

(2004) 05 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (C) No. 5923 of 2003

Dr. R.K. Sharma

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:

Citation : (2004) 112 DLT 88 : (2004) 75 DRJ 17 : (2005) 1 SLJ 302

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : V.P. Chaudhary and Puneet Aggarwal, for the Appellant; V.P. Singh Anurag Mathur, for R-1 and Diwan Singh Chauhan, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Petitioner seeks to impugn letters dated 15.5.2003 and 13.6.2003 addressed to Shyam Lal College (hereinafter referred to as the "College") by the University of Delhi (hereinafter referred to as the "University").

2. Letter dated 15.5.2003 directs the college as under:-

"Shri Ravindra Kumar Gupta,

Chairman,

Governing Body, Shyam Lal College,

c/o M/s. S.Chand & Co.

7361, Ram Nagar,

New Delhi- 110 055.

Dear Sir,

Please refer to your letter dated 16th April, 2003 addressed to the Vice-Chancellor, University of Delhi, Delhi sending therewith resolution of the

Governing Body, Shyam Lal College, regarding appointment of the Principal of Shyam Lal College.

In this connection, I am directed to inform you that the recommendation of the Governing Body of Shyam Lal College for the appointment of Dr. R.K. Sharma as Principal has not been approved by the competent authority. The college is directed to re-advertise the post of Principal immediately."

3. Letter dated 13.6.2003 directs the college as under:-

"Shri Ravindra Kumar Gupta,

Chairman, Governing Body,

Shyam Lal College,

c/o S. Chand & Co.

7361, Ram Nagar,

Qutab Road,

New Delhi.

Dear Sir,

This has reference to your letter dated 19th May, 2003, in reply to the letter sent by the undersigned on 15th May, 2003, stating that the appointment of Dr.R.K.Sharma as Principal of Shyam Lal College (Morning) has not been approved by the Competent Authority. In this connection, this is to inform you that the Competent Authority, is the Vice-chancellor, University of Delhi under the provisions of Ordinance xviii-7.

The Vice-Chancellor has not seen fit to approve the appointment of Dr. R.K. Sharma as the Selection committee minutes enclosed with the letter sent by you on 16.4.2003 (received by the University on 23.4.2003 show that due procedure has not been followed in recommending the name of Dr. R.K. Sharma. Further more, the Academic Council Expert on the Selection Committee has stated that "nobody is suitable" to be appointed.

You are, Therefore, requested to re-advertise the position and send the recommendations as per the provisions of Ordinance xviii 7(2) at the earliest but not later than 15th August, 2003."

4. Implementing the direction contained under the letters aforesaid, the college re-advertised the post of Principal of the College and invited applications. Petitioner, in addition, seeks quashing of said advertisement dated 17.8.2003.

5. University of Delhi stands established under the Delhi University Act 1922. Statutes, Ordinances and Regulations are the ones made under the Act. u/s 4 of the Act, the University has, amongst others, following power:-

"4. The University shall have the following powers, namely :

(1) (2) (3) (4) (5)
(6) (7) (8) (9) to maintain Colleges and Halls,
to admit to its privileges Colleges not maintained by the University and to
withdraw all or any of those privileges, and to recognise Halls, not maintained by
the University and to withdraw any such recognition."

6. Section 8 of the Act lists the officers of the University. Same reads as under:-

"8. The following shall be the officers of the University :

- (i) the Chancellor,
- (ii) the Pro-Chancellor,
- (iii) the Vice-Chancellor,
- (iv) the Pro-Vice-Chancellor, if any,
- (v) the Treasurer,
- (vi) the Registrar,
- (vii) the Deans of the Faculties, and
- (viii) such other persons in the service of the University as may be declared by
the Statutes to be officers of the University."

