
(1990) 11 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20958 of 1986

Dr. Manbodh Pandey and Another

APPELLANT

Vs

Chancellor, Kashi Vidya Pith and Others

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 31(10), 31(6), 31(7), 34, 37(7)

Citation : (1991) 1 AWC 368

Hon'ble Judges : R.R.K. Trivedi, J;A.P. Misra, J

Bench : Division Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Misra, J.—The Petitioner by means of the present writ petition sought for quashing selection of Respondent No. 4 on the basis of selection held by Respondent No. 2 on 15-12-1985 and also to quash order of Respondent No. 1, communicated through letter dated 25th of September, 1986, Annexure XII to the writ petition and also for quashing the recommendation of Respondent No. 1, dated 27th of September, 1986 appointing opposite party No. 4.

2. According to the Petitioner No. 1, he is appointed as lecturer in the Hindi Department in the evening classes on the recommendation of the selection committee at its meeting held on 23-1-1984 earlier. The Respondent No. 4 along with three other persons was appointed on the basis of the said recommendation. However, there was some dispute at initial stages between the Petitioner No. 1 and the Respondent No. 4 but that is not relevant and is not being referred to for purpose of the question involved in the present writ petition. The Respondent No. 3 got advertisement made on 10-4-1985 for appointment on substantive vacancy of Hindi lecturer. The Petitioners also applied forth said post in pursuance of the said advertisement, possessing requisite qualifications. Interview for the said selection was held on 15-2-1985. The Petitioner No. 1

appeared before the incomplete selection committee. However, Petitioner No. 2 and some other candidates did not appear before the said committee and submitted a representation to the Respondent No. 3 specifically mentioning that the quorum of the said selection committee was not complete. The said representation has been filed as Annexure IX to the present writ petition. It is thereafter that the Petitioners came to know that Respondent No. 4 was recommended by the said Selection Committee to the Executive council. However, since no decision was taken by the Executive Council within four months as stipulated, the matter was referred by the Vice Chancellor to the Chancellor. The Petitioner No. 1 thereafter sent his representations to the Respondent No. 1 against the said selection which are annexed as Annexure X and XI to the writ petition. The Respondent No. 1 thereafter rejected the said representation on the ground of it being time barred which is also subject matter of challenge by means of the present writ petition.

3. It is not necessary for us to go into various details of the factual averments. The main question involved in the petition is whether the quorum prescribed under the Statute was complete or not when the selection committee met to make selection for Hindi lecturer. It is not disputed as has been stated in paragraphs 21 and 22 of the writ petition that the selection committee met with Vice Chancellor and the expert only. The total number of members of the selection committee consisted of Vice Chancellor, head of the department and two experts. Thus out of four members only two members met for making selection which is subject matter of challenge before us. This is also not disputed that the recommendation of the selection committee was sent to the Executive Council which did not make any decision within a period of four months and then the matter was referred to the chancellor for decision. The chancellor endorsed the selection made by the selection committee appointing Respondent No. 4. The Petitioner No. 1 thereafter made representation against the said selection to the Chancellor which was rejected being time barred.

4. The petition has raised two points. Firstly, the quorum of selection committee not being there the selection of Respondent No. 4 is liable to be quashed; secondly holding representation of the Petitioner u/s 68 of the U.P. State Universities Act time barred is also wrong as time reckoned from the date the selection committee met cannot be proper as in the eyes of law there was no selection committee meeting when quorum was not complete.

5. According to the Chancellor the selection committee met on December 15, 1985, which was the date on which the question could have been raised and admittedly the representation being of 23rd August, 1986, and this being more than three months from that date, is barred by time. The contention on behalf of the Petitioners is that if the selection committee itself has not been duly constituted, the question of making representation on the date of meeting of the selection committee would not arise. Further, it has been contended that the Petitioner No. 2 on the date of selection has specifically raised objection about

the constitution of the selection committee. Section 68 of the Uttar Pradesh State Universities Act, 1973, specifically provides that the Chancellor may in exceptional cases act suo moto or entertain a reference after the expiry of the period mentioned in the preceding proviso. Thus the question of three months is not an absolute bar. If he would have thought that the selection which was made was not proper, he could have exercised that power.

6. However, we would not like to ask the chancellor for deciding afresh the main matter as to the lack of quorum as it goes to the root of the controversy and it would be proper to decide it in the present writ petition.

7. The main point for decision is whether the selection committee which met on 15-12-1985 had the requisite quorum of the meeting or not. The learned Counsel for the Petitioners relied on the case *Satish Chandra Pandey v. Banaras Hindu University*, Varanasi 1989 UP LB EC 1 230. It was held in that case that:

"Quorum" is not a matter of procedure. From...the provisions of the Act and the Statutes in relation to the University it is more than clear that quorum has not been considered to be a part of procedure. Quorum is the foundation for the validity of any decision taken or business transacted at a meeting. This is so as there cannot be valid meeting if there is no quorum.

