

(1993) 03 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5454 of 1991

Dr. Baishnab Charan Singh

APPELLANT

Vs

Registrar, Utkal University Shri Santanu Kumar Acharya for
self and representing the University and Others

RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Universities Act, 1989 — Section 21(2)

Citation : (1995) 1 OLR 463

Hon'ble Judges : D.P. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : T.K. Mohanty, Meera Ghose, P. Ku. Tripathy and Pramila Mohanty, for the Appellant; P.K. Mohanty and G.S. Das (for O.Ps. 1 and 2) and B.P. Das, B. Pr. Das, S. Das, G.A.R. Dora, D.P. Sahoo and A.K. Misra-2, (for O.P. 5), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Padhi, J.—In this writ application challenge has been made to the appointment of opp. party No. 5 to the post of Professor of Chemistry in the Post Graduate Department of Chemistry of the Utkal University. The selection process has been challenged on the grounds:

(a) While awarding marks, the Selection Committee had not followed the mandate under Statute No. 258 of the Orissa Universities First Statutes. 1990 (hereinafter referred to as "the Statutes").

(b) One of the experts i. e. Or. A.B. Sanigrahi was also invited as an expert in the year 1990. therefore, there hap been clear violation of Section 21(2) (ii) of the Orissa Universities Act, 1989 (hereinafter referred as "the Act").

(c) The Selection Committee consisting the experts selected by the Vice-Chancellor were not from the list furnished by the Syndicate, therefore, there has

been violation of Section 21.

(d) The experts who have been selected are not qualified to be experts in Physical and Nuclear Chemistry though the post of Professor is for Physical and Nuclear Chemistry:

(e) Opp. party No. 5 did not possess minimum educational qualification as per the advertisement; and

(f) Academic merit of the petitioner possessing educational qualification with brilliant records was not properly considered by the Selection Committee.

2. Opp. parties 1 to 3 have filed a return In which it is asserted that :

(i) the Selection Committee had followed the objective system of the evaluation of candidates as mandated under Statute 258 of the Statutes as enumerated in Schedule "A" thereof:

(ii) it is true that Dr. Sanigrahi who was called in the year 1990 as an expert was again called as an expert In the year 1991, but what the Section 21 (2)(ii) of the Act prohibits is a person who was an examiner of the previous year cannot be called as an expert in the next year. Since Dr. Sanigrahi had been called as an expert, but not as an examinee, there has been no violation of Section 21 (2)(ii) of the Act:

(iii) the experts were selected by the Vice-Chancellor from the list furnished by the Syndicate. The post of Professor which has been filled in 1991 had fallen vacant in the year 1989 and in that behalf the Syndicate had furnished a list. A Selection Committee was constituted in the year 1989 for selecting a person to fill up the post of Professor. But the Selection Committee found nobody fit to be appointed as a Professor. From the existing list furnished by the Syndicate for filling up the same post of Professor the Vice-Chancellor selected three experts, therefore, there has been no violation of Section 21 of the Act;

(iv) the experts who were selected are qualified to be members of the Selection Committee for selection of Professor in Physical and Nuclear Chemistry ;

(v) opp. party No. 5 possessed educational qualification as per the advertisement; and

(vi) academic merit of the petitioner vis-a-vis the other candidates who appeared before the Committee was duly considered by the Selection Committee. Opp. party No. 5 has been selected after due consideration.

Opp. party No. 5 has appeared and filed a counter affidavit in which stand taken is same as that of University and the assertions in the petition have been controverted

3. In reply to the counter affidavit filed by opp. party No. 5, the petitioner in the further rejoinder dated 22-2-1993 has asserted that one Dr. P.L. Nayak had filed a representation before the Chancellor challenging the appointment of opp. party

No 5 wherein it was asserted that the Ph. D. Thesis of Dr. Chakravarty was rejected by the examiners In 1983 with drastic comment of eminent scientist Dr. Damodaram of Bhava Atomic Research Centre, Bombay.

Thereafter Dr. Chakravarty re-submitted his Thesis under Dr. K.C. Das and manipulated to get the degree and he took 12 years to get the Ph. D. degree. Dr. Chakravarty does not have the basic qualification as per the advertisement.

Dr. K.C. Das, under whose guidance Dr. Chakravarty had got his Ph. D. degree was instrumental in getting the experts selected who are his friends to help Dr. Chakravarty selected for the post of Professor.

In the year 1988 in an interview held for the post of Professor for Chemistry in the discipline of Physical and Nuclear Chemistry in Utkal University, the Selection Committee had rejected the candidature of Dr. Chakaivarty only on the ground that he had no specialisation Physical and Nuclear Chemistry.

On receiving the representation of Dr. Nayak the Chancellor had made an enquiry, but it is asserted by Miss Ghose that such enquiry by Chancellor is not in accordance with law and procedure.