7. Section 17 of the Act lists the Authorities of the University. Same reads as
under:-

"The following shall be the Authorities of the University :

- (i) The Court,
- (ii) The Executive Council,
- (iii) The Academic Council,
- (iii-a) The Finance Committee,
- (iv) The Faculties, and
- (v) such other authorities as may be declared by the Statutes to be authorities of
the University."

8. Section 21 of the Act stipulates that:

"21. The Executive Council shall be the executive body of the University, and its
Constitution and the terms of office of its members, other than ex-officio rs, shall
be prescribed by the Statutes."

9. Section 30 provides:

"30. Subject to the provisions of this Act and the Statutes, the Ordinances may

provide for all or any of the following matters, namely :

(a) (b) (c) (d) (e) (f)
(g) (h) (i) (j) (k) (l) the
management of Colleges and other Institutions founded or maintained by the
University."

10. It is, Therefore, apparent that Ordinances issued by the University have the force of law. It is also apparent that the Executive Council of the University is one of the authorities of the University and the Vice Chancellor is one of the officers of the University.

11. It is the common case of the parties that the college is a constituent college of the University of Delhi and that Ordinance xviii applies to constituent colleges and hence, applies to Shyam Lal College. It is further the admitted case of the parties that appointment of the Principal has to be in the mode, manner and by the Competent Authority as per Ordinance xviii, after following the process of selection as mandated by the said Ordinance.

12. Clause 7 of Ordinance xviii is relevant for the purposes of the present decision, relevant part thereof being sub-clauses 1 and 2 of Clause 7. The same are as under:-

"7.(1) The appointment of the Principal and other members of the teaching staff shall be made after advertisement.

The Principal should, in addition to his duties, as Principal, be also required to undertake some teaching work in the College, or the University.

(2) The appointment of the Principal shall be made by the Governing Body of the College on the recommendation of a Selection Committee consisting of the Chairman of the Governing Body, two representatives of the University on the Governing Body, one expert nominated by the Academic Council for the purpose and two members of the Governing Body nominated by it, provided that prior to final selection and appointment (a) the Governing Body shall submit to the University a list of persons who have applied for the post of Principal, as also names of persons, who may not have applied but whose names the Governing Body may desire to consider for the post, in a form as prescribed by the University and shall indicate the persons from whom, in their opinion, the final selection may be made; (b) the list thus submitted by the Governing Body shall be considered by a Selection Committee constituted for the purpose and consisting of the following:

(i) Vice-Chancellor,

(ii) Pro-Vice-Chancellor,

(iii) A nominee of the Visitor,

(iv) Chairman of the Governing Body of the College concerned; and

(v) Two members of the Executive Council, nominated by it;

and (c) on the recommendation of the Selection Committee the University shall transmit to Governing Body a list of persons mentioned in the order of preference whom the University would be prepared to recognise as Principal or, if none of the applicants are considered suitable, shall refrain from sending a list, in which case the post shall be re-advertised:

Provided that where in the opinion of the Vice-Chancellor, emergency action is called for or where in his opinion, it would be unnecessary to adopt the procedure prescribed in (b) and (c) above, the Vice-Chancellor may indicate merely which of the candidates included in the list submitted by the Governing Body under sub-clause 2(a) of Clause 7 of Ordinance xviii, will not be acceptable to the University, briefly indicating ground for the decision. In such a case, the Governing Body will be free to appoint any person from any of the candidates against whom no such disapproval has been indicated."

13. A perusal of sub-clause 1 of Clause 7 of Ordinance xviii shows that appointment of the Principal has to be made after advertisement. Sub-clause 2 of Clause 7 of Ordinance xviii would reveal that the appointment of the Principal has to be made by the Governing Body of the College on the recommendation of a Selection Committee. The said Selection Committee is to consist of:-

- (a) Chairman of the Governing Body;
- (b) two representatives of the University on the Governing Body;
- (c) one expert nominated by the Academic Council;
- (d) two members of the Governing Body nominated by it.

