

(1983) 05 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5518 of 1979

Dr. Krishna Nand

APPELLANT

Vs

The Chancellor, Gorakhpur University and Others

RESPONDENT

Date of Decision : 05-05-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 54, 55
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30
Uttar Pradesh State Universities Act, 1973 — Section 19, 31(1), 31(6), 31(8), 68

Citation : (1983) 05 AHC CK 0044

Hon'ble Judges : Satish Chandra, C.J;B.D. Agarwal, J

Bench : Division Bench

Advocate : V.N. Khare, for the Appellant; S.N. Upadhya, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—The Petitioner was Reader in Political Science in the University of Gorakhpur. Vacancy arose for the post of an additional Professor in Political Science. The Petitioner was also a candidate. The Selection Committee consisted of the Vice-Chancellor (Chairman), the Head of the Department and three experts nominated by the Chancellor. The Committee met on November 13, 1978. One of the three experts was not present. Out of the three candidates called for interview the Petitioner alone appeared. The Vice-Chancellor and one of the experts, Sri. M.D. Misra recorded:

It is recommended that Dr. Krishna Nand be appointed Professor in Political Science. In view of his good research work the condition of consistently good academic record is relaxed.

The Head of Department (Prof. Raghuveer Singh) and the other expert present, namely G.N. Sharma, recorded:

The post be readvertised because Dr. Krishna Nand does not satisfy the

prescribed qualifications and relaxation is not justified.

The Executive Council at its meeting held on March 7, 1979 accepted the "recommendation" of the Selection Committee and decided to appoint the Petitioner as professor for Political Science. The Petitioner took up the assignment on the same day. The Head of the Department made a representation to the Chancellor on April 16, 1979 saying that the Petitioner did not possess the requisite qualification and that there was no recommendation as such made by the Selection Committee for his appointment. In their comments before the Chancellor the University as well as the Petitioner raised objection, inter alia, with regard to the locus standi of the Head of the Department to make representation contending that he is not a person aggrieved. The Chancellor observed that this was a fit case in which the matter may be decided under the second proviso to Section 68 of the U.P. State Universities Act, 1973. Upon merit, the Chancellor was of the view that the Selection Committee had not made any recommendation unanimously or by majority and that there was no finding recorded as appearing from the notes of the Vice Chancellor and the expert that the Petitioner had to his credit published work of a very high standard so as to deserve relaxation. It was observed:

Under Section 31(1) it is clearly provided that a teacher of the university shall be appointed by the Executive Council on the recommendation of the Selection committee as in this case, the Executive Council cannot, in my view, take any decision in regard to the appointment of a teacher. In absence of any specific rule to the contrary, the normal rule applicable to bodies should prevail, namely, that the decision must be either unanimous or by majority. Here the members were evenly divided and the differences were of a fundamental nature, and go to the root of the recommendation. In my view, the view of the two members cannot be regarded as a decision of the Selection Committee as a whole. The fact that one of the experts had agreed to the selection of Dr. Krishnanand would not make it a recommendation of the Selection Committee by virtue of Section 31(6). The Executive Council or the Chancellor cannot be left to pick and choose arbitrarily one of the two views of the Selection Committee as its recommendation. It is obvious that the selection committee failed to make any valid recommendation.

2. The appointment of the Petitioner as Professor in Political Science was quashed as a result and the selection directed by the Chancellor to be made afresh in accordance with law. Aggrieved against this order of the Chancellor dated July 26, 1979 the Petitioner filed this petition under Article 226 of the Constitution.

3. Sri. Raja Ram Agarwal, learned Counsel for the Petitioner, made two fold submissions before us:

1. The Vice-Chancellor in his capacity as Chairman of the Selection Committee be deemed to have exercised casting vote and hence the Selection Committee be

taken to have made recommendation for appointment in Petitioner's favour;

2. The Chancellor could not act suo moto to dispose of the representation without notice to this effect being given to the Petitioner.

4. Before adverting to these contentions, it is proper to refer in brief to the relevant provisions. The Selection Committee for the appointment of teachers is one of the authorities of the University (Section 19 of the U.P. State Universities Act, 1973). Section 31(1) provides that the teachers of the University shall be appointed by the Executive Council on the recommendation of a Selection Committee. The constitution of the Selection Committee for the appointment of a teacher of the University is laid in Sub-section (4)(a). It consists of the Vice-Chancellor who shall be the Chairman thereof; the Head of the Department concerned and in the case of the Professor, as in the present case, three experts nominated by the Chancellor. A recommendation by a Selection Committee is not to be considered valid unless one of the experts has agreed to such selection Sub-section (6). Sub-section (7) prescribes that the majority of the total membership of any Selection Committee shall form the quorum of such Committee. If the Executive Council does not agree with the recommendation made by the Selection Committee with respect to the appointment of a teacher of the University, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final, (Sub-Section 8).