4. From the rival contentions of both the sides, the moot Questions which arise for consideration are ;

(a) as to whether the Selection Committee while selecting opp. party No. 5 had followed the procedure laid down under Statute 258?

f (b) as to whether Dr. A.B. Sanigrahi who had been called as expert in the previous year could have been called as an expert in the year in question or there has been violation of Sectopm 21(2) (ii) of the Act ?

(c) as to whether the Selection Committee was improperly constituted in violation of Section 21 of the Act ?

(d) as to whether the experts who were selected are not qualified to interview the candidate for the post advertised?

(e) as to whether opp. party No. 5 did not possess the minimum educational qualification as per the advertisement ? and

(f) as to whether in writ jurisdiction, Court can go into the question regarding the inter se merit of the interviewed candidates as assessed by the Selection Committee ?

5. Question No. (a)

Statute 258 of the Statutes mandates the Selection Committee for objective system of evaluation of career experience etc. as per Schedule "A" appended to the Statute. Schedule "A" lays down the procedure for objective system of evaluation for teaching posts. On our direction Shri Mohanty appearing for the University produced the proceedings of the Selection Committee. After going

through it we are satisfied that the Selection Committee had made the evaluation as per the mandate of Schedule "A" appended to Statute 258. Therefore, there has been no violation of Statute 258.

Question No. (b)

The next question which arises for consideration is as to whether by inducting Dr. Sanigrahi as one of the experts in the year in question who had been called in the previous year as an expert, there has been violation of Section 21(2)(ii) of the Act. Section 21(2) (ii) mandates that the Vice-Chancellor is to select 3 "experts" out of the list of 6 "experts" to be furnished by the Syndicate, which shall not include any person who has been an examiner of such University in the preceding year or in the relevant year. Statute 203 classifies "examiners" as 3 classes, namely :

(a) Examiners to be designated as question paper setters who will set the question papers required for the examinations of the University.

(b) Chief, Additional, sole and Assistant Examiners to value the answer papers, dissertations thesis etc. or conduct viva voce and practical examinations and shall include special papers and/or special occasions;

(c) Examiners to be designated as conducting examiners.

Neither the Act nor the Statutes define the meaning of "expert". Section 21 of the Act refers to "experts" as well as examiners; therefore, ""experts" and "examiners" cannot carry the same meaning. In our opinion, what is prohibited u/s 21(2) (ii) of the Act is that a person who had been an examiner of the University in question in the preceding year or in the relevant year cannot be selected as an expert. Since it is the specific assertion of the University, which has not been controverted, by the petitioner, that Dr. Sanigrahi had come as an expert in the previous year and not as an examiner, by nominating him as an expert in the year in question, there has been no violation of Section 21(2)(ii) of the Act.

Question No. (c)

The next question which arises for consideration is as to whether the Vice-Chancellor had selected 3 experts from out of the list of 6 experts furnished by the Syndicate as mandated u/s 21(2) of the Act Section 21(2) of the Act authorises the Vice-chancellor to select 3 experts out of the list of 6 experts to be furnished by the Syndicate. Statute 4 mandates that the Syndicate is to prepare a panel of 6 experts for each vacant post of teacher in accordance with the principles laid down in Sub-Section (2) of Section 21 of the Act. Miss Ghose, learned counsel for the petitioner relying on the affidavit filed by the petitioner dated 22.2.1993, submitted that the Syndicate had not furnished the names of six experts as visualised u/s 21(2) of the Act. The Secretary Sri B.C. Mallick had performed the duty of the Syndicate and had chosen the experts. The experts were chosen with mala fide intention in consultation with Dr. K.C. Das under

whose guidance Dr. V. Chakravarty had got the Ph. D. degree. Opp. parties 1 and 2 have filed an additional affidavit on 24-2-1993 wherein it has been asserted that earlier to July, 1989 the post of Professor in Chemistry, which is now sought to be filled up had fallen vacant. On 12-7-1989 the Syndicate had furnished a list containing the names of six experts. A Selection Committee was constituted by the Vice-Chancellor from out of the said list. The Selection Committee, so constituted, conducted the selection on 27-10-1989, but found none of the candidates appearing before the Committee to be suitable to be appointed to the post of Professor in Chemistry. Therefore, the same could not be filled up in 1989. The Vice-Chancellor again selected three names out of the list so prepared by the Syndicate on 12-7-1989. Therefore, there has been compliance of Section 21(2) of the Act and Statute 4. Though some allegations of mala fide have been imputed against Dr. K.C. Das, he had not been made a party. Though there is assertion on behalf of the petitioner that the Secretary, Sri B.C. Mallick had furnished the list, in view of the affidavit filed by the University that the Syndicate had furnished the list of six experts, we are unable to accept the contention of the petitioner. We are of the opinion that the Vice Chancellor had selected three experts out of the list furnished by the Syndicate as visualised u/s 21(2) of the Act and as required under Statute 4. Therefore, there has been no violation of Section 21(2) of the Act or Statute 4 of the Act. This contention of Miss Ghose in this regard is not acceptable.

Question No. (d).