14. As per the latter, part of sub-clause 2 of Clause 7, prior to the final selection, the Governing Body has to submit to the University a list of persons who had applied for the post. If the Governing Body desires to consider for appointment, a person who has not applied, his name can be included in the list. The Governing Body may indicate in the list the persons from whom, in the opinion of the Governing Body, the final selection may be made.

15. The list so submitted by the Governing Body is required to be considered by a Committee consisting of:-

- (a) Vice- Chancellor;
- (b) Pro-Vice Chancellor;
- (c) a Nominee of the Visitor;
- (d) Chairman of the Governing Body of the College and
- (e) Two members of the Executive Council.

16. As per the proviso to sub-clause 2 of Clause 7 of Ordinance xviii, in the

opinion of the Vice chancellor where emergent action is called for or where in his opinion, it would be unnecessary to adopt the procedure prescribed for submitting the list to a Committee for its consideration, the Vice-Chancellor is empowered to indicate which of the candidates included in the list submitted by the Governing Body is not acceptable to the University, briefly indicating ground for the decision. In such a case, Governing Body will be free to appoint any person from any of the candidates against whom no such disapproval has been indicated.

17. The legal position would, Therefore, be that Selection Committee consisting of the Chairman of the Governing Body, two representatives of the University on the Governing Body, one expert nominated by the Academic Council and two members of the Governing Body would consider persons who have offered themselves for appointment to the post of Principal. Recommendations of the said selection committee shall be transmitted to the University by the Governing Body of the College. It would be open to the Governing Body to include in the said list the name of a person who may not have applied for the post but is otherwise desired to be considered for the post. The said list has to be considered by a Selection Committee consisting of the Vice-Chancellor, Pro-Vice Chancellor, nominee of the Visitor, Chairman of the Governing Body of the College and two members of Executive Committee. The said Committee would thereafter transmit to the Governing Body a list of persons mentioned in the order of preference whom the University would be prepared to recognise as Principal. As an exception to the aforesaid procedure i.e. said Committee considering the list submitted to it by the Governing Body, in an emergent situation, the Vice-Chancellor can exercise his emergency power. In addition, the Vice-Chancellor may record that it is unnecessary to adopt the procedure prescribed in (b) and (c) of sub-clause 2 of Clause 7 of Ordinance xviii. While so doing, the Vice-Chancellor is empowered to indicate which of the candidates is not acceptable to the University. In such a situation, Governing Body will be free to appoint any person from the list of candidates against whom no such disapproval has been indicated.

18. Whether Clause 7 of Ordinance xviii has been complied with and whether the Vice-Chancellor, in the facts of the present case could have exercised his power under the proviso requires to be adjudicated in the present case.

19. There existed a vacancy to the post of Principal of Shyamlal College. On 8.12.2002, the same was advertised. Petitioner applied. Petitioner is fully eligible to be appointed as a Principal. Selection Committee, consisting of the Chairman of the Governing Body, two University representatives of the Governing Body, subject expert nominated by the Academic Council and two members of the Governing Body. i.e. Six members interviewed the candidates who had applied. For record it may be noted that 17 candidates were called for interview. Only 12 appeared at the interview.

20. As per sub-clause 2 of Clause 7 of Ordinance xviii, the said Selection

Committee was to recommend, by indicating the persons from whom final selection could be made.

21. The Selection committee indicated its decision as aforesaid :-

"Since there is no unanimity on the selection of the candidate and the division of votes is equal, I being Chairman of the Selection Committee used my casting vote to recommend the name of Dr. R.K. Sharma for appointment for the post of the Principal.

