

(1995) 05 AHC CK 0011
In the Allahabad High Court
Case No : C.M.W.P. No. 13086 of 1995

Dr. K.K. Azad

APPELLANT

Vs

University of Allahabad and Others

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(8), 68

Citation : (1995) 05 AHC CK 0011

Hon'ble Judges : R.K. Singh, J; Palok Basu, J

Bench : Division Bench

Advocate : A.K. Yog, for the Appellant; A. Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu, J.—The city of Allahabad, though famous for its religious heritage, has a proud possession in the Institution known as Allahabad University. Formerly, reverentially referred to as the "Oxford of the east", the alumni of which University are adorning highest seats in political, social and cultural fields, the present day professors of this University have also earned international reputation, some of whom are well-known to the citizens not only of Allahabad but the State, if not the country. Two such reputed teachers of the University are arrayed unfortunately in this petition, being the Petitioner Dr. K.K. Azad and the opposite party No. 3 Dr. B.L. Sharma. Both of them have established their own reputation and hail from the Mathematics Department of this University which had seen the like of Dr. Gorakh Prasad, Professor R.N. Chaudhari and Dr. B.N. Prasad etc.

2. This litigation revolves round the question whether the Petitioner who has been called for an interview fixed for 18th of May, 1995 before the Selection Committee, Is entitled to challenge the said meeting on the ground that the inclusion of Dr. B.L. Sharma in the Selection Committee is illegal and further that requirement of 15 days" notice said to be required under Statute No. 11.11 framed under the State Universities Act, has not been complied with.

3. This writ petition was filed on 16th of May, 1995 and since the matter was of extreme urgency, it has been heard yesterday and today at considerable length. Sri A.K. Yog, learned Counsel for the Petitioner has argued the matter with ability which is opposed by Sri Ashok Bhushan appearing on behalf of the University and Sri D.P. Singh as an intervener on behalf of one of the opposite parties Dr. B.L. Sharma (opposite party No. 3).

4. Before coming to the facts of this case, a short history of an earlier litigation should be produced here. Two posts for Professorship fell vacant in the Mathematics Department of the University. The Selection Committee recommended the name of Sri B.L. Sharma (in absentia) at serial No. 1 and the name of the Petitioner Dr. K.K. Azad at serial No. 2 and the name of Dr. R.S. Sengar at serial No. 3 in order of merit for the post No. 1. For the other post the Petitioner Dr. K.K. Azad was placed at serial No. 1 ; Dr. R.S. Sengar at serial No. 2 and Dr. R.S.D. Dubey at serial No. 3. When this matter went to the Executive Council, the serial was changed by which Dr. R.S. Sengar was put at serial No. 2 position and the Petitioner Dr. K.K. Azad was shifted to serial No. 3 position. This compelled Dr. Azad to file a representation before the Chancellor u/s 68 of the State Universities Act, (for short "the Act"). The Chancellor dismissed the same on the ground that in the meantime the University has made a reference u/s 31(8) of the Act. The Chancellor, therefore, trained from deciding the said representation. The Petitioner then preferred the Civil Miscellaneous Writ Petition No. 39516 of 1993 in which an interim order was passed on 10th of May, 1995, a copy of which has been filed as Annexure T to this writ petition. The last two paragraphs of the said interim order, may be useful, are quoted here :

There is no need to go into these arguments for the time being because admittedly the Petitioner has not yet made a representation u/s 68 of the Act after he came to know of the decision referred to in Annexures C.A. 1 and C.A. 2 quoted above. The Petitioner may, if he so advised, file a representation within a week from today before the Chancellor who may on the special facts of this case, decide the same preferably within six weeks for the reason that professor B.L. Sharma who is the Head of the Department is retiring on 28th May. 1995.

However, if any appointment has to be made, before the decision of this writ petition, it will be subject to the orders in the writ petition which may be passed after the Petitioner informs the Court the result of his representation by the Chancellor. Needless to say that if the Chancellor takes any view in favour of the Petitioner, this Court shall not be called upon to go into the merits at all in this writ petition.

5. After this, Selection Committee meeting for another post has been called by the Vice-Chancellor; it has been fixed for 18th of May. 1995. The relevant paragraph concerning the service of notice on the Petitioner is paragraph 22, which, for ready reference, is quoted hereinafter:

22. That the Petitioner was shocked to receive interview call letter dated 12th

May, 1995 through special messenger (wrongly mentioning it to be registered). The said interview call letter has been issued in the name and signed by Registrar. Petitioner has received the said letter in the afternoon of 13th May, 1995 (Saturday). A true copy of the said interview call letter dated 12th May, 1995 is being filed herewith as Annexure No. "6".

It, therefore, is obvious that the Petitioner has personal knowledge of the date fixed and has been duly served with the notice as required under the Statute 11.11. The argument of Sri Yog was strenuous enough to indicate as if the "fifteen days notice" words must be held to be mandatory and, therefore, the notice should be held to be defective and it should be quashed. Since the words used in the said statute were vehemently emphasized, the said statute is quoted herein for ready reference and similarly for appreciating the argument, the Statute 11.10 is also required to be quoted herein:

11.10. Members of the Selection Committee shall be given not less than fifteen days notice of the meeting reckoned from the date of despatch of such notice. The notice shall be served either personally or by registered post.

11.11. At least fifteen days" notice reckoned from the date of despatch shall be given to the candidates prior to the meeting of the Selection Committee. The notice shall be served either personally or by registered post.

6. It was emphasised by Sri Yog that "at least fifteen days notice reckoned from the date of despatch shall be given to the candidates prior to meeting of the Selection Committee" indicates the intendment of the Legislature that a gap of fifteen days must intervene between the date of despatch and the date of meeting. It was emphasised that the words "prior to the meeting" will have no meaning if the governing words "fifteen days notice" are held to be directory.