8. The learned Counsel for the Respondents on the other hand stressed that the said decision is in respect of the Statute of the Banaras Hindu University and in that case the court further held that the persons who were essential to constitute the body did not attend the meeting, therefore, held that constitution of the said body to be invalid and that will not be applicable in the present case. The learned Counsel for the Respondents relied on Section 66 of the Act that even if there was any defect which is procedural the selection would not be invalid. Section 66 is reproduced below:

66. Proceeding not to be invalidated by vacancies, etc-

No act or proceeding, of any authority or body or committee of the University shall be invalid merely by reason of...

(a) any vacancy or defect in the constitution thereof, or

(b) Some person having taken part in the proceedings who was not entitled to do so, or

(c) any defect in the election, nomination or appointment of a person acting as a member thereof, or

(d) any irregularity in its procedure not affecting the merits of the case.

9. Main reliance was placed on the case *Arun Kumar Shukla v. The Chancellor of Allahabad University* 1984 UP LB EC 477. In that case selection was set aside by the Chancellor on account of non compliance of Section 31(10) which provided for advertisement of the vacancy in at least three issues of two news papers

court and the provision only directory not mandatory, and since sufficient publicity was made the selection cannot be set aside on this procedural irregularity. The fact in the case was different that in the present case.

10. The question in the present case is whether the quorum not being there, whether it is a mere procedural irregularity or is an illegality going at the root and its non-compliance vitiates the entire proceedings. Reliance by learned Counsel for the Respondents was placed in the case of *Dr. N.D. Tahiliani v. Dr. R.P. Mishra* 1987 UP LB EC 361. It was held in that case:

From the definition of word "quorum" and the opinion expressed by Shackleton it is clear that "quorum" is a rule made by the body itself regulating its own procedure. Since the question of quorum is a matter of procedure and does not affect the merits of the case, the decision of the body is clearly protected by Section 66 of the Act. It cannot, therefore, be said that the decision taken in the meeting held on 26th of April, 1986, by the Board of Studies was not valid in law.

11. Having considered this authority we find that the contention raised on behalf of the Respondents is not sustainable. The decision in the case of *Dr. N.D. Tahiliani Supra* was in respect of a case u/s 34 of the U.P. State Universities Act where it was provided that the Board of the University may make regulations laying down procedure to be observed in their meeting and the number of members required to fill the quorum. In a case where quorum is fixed by the body itself at the time of holding the meeting, that fixation of quorum in view of Section 34 of the Act may merely be a procedural irregularity. However, in the present case the quorum is not fixed by the said body but is fixed under Statute itself. Section 31(7) of the Act specifies that subject to the provisions of Sub-section (6), the majority of the total membership of any election committee shall form the quorum of such committee. Admittedly, where a quorum is fixed by a Statute then its violation cannot be said to be directory but would be mandatory. In the matter of fixation of quorum in Statute, its compliance is mandatory and it cannot be said the error in this is only of procedural defect. The principle of fixation of quorum is to see that the business of that body is not transacted less than the number fixed under the Statute. This is to protect the consequential results not being decided by at least the minimum prescribed. If it could be said to be merely procedural, then taking the present case even if one member decides it may be said to be merely procedural error. We are, therefore, of the opinion, where ever a statute fixes a quorum for a body any decision taken in that body without requisite quorum cannot be sustained.

12. In the present case Section 31(7) lays down quorum according to which in the facts of this case the minimum quorum would be three as the total number of members constituting the selection committee is not being disputed to be four and "quorum" as used in Sub-section (7) is said to be the majority of the total membership of any selection committee. Majority constituting the quorum will always be more than equal and of four two will be equal, thereby the majority will be of three members. It is not in dispute that the selection committee met

with only two members, Vice chancellor and only one expert. Quorum thus having not been there for the said selection, the recommendation made by the selection committee and approved by the Chancellor on the basis of the said recommendation cannot be sustained. We have come to the conclusion that since the present selection of Respondent No. 4 was recommended by the selection committee which did not form a quorum u/s 37(7) of the Act which is a mandatory requirement, the said recommendation and the selection is illegal and not sustainable in the eyes of law.

13. Accordingly, the present writ petition is allowed. The impugned order dated 25-9-1986 passed by the Respondent No. 1 approving the recommendation of the selection committee dated 15-12-1985 passed in favour of Respondent No. 4 is hereby quashed. In view of quashing of the said selection it is not necessary for us to quash the order passed by the Chancellor which is sought to be impugned as that has now become in fructuous. We herewith direct the Respondents to make fresh selection on the said post in accordance with the law at the earliest after giving due consideration both to the Petitioner and also to the Respondents and all other candidates who have applied for the said selection. We further feel in the facts of the present case that till the next selection is made, let the Respondent No. 4 continue to teach on the said post and he will be entitled to the salary of the said post till a fresh appointment is made.

14. With the above observations, the present writ petition is allowed, Costs on the parties. We hope and truss that the Respondents will expeditiously hold the said selection preferably within a period of three months from the date a certified copy of this order is produced before the authority concerned.