Sd/- Ravinder Kumar Gupta (Chairman, Selection Committee) I think that this I disagree with this procedure is wrong. Procedure sd/- sd/- (Prof. Badal Mukherjee) (Prof. K. Mamkootam) I feel nobody is suitable. sd/- sd/- (Prof. K. Muralidhar) (Prof. H.S. Srivastava) sd/- (B.K. Gowel)"

22. Aforesaid are the Minutes of the Selection Committee meeting held on 8.4.2003, as recorded.

23. On 9.4.2003, the Governing Body of the College met and considered the Minutes of the Selection Committee. The Governing Body passed a resolution that only the name of Dr. R.K. Sharma be sent for approval for appointment to the post of Principal.

24. The Vice-Chancellor of the University was of the opinion that due procedure was not followed. Letters sought to be impugned were issued directing the College to re-advertise the post.

25. In a nut-shell, the Vice-Chancellor of the University was of the opinion that it was not for the Selection Committee consisting of the Chairman of the Governing Body, two representatives of the University of the Governing Body, one expert nominated by the Academic Council and two members of the Governing Body to act in the manner it has acted. The said body had to submit to the University the names of persons from whom in their opinion, final selection be made. As per the Vice-Chancellor, the Minutes recorded showed that there was a division of votes and the Chairman of the Governing Body had exercised a casting vote. Further, evidenced by the Minutes of the Governing Body meeting held on 9.4.2003, the Chairman of the Governing Body had informed the Governing Body of the College that whereas he and two other members of the Governing Body were of the unanimous opinion that only Dr. R.K. Sharma be recommended for appointment as Principal of the College, the subject expert, Professor K. Muralidhar was of the opinion that nobody was suitable and that the two University representatives of the Governing Body, namely, Professor Badal, Professor K. Mamkootam were of the view that the procedure of recommending only one name was incorrect and a panel of nominees should be recommended.

26. It may be noted that in the Minutes of the Selection Committee dated 8.4.2003, Professor Badal and Professor K. Mamkootam have indicated that the procedure followed was wrong.

27. Sh. V.P. Chaudhary, learned counsel appearing for the petitioner contended that it was open to the Governing Body of the College to recommend only one name, There was no requirement to forward a panel. Counsel contended that since 3 out of 6 members of the Selection Committee were of the unanimous view that only name of petitioner be recommended and 2 members of the Selection Committee being of the view that more names be recommended and one member indicated that none was suitable, qua the petitioner there being a tie, the Chairman of the Governing Body was entitled to use his casting vote. Counsel contended that the entire list of persons who were called at the interview was sent to the University., Counsel contended that the Vice-Chancellor could not have exercised emergency power. The matter had to be placed before the Committee consisting of the Vice-Chancellor, Pro-Vice Chancellor, nominee of the Visitor, Chairman of the Governing Body and two members of the Executive Council. Said committee had to take the final decision.

28. Per contra, Sh. V.P. Singh, learned senior counsel appearing for the University contended that since there was a fundamental flaw in what was recommend to the University, the Vice-Chancellor was fully justified in not placing the matter before the Selection Committee consisting of the Vice Chancellor, Pro-Vice Chancellor, nominee of the Visitor, Chairman of the Governing Body of the College and two members of the Executive Council.

29. Counsel debated at the Bar whether a casting vote could or could not have been cast by the Chairman of the Governing Body as a member of the Selection Committee. Mr. V.P. Chaudhary, learned Senior Counsel urged that as per common law, in the absence of a rule to the contrary, at every meeting, the Chairman of the meeting has a casting vote. Mr. V.P. Singh, learned senior counsel urged to the contrary. As per him, power to cast a casting vote had to be specifically conferred.

30. Issue whether the Chairman could or could not use his casting vote would need adjudication if this Court holds that the Vice-Chancellor of the University could have exercised his power under the proviso to sub-clause 2 of clause 7 of Ordinance xviii.

