

(2005) 01 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 45509 of 2004

Dr. N. Venkataswamy Reddy

APPELLANT

Vs

The Bangalore University and Others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Karnataka State Universities Act, 1976 — Section 28 (1) (d), 38, 39 (1)

Citation : (2005) 2 KarLJ 69 : (2005) 1 KCCR 549

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy, for the Appellant; T.P. Rajendra Kumar Sungay, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The petitioner working as a Professor and Dean of Faculty of Arts in Bangalore University. The Vice-Chancellor by order at Annexure-B, dated 28-6-2004 nominated the petitioner to syndicate. The terms of nomination makes it explicit that the term is for one year w.e.f. 1-7-2004 or till the reconsideration of syndicate as envisaged u/s 38(1), whichever is earlier.

2. The term of syndicate to which the petitioner is nominated expired and reconstituted w.e.f. 6-11-2004. It is the contention of the petitioner that even in the reconstituted syndicate, he is entitled to hold the office as a nominated member until the expiry of one year as per Annexure-B. The relevant provisions of Sections 28, 38 and 39 are extracted hereunder for convenient reference.-

"28. Syndicate.-(1) The Syndicate shall consist of the following Members, namely.-

xxx xxx xxx. (d) One Dean nominated by the Vice-Chancellor for a period of one year by rotation according to seniority.

38. The term of Office of the Members of the Academic Council and Syndicate.-

(1) Save as otherwise provided, the term of the office of the Members other than the ex officio Members of the Academic Council and the Syndicate shall be three years, or till reconstitution, whichever is earlier.

(2) Notwithstanding anything contained in this Act, the Academic Council and the Syndicate shall be reconstituted once in three years simultaneously.

39. Restriction of holding the membership of the authorities:- (1) Any member nominated to any of the authorities under this Act shall hold office during the pleasure of the nominating authority concerned.

(2) Any person nominated to any of the authorities under this Act shall not be eligible for being nominated or elected for a second term,

(3) Any member nominated to any of the authorities shall; be liable to be removed from such membership at any time by the Chancellor on the ground of misbehaviour, misconduct or otherwise after holding an enquiry".

3. The learned Counsel for the petitioner argued that the provisions of Section 38 makes it explicit that the term of the office of the members mentioned in Section 38 is co-terminus with the term of the syndicate. The provision of Section 38 has no overriding effect to curtail the term of the nominated member u/s 28(1)(d). It is argued that the provisions of Section 38 begin with the words "save as otherwise provided", which means that any of the provisions of the Act inconsistent with the provisions of Section 38 would prevail and harmoniously the provisions have to be construed. It is submitted that as a privilege, the teaching faculty will have the opportunity of serving the syndicate only for a period of one year term and only once in their career, on rotation basis. When once the Vice-Chancellor nominates the member of a teaching faculty, he would remain a member of syndicate for only one year w.e.f, the date of nomination. Notwithstanding, the expiry of the term of syndicate as envisaged u/s 38 and he would continue as a member in the reconstituted syndicate. In this regard relied on the ruling of the Supreme Court in the case of State of Rajasthan and Others Vs. Shri Noor Mohammad, , the following observations are made.-

"If the expression "save as otherwise provided by or under the Act" is construed in a manner to negative the functions permitted to be performed under Sub-clause (b), the very object with which Sub-clause (b) has been enacted will be frustrated. We have, therefore, to construe the expression "save as otherwise provided by or under the Act" in a harmonious manner so that Sub-clause (b) is not reduced to a nullity. In our opinion the expression "save as otherwise provided by or under the Act" would in the context mean, "save as otherwise expressly barred by or under the Act". If there is a provision which expressly debars the exercise of the power under Sub-clause (b) in any case then only the State Transport Authority will not be able to exercise the powers and discharge the functions given in Sub-clause (b). Otherwise there would be no such bar. It is not shown to us that there is any express provision which bars the performance by the State Transport Authority of the duties referred to in Sub-clause (b) and,

therefore, we are of the view that the State Transport Authority in this particular case would not be barred from performing the duties under Sub-clause (b)".

4. The legal proposition canvassed by the learned Counsel for the petitioner that the provisions of Section 38 have no overriding effect to curtail the term of nominated member u/s 28(1)(d) appears to be a tenable contention. However, the said proposition has no bearing on the claim of the petitioner. The nomination of petitioner to syndicate by order at Annexure-B specifically makes a mention that it shall be for a period of one year or till the syndicate is reconstituted u/s 38(1), whichever is earlier.

5. The contention of the learned Counsel for the petitioner that the Vice-Chancellor has no jurisdiction to prescribe a lesser term for a nominated member contrary to Section 28(1)(d) is untenable. The provisions of Section 39(1) makes it explicit that "any member nominated to any of the authorities under this Act shall hold office during the pleasure of the nominating authority concerned". Therefore, it is open to the nominating authority to fix the term lesser than one year in accordance with Section 38 of the Act. If in the Annexure-B, the term is not restricted to the happening of reconstitution of syndicate as envisaged u/s 38 definitely the petitioner could have continued in the reconstituted syndicate until the expiry of one year time, but the terms of nomination in Annexure-B is otherwise.

In that view of the matter, the claim of the petitioner to continue an office after reconstitution of syndicate is untenable. Accordingly, petition is dismissed.