7. There is an inherent fallacy in argument of Sri Yog. The latter part of the Statute 11.11, i.e. "The notice shall be served either personally or by registered post" cannot admit of any other interpretation except that the despatch date and the date on which the meeting is fixed, if permitted to be fifteen days apart, the service of the notice even two days prior to the holding of the Selection Committee meeting, would be sufficient compliance of the provisions contained in that statute. Sri A.K. Yog has, very rightly conceded that a registered notice even if calling upon the candidate to appear after 15 days of the date of despatch, may be served only a couple of days prior to the date fixed or may not be served at all. Instances have been many when registered notices sent to persons by the Government or any department, have not reached at the destination in time. Consequently, it is impossible to concede that the words "at least 15 days" notice" should mean a gap of fifteen days even in a situation where personal service is effected. Since in the instant case, the Petitioner himself happened to be in the University serving the Mathematics Department, admittedly the notice was served upon him on 13th of May, 1995. This means that the Petitioner has a gap of five or six days from the date he received the

notice and the date fixed for the interview before the Selection Committee. Exactly similar may have been the position if the letter was despatched by the University authorities fixing a date after fifteen days and the service of it may have been affected only five or six days prior to the date fixed. Consequently, no injustice appears to have been done inasmuch as the aforesaid provisions contained in Statute No. 11.11 cannot be held to be mandatory and complete compliance with the Statute has been made in the instant case. The argument that the notice being defective, the Selection Committee meeting should be postponed after quashing the notice, is not tenable and is hereby rejected.

8. Coming to the other aspect of the matter, Sri Yog has filed a supplementary affidavit sworn by the wife of the Petitioner which runs into 16 paragraphs and has six leaves as annexures. The first one is a letter of the Petitioner dated 21st of April, 1995, addressed to the Chairman, Examination Committee; the second one is a letter dated 30th March, 1995 written by the Petitioner addressed to the Respondent No. 3, Dr. B.L. Sharma; the third one is reply of Dr. B.L. Sharma written to the Petitioner; fourth one is again a rejoinder reply dated 3rd April, 1995 of the Petitioner to Dr. B.L. Sharma ; the fifth one happens to be a written information sent to the Station Officer, Police Station, Colonelganj, Allahabad on 15th April, 1995 by the Petitioner alleging therein that he has been receiving some threatening calls at his residential telephone in which he was asked to take back his writ petition filed in the High Court; and the last one is the representation of the Petitioner dated 21st of April, 1995 addressed to the Chairman, Examination Committee.

9. It was argued vehemently by Sri Yog that the earlier litigation in which the Petitioner had challenged the appointment of Dr. B.L. Sharma whose name was recommended by the Selection Committee for appointment as Head of the Department, has prejudiced the mind of Dr. B.L. Sharma and, therefore, he has acted with bias and malicious motive. The argument proceeds that the calling of the meeting of the Selection Committee on 18th May, 1995 is motivated because Dr. B.L. Sharma is retiring on 19th May, 1995 and since he wanted to prejudice the case of the Petitioner so that his name may not be recommended and he may not be selected, a hasty action has been got perpetrated by Sri Sharma through the Vice-Chancellor of the University.

10. As stated above, the documents filed have practically no relevance whatsoever to any bias that Dr. B.L. Sharma may be said to be having towards the Petitioner. The fact that a litigation was brought about concerning the name of the opposite party No. 3 Dr. B.L. Sharma having been recommended for the appointment as Head of the Department of Mathematics and Statistics suffice it to say that in the earlier petition in which the order was passed by this Court, the Petitioner himself has admitted that since Dr. B.L. Sharma was to retire on 19th May, 1995, his grievance was more towards the propensity of Dr. R.S. Sangar's appointment as Head of the Department. However, those matters will be particularly gone into in the said writ petition, which will mature for hearing after

the decision of the Chancellor is made u/s 68 of the Act. It may be clarified here that none of the observations made in this writ petition shall have any effect whatsoever in the aforesaid writ petition or the matter pending before the Chancellor.

11. Reliance was placed by Sri Yog on two decisions on bias. In *G. Sarana Vs. University of Lucknow and Others*, , it has been held that:

A Judge may be a relative, friend or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. The courts have not been consistent in laying down when bias of this type will invalidate a hearing

In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, , it has been held that:

In the facts of the case, there was not only a reasonable apprehension in the mind of the Appellant about the bias of one of the members of the inquiry committee, namely, the said Sri Maru Ram but such apprehension was real when the said Maru Ram appeared as a witness against the Appellant to prove the said charge and thereafter proceeded with the inquiry proceeding as a member of the inquiry committee to uphold the correctness of his deposition as a judge.

12. The relevant decision, however, which may be attracted to the facts of the present case, is the leading ruling in *Manak Lal Vs. Dr. Prem Chand*, , it was held that:

The alleged bias in a member of the tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question.

13. It has been emphasized in this authority that there must be substantial bias for attributing bias on a person who happens to be a member of the tribunal or committee. As found above, it is impossible on the documents filed to concede to the argument that there is or can be any personal bias of Dr. B.L. Sharma as against the Petitioner Dr. K.K. Azad.

14. Before parting with this case, it has to be emphasized that the Petitioner has taken a ground in this writ petition that he will be away at Delhi in connection with some of his professional engagement and, therefore, he may not be present on 18.5.95. This is a question of fact. Once the Petitioner is aware of the date fixed, the responsibility to appear before the SelecMon Committee or choose to be away from it in Delhi lies with the Petitioner.

In view of the aforesaid discussion, there is no merit in this writ petition. It is accordingly dismissed at the admission stage summarily.