
(1992) 05 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 2667 of 1985

Dr. Bhikari Charan Sahu

APPELLANT

Vs

Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 05-05-1992

Acts Referred:

Utkal University Act, 1966 — Section 20(2)

Citation : (1993) 1 OLR 197

Hon'ble Judges : S.K. Mohanty, J;L. Rath, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; Bijan Roy, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The petitioner who is a lecturer in Zoology in the Utkal University has sought the relief from the Court of quashing Annexure-9, an order of the Chancellor of 7-10-1985 directing dissolution of the selection committee which had selected him for promotion to the post of Reader and further directing the constitution of a new selection committee for interview of the candidates. The petitioner has also sought the relief of implementing the recommendation of the previous selection committee and quashing of the resolution of the Syndicate in Annexure-4 on 12-7-1985 purporting to disapprove the recommendation of that selection committee.

2. The facts in brief are that the petitioner along with the opposite party No. 4 and others was applicant for the post of Reader in Zoology which was a sixth plan post advertised. The selection committee duly constituted by the Syndicate interviewed the candidates and recommended the petitioner for promotion. Aggrieved by the selection, the opp. party No. 4's father made a representation which was forwarded by the Vice Chancellor to the Chancellor. The Syndicate which met on 12-7-1985 did not approve the recommendation of the selection committee. The decision of the Syndicate is Annexure-4 to the writ petition and shows that the recommendation of the selection committee was not approved

because (i) the marks awarded for research experience were not as per the guidelines prescribed by the Syndicate; and (ii) that proportionate markings had not been awarded for personality and the performance of the candidates had been considered in their absence. The petitioner made a representation to the Chancellor on 26-7-1985 to annul the resolution of the Syndicate and to direct his appointment to the post and on 19-8-1985, he submitted certain additional facts to the Chancellor. The comments of the University having been sought for by the Chancellor on the petitioner's representation, the Vice-Chancellor on 26-8-1985 forwarded his comments on the same. On 26-8-1985 the Vice-Chancellor made a reference to the Chancellor of the matter in accordance with the provisions of the proviso to Section 20(2) of the Utkal University Act, 1966 (Orissa Act 20 of 1966) (hereinafter referred to as "the Act"). On 7-10-1985 the Chancellor decided the matter against the petitioner as in Annexure-9 which is impugned in this case.

3. Dr. Das, the learned counsel appearing for the petitioner, has urged four submissions in support of the relief's claimed :

(1) That the communication of the Vice-Chancellor in Annexure-6 referring the matter to the Chancellor was illegal as the Syndicate in its resolution in Annexure-4 on 12-7-1985 did never refer the matter to the Chancellor and hence the communication of the Vice-Chancellor was wrong on facts ;

(2) That even though the Syndicate found fault with the Selection Committee for not having followed the guidelines issued by it regarding awarding of marks for research experience, yet no such guide lines had been prescribed by the Syndicate ;

(3) That the Syndicate bereft of any power to issue any guideline in the matter and that Statute 75(10) of the Utkal University Statutes, 1966 (hereinafter referred to as "the Statutes") did not authorise the Syndicate to issue any such guidelines ; and

(4) That the Chancellor in deciding the matter had no powers to dissolve the Selection Committee and direct the appointment of a new one. "

4. Developing the first submission, Dr. Das has placed reliance on Section 20(2) proviso of the Act which is in the following words ;

"20 (2). The teachers of the University shall be appointed by the Syndicate on the recommendation of a committee consisting of-

(a) the Vice-Chancellor;

(b) the Director of Public Instruction, Orissa ;

(c) three experts selected by the Syndicate ; and

(d) one member to be elected by the Syndicate from amongst the remaining members thereof:

Provided that where the Committee fails to make any specific recommendation or where the Syndicate differs from the recommendation made by the Committee, the matter shall be referred by the Syndicate to the Chancellor whose decision thereon shall be final."

