (23)(1)(ix) all to be elected by the Senate from amongst its members. Elections of Principals are not due for the present and elections of Teachers are scheduled for tomorrow. S. 23(1)(viii), which squarely falls for consideration, reads thus :-

"two Teachers, other than Principals and Heads-of University Departments, elected by the Senate from amongst its members."

The petitioner filed his nomination paper for election of membership of Executive Council under S.23(1)(viii), but in a scrutiny made on 21st Oct., 1985, it came to be rejected by the Returning Officer (Respondent 2) on the ground that the petitioner was not entitled to contest the election because of acquisition of membership of a Senate in an additional ex officio capacity as a Principal and that his initial membership as a Teacher had become secondary for the purpose of onward elections as he ceased to represent the original constituency for the time being. Being aggrieved by this order, the petitioner filed an appeal before the Vice-Chancellor under clause 8 of Statute No. 33 and also simultaneously

moved this Court on 23rd Oct., 1985, perhaps because the election was only two days ahead. The Vice-Chancellor has by now rejected the appeal observing.

"Dr. Choubey is entitled to exercise his right of franchise for proposing or seconding a candidate for any of the constituencies for the purposes of election to the Executive Council from Senate. However, there is a specific bar for his contesting as a teacher candidate from Senate to Executive Council since he has become a Member of the Senate as Principal."

4. At this stage, a grievance made by the petitioner before the university Authorities as well as before us about the discriminatory treatment meted out to his case vis-a-vis the cases of Dr. Bhandarkar and Shri Kedar may be noticed. Dr. Bhandarkar was also elected to the Senate as a teacher in the year 1982 and thereafter had become head of the University Department of Social Science Shri Kedar had entered the Senate as the representative of registered graduates under S. 20(1)(B)(vi) in 1982 and is presently appointed as a Principal of the College of Physical Education. Both these gentlemen have been allowed to contest the election of membership to the Executive Council under S. 23(1)(viii) and (ix) respectively. It may be noticed that election of Heads of Department to the Senate is also by rotation under S. 20(1)(C)(iv) read with Statute No. 15. S. 23(1)(ix) deals with election of seven persons "other than Principals, Teachers and student members."

5. Petitioner's submission is that subsequent acquisition of the status of a Dean and election to the Senate in that capacity for a period of two years by rotation accidentally at the time of elections to the Executive Council cannot take away his right to contest the election to the membership of the Executive Council as a regular elected representative of teachers for a period of six years specially when his membership as a Senator in that capacity is not suspended. We see considerable force in the submission. In the first place, there is no specific provision either in the Act or in the statute as is wrongly assumed by the Vice-Chancellor for incurring any such disqualification for contest. Disqualification to contest an election is a serious inroad upon a valuable democratic right and cannot readily be inferred. Submission that the rights acquired under S. 20 (1)(B) (iii) stand merged in the rights acquired under S. 20(1)(B)(i) also does not appeal to us considering the character of the rights. Whereas one is acquired by a regular election and choice for a full period of six years, the other is merely involuntary, ex officio and only for a period of two years. Additionally it is just an accident that the term of a particular college may come in rotation at the time of triennial elections of the Executive Council. Thus, by any measure, the right under S. 20(1)(B)(iii) is higher and cannot either merge into the lower or become secondary to it. The teachers elect a representative for a full period of six years. The right of such an elected representative as a member of the Senate is not statutory suspended or ceased only because of the subsequent promotion to the post of Principal or Head of the Department as is the stand of the University itself. It is on the basis of this stand only that Dr. Bhandarkar and Dr. Kedar were

allowed to contest the election to the membership of the Executive Council, despite their holding a position as the Head of the Department and/or Principal. If that be the correct position, it is difficult to see how the right to contest onward election to the Executive Council stands suspended only because of the accident and/or fortuitous circumstance of the institution's turn coming at the time of elections.