31. In addition to the proviso to sub-clause 2 of Clause 7 of Ordinance xviii, Statute 11-G stipulates the powers of the Vice-Chancellor. It reads as under:-

"11-G (1) The Vice-Chancellor shall be the Principal Executive and Academic Officer of the University and shall take rank in the University next to the Pro-Chancellor. He shall be the ex-officio Chairman of the Executive Council, the Academic Council and the Finance Committee, and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation to confer degrees. In the absence of the Chancellor and the Pro-Chancellor, he shall also preside at the meetings of Court. He shall be entitled to be present and to address any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic Council and shall perform all such acts, as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided further if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to Executive Council."

32. Counter affidavit filed by the University does not indicate as to what was the emergent situation which led the Vice-Chancellor not to adopt the procedure prescribed of submitting the list forwarded to the University for being placed before the Committee consisting of himself, Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council. The entire thrust of the counter affidavit is that the Selection Committee was to recommend a panel of persons it considered fit for being appointed as Principal of the College and thereafter the Governing Body was to submit the said names to the University. Since there was a flaw in what the Selection Committee did, matter was not required to be placed before the Selection Committee, consisting of the Vice-Chancellor, Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body and two members of the Executive Council.

33. In my opinion whether the Selection Committee had acted rightly or wrongly and whether the Governing Body of the College had forwarded the names correctly or wrongly is a matter distinct from exercising emergency power. What is relevant is the existence of a situation attracting exercise of emergency power. None has been shown.

34. The scheme of the Act, Statutes and Ordinances of the University of Delhi would reveal that the Vice-Chancellor of the University is an office of the University. The Executive Council is a statutory body of the University. The Vice-Chancellor has been conferred with executive powers to act in emergent

situations. Save and except an emergency action, the nominal course of conduct has to be followed.

35. Without there being any ground requiring emergency action to be taken, Vice-Chancellor appropriated to himself the power to by-pass the Selection Committee consisting of himself, the Pro-Vice-Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council. Under normal circumstances it was for the said Body to have considered whether the Chairman of the Governing Body had a casting vote or whether the proceedings of the Selection Committee which met on 7.3.2003 are valid or not. It was for said body to have taken a final decision.

36. The democratic norm of collective decision contemplated by sub-clause 2 of clause 7 of Ordinance xviii has to be given full force. This normal course can be avoided provided an emergency situation exists.

37. It was for the Vice-Chancellor to disclose as to what emergent situation existed. None have been disclosed.

38. Even otherwise, on facts I find none. Petitioner was already officiating as Principal of the College. It was not a situation where some legal provision would have been violated, if the Principal was not appointed forthwith. It is even not the case of the Vice-Chancellor that it was not possible for the Committee consisting of himself, the Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council to meet.

39. Further, if the Vice-Chancellor was to exercise his power under the proviso and was of the opinion that procedure prescribed in (b) and (c) was not to be followed, the Vice Chancellor could only indicate as to which candidate was not acceptable to the University. The Vice-Chancellor could not have set at naught the entire process of selection. It may be noted that under (c) the Committee consisting of the Vice Chancellor, Pro-Vice Chancellor, Visitors nominee, Chairman of the Governing Body and two members of the Executive Council alone can say that no candidate is acceptable and in such eventuality the post has to be re-advertised.

40. Writ petition is allowed. Impugned letters dated 15.5.2003 and 13.6.2003 are quashed. Advertisement dated 17.8.2003 is also quashed. Mandamus is issued to the University of Delhi to place before the Committee consisting of the Vice-Chancellor, Pro-Vice Chancellor, Visitor's nominee, Chairman of the Governing Body of the College and two members of the Executive Council, the recommendations of the Governing Body as also the list of persons who had applied for the post of Principal of Shyamlal College for its decision. It is clarified that it would be open for the said body to decide whether the decision of the Selection Committee which met on 7.3.2003 is vitiated, in that, it did not prepare a panel. It would be open for the said Body to consider whether the Chairman of the Selection Committee had a casting vote. It would be open to the said Body to

consider any other/all relevant material. Further action be taken in terms of the recommendations of the said Committee. Needful be done within 6 weeks from today. No costs.