It is his contention that the resolution of the Syndicate in Annexure-4 says it merely disapproved the recommendation of the Selection Committee. There was no resolution passed referring the matter to the Chancellor. Since there was no resolution, the communication made by the Vice-Chancellor in Annexure-6 on 26-8-1985 that "as required under the proviso to Sub-section (2) of Section 20 of the Utkal University Act, 1966 the Syndicate submits this case to the Chancellor for his decision was a mis-statement of fact, as in fact the Syndicate never directed submission of the matter to the Chancellor. Factually the submission of Or. Das is also admitted in the counter affidavit that there was no resolution in effect of the Syndicate expressly saying that the matter be referred to the Chancellor, but the stand taken in the counter affidavit is that once the Syndicate differed from the recommendation of the Selection Committee, thereafter the matter of reference to the Chancellor was a ministerial act and that any specific resolution of the Syndicate was not necessary. A plain reading of the proviso to Sub-section (2) of Section 20 of the Act shows that if the Syndicate differs from the recommendation of the Selection Committee, the only function thereafter of the Syndicate is to refer the matter to the Chancellor. The submission of Dr. Das is that since all decisions of the Syndicate must be expressed in form of resolutions and there is no resolution saying that the matter be referred to the Chancellor, the act of the Vice-Chancellor in making the reference was an illegal act. The submission has no force since Section 20 (2) proviso of the Act does not make any other provision regarding the actions to be taken by the Syndicate except saying that in the event it does not agree with the Selection Committee's recommendation, it is to refer the matter to the Chancellor. No other option is left with the Syndicate in the matter of differing with the Selection Committee. Hence once the disagreement is there, the reference to the Chancellor becomes a mere routine and ministerial act inasmuch as when the Syndicate disagrees with the Selection Committee, it itself implicitly takes the decision to refer the matter to the Chancellor. As such the decision to refer the matter to the Chancellor is implicit in the disagreement itself and what the Vice-Chancellor does is merely to articulate the implicit decision of the Syndicate. The absence of express words in the resolution referring the matter to the Chancellor is merely an inadvertent omission to express in words the decision already taken. This is the most logical view to take as the Syndicate could not have taken any other decision in the matter. We would hence reject the submission of Dr. Das in that regard and would hold that the reference made by the Vice-chancellor to the Chancellor was in order and was in fact only an articulation of the decision of the Syndicate and. nothing more.

5. So far as the next submission of Dr. Das is concerned, it is factually not correct. The guidelines have in fact been prescribed as appears from the counter

affidavit in para 11 wherein those prescribed by the Syndicate under the Statutes, regarding different career marks to be awarded for different qualifications are given. The stand taken in the counter affidavit is that the Selection Committee is bound by the guidelines. This submission hence must also fail.

6. The third submission of Dr. Das is that the Syndicate has no powers to issue any guideline and that Statute 75(10) does not authorise the issue of such guideline. It is his submission that the Selection Committee consists of eminent scholars and hence it must be left to them as to how they would assess different candidates who appeared before them and that the selection by them cannot be restricted by the Syndicate to any particular mode of selection by issuing guideline. Statute 75(10) of the Statutes vests authority in the Syndicate to prescribe the qualifications of teachers in the colleges affiliated to, it and of the teachers of the University. It is the submission of Mr. Roy the learned counsel appearing for the University that the guidelines have been in existence since very long and are accepted uniformly as the guidelines. He has placed before us not only the guidelines but also the pro forma prescribed by the Syndicate regarding the manner of assessment to be made of different candidates, the career markings and other matters, it is pointed out by Dr. Das that in the letter of the Vice-Chancellor in Annexure-8 certain instances were referred to where the guidelines had not been followed. On that basis it is his submission that the guidelines have no uniform application. Such instances are few but it is not disputed that the guidelines are in fact followed in selecting the candidates and that such guidelines have been existing since long and have become the practice of the University. The guidelines themselves do not say anything more than how much mark are to be given in respect of different academical qualifications and a pro forma has also been prepared of the assessment form. This would show that the Syndicate has sought to achieve some sort of uniformity in the matter of career marking and other factors. That being so, we are not prepared to hold that the guidelines issued by the University are not authorised under Statute 75(10). As a matter of fact the Syndicate has the right also to differ from the assessment made by the Selection Committee, but in such event It has to only refer the matter to the Chancellor. There is hence no intrinsic illegality in the Syndicate prescribing a pro forma regarding the mode of assessment and if the mode is not adhered to, the Syndicate has every right not to agree with the assessment made. The matter has thereafter to be examined by the Chancellor as to whether there is any substance in the views of the Syndicate and he can overrule, if satisfied otherwise, the Syndicate's disagreement and uphold the recommendation of the Selection Committee. On the other hand, the Chancellor may also uphold the decision of the Syndicate.

7. Certain citations have been made before us by Dr. Das mainly to show that the business of the assessment of candidates should rightly fall to be the function of the Selection Committee and that the Syndicate should not interfere in the matter. These decisions are all on the line of the requirement of non-interference

with the functions of academic bodies by Courts or tribunals with the principle postulated that while academicians have deliberated over a matter which pertains to academics, either the Courts or the tribunals should be extremely loathe to interfere with their internal functionings. The principles have absolutely no application when the question is one as is before us as to whether between the internal administrative authority in the academic body itself and the expert committee, there should be any controlling left to the administrative body or not. We hence do not find any support from the citations made by the learned counsel. This submission of Dr. Das must also fail.

8. The last submission is that the Chancellor has no powers to dissolve the Selection Committee. The submission on the face of it has no force as the very provision of Section 20 (2) proviso of the Act vests the final authority of decision in the Chancellor. The authority so vested is without restrictions. Since it is the function of the Syndicate to constitute the Selection Committee and if necessary the Syndicate has the power also to alter the Selection Committee or substitute it, it must be conceded that the Chancellor having the ultimate authority on the question has also the powers of the Syndicate and hence has the power to dissolve the Selection Committee and appoint a new one.

9. In the result, all the questions raised by Dr. Das having failed, the writ petition has no merits and hence is dismissed with costs. Hearing fee is assessed at Rs. 500/-.

S.K. Mohanty, J.

10. I agree.