5. u/s 68 provision is made for reference to the Chancellor where, inter alia, any question arises whether any decision of any authority of the University is in conformity with the Act. The reference to the Chancellor can be made by an authority or officer of the University or person aggrieved. The second proviso states that in exceptional circumstances the Chancellor may act suo moto.

6. Taking up the second submission of the Petitioner's learned Counsel first, it was contended that since the Chancellor chose to act suo moto it was incumbent upon him to have given notice of his decision on the subject to the Petitioner. As stated above, the representation was made before the Chancellor by the Head of the Department of Political Science on April 16, 1979 against the appointment made of the Petitioner as Professor in this Department by an order of the Executive Council dated March 7, 1979. In their replies dated April 30, 1979 and June 2, 1979, the Petitioner and the Vice-Chancellor respectively raised objection, inter alia, to the effect that the representationist could not claim to be a person aggrieved (vide Annexures III and IV to the writ petition). Referring to this part of the objection raised, the Chancellor observed in the impugned order that he may in exceptional circumstance of the case act suo moto.

In view of this the Chancellor did not find it necessary to decide whether the Head of the Department could or could not be a person aggrieved. The second proviso to Section 68 empowers the Chancellor in exceptional circumstances to act suo moto. Learned Counsel urged that there was breach of principle of

natural justice in so far as notice was not given to the Petitioner by the Chancellor intimating that he would act suo moto in this matter. In support of this contention reliance was placed on the following observation appearing in the case of D.N. Roy and S.K. Bannerjee and Others Vs. The State of Bihar and Others,

But in this case the difficulty is that at no stage the Central Government intimated to the Appellant that it was exercising its suo moto power. At all stages it purported to act under Rules 54 and 55 of the Mineral Concession Rules, 1960. If the Central Govt. wanted to exercise its suo moto power it should have intimated that fact as well as the grounds on which it proposed to exercise that power to the Appellant and given him an opportunity to show cause against the exercise of suo moto power as well as against the grounds on which it wanted to exercise its power.

In that case, it will appear, lease in respect of a minor mineral was granted to the Appellant by the State Government on March 3, 1962. Against this the Respondents made representation to the Central Government which was dismissed on September 30, 1964. Subsequent to this, however, the Central Government made a review under order dated 5th November, 1964 and allowed the representation. The High Court observed that the Central Government had suo moto power to review the order of the State Government u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957. Upon the matter coming up before the Supreme Court, it was noticed that there was no power of review under the Rules. The representation on which the Central Government acted had been made under Rule 54 of the Mineral Concession Rules. The impugned order did not show that it was made in exercise of its suo moto power. The order stated instead that the Central Government acted in exercise of their revisionary power conferred by Rule 55 and all other powers enabling in this behalf. It was in this context of absence of power to review contained in the relevant rules invoked by the Respondent concerned, and the non-specification of any such power in the impugned order, that their Lordships of the Supreme Court made the observation quoted above. The position may not be said to be the same, in our view, where, as in the instant case, provision is contained in Section 68 for the exercise of suo moto power by the Chancellor in certain circumstances and the Petitioner had adequate notice that the jurisdiction of the Chancellor had been invoked under this provision. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of- The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, . The principles of natural justice being flexible turn on the facts and circumstances of each case. There has not been any unfair deal by the authorities concerned in the instant case. The Petitioner has had just opportunity to state his plea, Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh and Others, .

7. Upon the material before the Chancellor exceptional circumstances were apparent. The question arising was whether the Selection Committee made any recommendation. The head of the Department concerned intimately with the composition of the personnel in the Department had raised the issue, but this was objected to from the side of the Petitioner saying that he was not an aggrieved person. Section 31(8) is not attracted if there is no recommendation of the Selection Committee or disagreement on the part of the Executive Council and hence no reference at the instance of the latter. The Chancellor could not in the situation ensure compliance with the statutory provisions except by acting suo moto.

8. This takes us to submission No. 1 of the Petitioner's learned Counsel. The principle has long been established that the will of a corporation or body can only be expressed by the whole or a majority of its members, and the act of a majority is regarded as the act of the whole. (Shackleton on "The Law and Practice of Meetings" 6th Edition, page 57). The Act or the statutes we are concerned with do not provide anything inconsistent or in conflict with this general rule. The recommendation of the Selection Committee might be unanimous or by majority; the essential condition, according to Section 31(6), is that one of the experts must concur. In this case there were two sets of opinion recorded-2:2. The division was equal. Can the Vice Chancellor in capacity as Chairman be said to have exercised a casting vote? The contention for the Petitioner in this respect cannot be sustained, in our view, for two reasons:

(i) The Act, the statutes or the relevant regulations do not provide for the exercise of casting vote by the Chairman of the Selection Committee.