It is submitted by Miss Ghose, learned counsel for the petitioner that experts who had no specification or expertise in the branch of Physical and Nuclear Chemistry acted as experts in the Selection Committee for interviewing the post of Professor in Chemistry. In the affidavit filed on behalf of the petitioner on 22-2-1993, it has been submitted that one Dr. Nayak had made a representation to the Chancellor making allegation that the experts who conducted the selection were not qualified to be experts as they do not have any specialisation or expertise in the branch of Physical and Nuclear Chemistry. The Chancellor on receipt of the representation of Dr. Nayak had made an enquiry and sought clarification from the experts. But such clarification which has been furnished by the experts is not acceptable.

An additional affidavit has been filed on behalf of opp. parties 1 and 2 in which it has been asserted that the experts who were selected to conduct the interview for the post of Professor in Chemistry have specialisation and expertise in the branch of Physical and Nuclear Chemistry. On the representation of Dr. Nayak, the Chancellor had made some queries from the experts. Professor B.L. Khandelwal, one of the experts of the Selection Committee had replied to the Chancellor indicating his specialisation or expertise in the branch of Physical and Nuclear Chemistry. The same has been annexed as Annexures-B and C to the above counter affidavit. Annexure-B indicates that the study of Spectroscopy and its application is an important component of Physical Chemistry and Annexure-C

indicates that Professor Khandelwal had published many papers in the above subject. There is no material on record showing lack of teaching experience and expertise of the eminent Professors selected as members of the Selection Committee. It has not been proved that they are ignorant of the subjects in which they were called upon to select. No mala fide action has been established against them. In the case of *Kumari Neelima Misra v. Dr. Harinder Kaur Paintal and others* AIR 1990 SC 402 while considering Section 31 (8) of the U. P. State University Act, 1973 which provision is similar to the section under consideration, their Lordships have opined that the experts should have the requisite expertise to interview the intending candidates for the post of Professors.

After considering the rejoinder dated 22-2-1993 filed by the petitioner and the counter affidavit dated 25-2-1992 filed by the University, in our opinion, experts who constituted the Selection Committee have specialisation and expertise in the branch of Physical and Nuclear Chemistry and, therefore, had requisite expertise to conduct the interview. This view of ours finds support from OJC No. 1633 of 1984 (*Dr. Sukadev Mohanty v. The Utkal University and Ors*) decided on 7-11-1984. Therefore, the submission of Miss Ghose that the experts who have no specialisation or expertise on the branch of Physical Nuclear Chemistry is not acceptable.

Another question which arises for consideration as to whether the petitioner who had appeared before the Selection Committee could challenge the process of selection. In *G. Sarana Vs. University of Lucknow and Others*, in which it was held that where a candidate for selection knowing fully well the relevant facts about the members of the Selection Board voluntarily appeared for interview without raising any kind of objection against the constitution of the Selection Board and took a chance of favourable recommendation in his favour, it was not open to him to turn round and question the constitution of the Board when the decision was unfavourable to him. In this case the petitioner appeared before the Selection Committee, took a chance, therefore, he cannot question the constitution of the Board.

Question No. (e).

Coming to the question as to whether opp. party No. 5 possessed the minimum educational qualification as per the advertisement, the stand of opp. parties 1 to 3 is that opp. party No. 5 Dr. V. Chakravarty has been doing research in Physical and Nuclear Chemistry since 1976. He has been also teaching the same subject. Dr. Chakravarty (opp. party No. 6) has two years' post doctoral experience in Physical and Nuclear Chemistry from Mysore. Opp. party No. 5 has filed a return in which it has been asserted that he had the requisite qualification as per the advertisement and in support of the same he has filed Annexures B/5 to G/5 which indicate that opp. party No. 5 was eligible to apply and had minimum educational qualification to apply for the post of Professor. After considering all the materials on record we are of the opinion that opp. party No. 5 has requisite qualification as per the advertisement.

Question No.(f).

The next question which arises for consideration is whether the Selection Committee had taken into consideration the merit of the petitioner who asserts to be more meritorious than opp. party No. 5 and therefore should have been selected. It is not the function of the Court to hear the writ application as an appeal sitting over the decision of the Selection Committee and scrutinise the relative merits of the candidates. The decision of the Selection Committee can be interfered with only when while conducting the selection there has been patent illegality or material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection. Therefore, we are afraid, it is not within our domain to analyse comparative merits of the candidates who appeared in the Selection Committee. This view of ours find support from *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, wherein the apex Court has opined that it is not the function of the Court to hear the appeals over the decision of the Selection Committee and to scrutinise the relevant merits of the candidates. Whether a candidate is fit for the post or not has to be decided by the duly constituted Selection Committee which has expertise on the subject. The Court has no expertise on this aspect. Their Lordships have further opined that the decision of the Selection Committee can be interfered with only on the limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection.

After considering all the contentions raised by the counsel for the petitioner we are of the opinion that there is no merit in the writ application and it is liable to be dismissed. No costs.

D.P. Mohapatra, J.

6. I agree.