6. There is yet another important rule of construction which comes into play and that is of necessity of avoiding, if possible, interpretation which leads to patently unjust and absurd results. In our judgment, interpretation adopted by the respondents leads to such result and it is possible to avoid that result even considering the language used in S. 23(1)(viii) of the Act and the general scheme. How then can one read the words "other than Principals and Heads of University Department" used in S. 23(1)(viii). In our judgment, the said provision relates only to the initial entry as Senator. If a person has initially entered the Senate as a Principal or Head of the University Department and continues as such at the time of election to the membership of Executive Council, he is disqualified to contest the said election either under S. 23(1)(viii) or (ix). In this connection, we are not operating upon a virgin field. Though in somewhat different context, the Division Bench of this Court in the case of Dr. Devising Ramsing Shekhawat v. The Chancellor (Writ Petn. No. 537 of 1981 decided on 29th April, 1981) had in occasion to deal with the subject. As both the parties are strongly relying on this decision, it will be proper to notice the basic facts and the background in which it came to be rendered. Dr. Shekhawat the petitioner there entered the Senate for the first time under S. 20(1) (B)(i). He was elected to the Executive Council as representing the Principals under S. 23(1)(vii). Before the term of two years expired, he also became a member of the Senate under S. 20(1)(B)(xvi) as a representative of the Society. The question arose whether he could continue as a member of the Executive Council even after the expiry of the period of two years by virtue of the fact that before that period came to an end, he had acquired membership as Senator in different capacity. The division Bench relied on proviso to S. 20(1)(B) as well as proviso to S. 23(1) and came to the conclusion that membership of the Senate as a Principal had come to an end after a period of two years as he ceased to be "a member of the electing body" as provided in the proviso to S. 20(1)(B) and , therefore, he ceased to hold the office of Executive Councillor under proviso to S. 23(1). Whiled exhaustively dealing with the scheme of the Act in general and the provisions of S. 20 and S. 23 of the Act in particular, the following significant observations came to be made :

"It is in this light that the "Principals" to be elected from the Senate to the Executive Council has to come on the Senate initially as a member under S. 20(1) (B)(i).

x x

Those Principals who are elected by the Senate from amongst its members are

those members, who are elected to the Senate in the first instance under S. 20(1)(B)(i)."

With respect, we are in total agreement with this view. That is the only way by which different provisions can be harmoniously construed and absurdity and injustice avoided. The two provisos are reproduced for ready reference :-

"Proviso to S. 20(1)(B) :

Provided that, a person elected under sub-cl. (I) to (xvi) of cl. (B) shall cease to be a members of the the Senate as soon as he ceases to be a member of the electing body or bodies as the case may be."

"Proviso to S. 23(1) :

Provided that, a member elected under cl. (vi) to (xi) shall cease to hold office as member if he ceases to be the Head of the University Department, or member of the Senate or the Academic Council, or the Dean as the case may be."

The submissions that in S. 23, category of Principals falls earlier to the category of Teachers and, therefore, category of teachers becomes secondary does not appeal to us. Membership in all the capacities is equal, subsequent membership cannot prevail over the former and there is no warrant for the conclusion that the membership in two capacities at the same time cannot exist. The status acquired by regular election is neither suspended for the limited purpose of contesting the election nor is the period of six years curtailed. An elected representative of teachers continues to represent his original constituency for all purposes for a full period.

7. In this connection, useful reference may be made to the case of *Jehangir Bhikaji Panthaki v. Corpn. of the City of Nagpur*, 1960 Nag LJ 99. City of Nagpur Corporation Act contained a provision for having a representation to a Textile Mills in the Corporations as a Councillor. Jehangir Panthaki was appointed as a Councillor on behalf of the Textile Mills. Subsequently the relationship of master and servant between him and the Mills came to an end and the Mills took the decision of cancelling his representation. Point arose whether he automatically ceased to be a Councillor thereby and incurred disqualification because of the subsequent event. In this background, the following observations dealing with disqualification clause were made :

"Once a Councillor is appointed under S. 9(1)(d)(vi) and his appointment is notified under S. 16, the Councillor has a right to hold that office for a period of five years subject to the Act. If he incurs any disqualification either under S. 15 or under S. 19, the person shall cease to be a Councillor and the State Government shall declared his seat to be vacant by a notification. Mr. Panthki's seat has not been declared to be vacant under S. 19. Under S. 17 therefore Mr. Panthaki will be entitled to hold the office of Councillor for a period of five years."

Undoubtedly, the situations in both these cases are not similar but the principle

laid down is relevant. The only provision dealing with vacating the office is contained in S. 79 of the Act.

8. To conclude, the nomination paper of the petitioner was wrongly rejected and the orders passed by the respondents to that effect are quashed and set aside. It is declared that the petitioner is entitled to contest election under S. 23(i)(viii) of the Act. Petition allowed. Rule made absolute in terms of prayer (a). Having regard to the fact that the University must have taken the decision bona fide, we would choose to make no order as to costs.

9. Petition allowed.