(ii) The Vice Chancellor is not shown to have exercised an additional vote i.e., one as a member and the other by virtue of being the Chairman of the Committee.

In Shackleton's The Law and Practice of Meetings at page 49 it is observed:

By casting vote" in this connection, what is meant is a second vote exercisable by the Chairman of a meeting in addition to his own vote as a member. There is no common law right to such a vote, if it is not granted by the regulations governing the meeting the Chairman can exercise his own vote but not a casting vote.

At page 73 it is said:

The rule sometimes in use which gives the Chairman a vote only on an equality of votes is devised to ensure the absolute impartiality of the chair. This is not the same as granting a "casting votes to the Chairman": a "casting" vote is a second vote additional to his own vote as a member.

Smith says the same thing in Public Company and Local Government Meetings 18th Edition at page 31:

In the absence of express provision a Chairman has no second or casting vote, but this privilege can be conferred by the relevant rules which govern the meeting.

Where a Chairman has a second or casting vote, if he intends to exercise both his votes he should give his first vote while the vote of the other members is being taken and before the tendency of the votes is visible.

9. The Act and the statutes are silent entirely with respect to a casting vote. Nor are we referred to any regulation pertaining to the Selection Committee. Reference was made by Sri. Agarwal, the learned Counsel, to Regulation 9 framed by the Executive Council on April 14, 1979 concerning its deliberations. It does not appear how may this be imported into consideration for the purpose of deliberation of the Selection Committee which took place on November 13, 1978. We are not impressed with the argument that the Selection Committee be treated as an authority subordinate to the Executive Council. Both are authorities of the University. The constitution, powers and functions of each is defined; in the event of the Executive Council disagreeing with the recommendation of the Selection Committee the matter has to go to the Chancellor, the jurisdiction of both is co-ordination.

10. Another submission of the learned Counsel was that in the supplementary affidavit filed by him the Petitioner has said that he has been informed that there has been convention in the University to the effect that whenever there was equity of evidence, the Chairman had exercised his casting vote. This has only to be referred to and rejected. The source constituting the basis for the averment is vague and unspecified. There is not one instance cited in proof of the alleged convention.

11. In relation to the other aspect of this issue, it is manifest, as Sri. S.N. Upadhyaya, learned Counsel for the Respondent urged, that the minutes of the Selection Committee did not record that the Vice Chancellor cast an additional or casting vote. Even where the relevant regulations empower the Chairman to exercise additional or casting vote, it is not presumed that he exercised this too. The minutes of the Committee drawn contemporaneously with the deliberations is undoubtedly the best evidence on the point.

12. For the Respondents it was urged then that Statute 11.01(2) of the Gorakhpur University does not permit relaxation of the requisite qualification except where the Selection Committee is of the opinion that the research work of a candidate, is "of a very high standard". In this case, it is argued, the Vice Chancellor and one of the experts, recorded the view that the Petitioner has to his credit one published book and a few papers and that in view of his good research work, the condition of consistently good academic record was relaxed. We need not enter into this nicety for the obvious reason that the relaxation, if any, has to be by the Selection Committee. The opinion entertained by two of the Members of the Committee cannot in itself serve to accord the required

relaxation.

13. In our opinion, therefore, there was no recommendation of the Selection Committee unanimous or by majority for the appointment of the Petitioner as Professor in Political Science. In giving the appointment, therefore, to the Petitioner the Executive Council acted in contravention of Sub-section (I) of Section 31. In the circumstances, of which the Petitioner had adequate notice, the Chancellor could act suo moto to set aside the appointment.

14. We are conscious that the Petitioner has since been confirmed by the Executive Council on February 20, 1983 with effect from March 8, 1980. His teaching experience extends now to over 30 years. The Vice Chancellor and one of the experts recorded the opinion that he was highly spoken for his academic pursuits. In consequence of the mandatory provision contained in Section 31(1) being not observed, the appointment of the Petitioner as Professor in Political Science is void. The post would need be re-advertised and the selection held afresh in accordance with the law. We have no reason to doubt that, if the Petitioner chooses to re-apply, his candidature would be judged on merits, uninfluenced by what transpired before the Selection Committee on November 13, 1978.

15. The Petitioner functioned as the Professor in Political Science since March 7, 1979. In virtue of an interim order passed by this Court he continued to work on that post during the pendency of the present writ petition. It is not in the interest of higher education in the University of Gorakhpur that the post of Professor in Political Science be kept vacant for long. It will be fit and proper if pending fresh selection to that post the Petitioner is permitted to continue to function. If some other person is selected, the Petitioner will revert to his original post of Reader in Political Science.

16. Subject to these observations the petition fails and is dismissed. We make no order as to costs.