
(1974) 04 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 430 of 1971

Haraprasad Nayak

APPELLANT

Vs

Sambalpur University and Others

RESPONDENT

Date of Decision : 16-04-1974

Acts Referred:

Sambalpur University Act, 1966 — Section 10(1), 19, 2, 5(4)

Citation : (1974) 40 CLT 799

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : S.C. Mohapatra and B. Naik, for the Appellant; Asok Das and S.N. Satpathy, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Petitioner, an Advocate practicing at Sambalpur was a part-time lecturer of the Lajpatrai Law College at Sambalpur. He was elected to the Senate of the Sambalpur University (hereafter referred to as the "University") as a College Teacher. On 10th of June, 1972, he filed his nomination seeking election to the Syndicate of the University from the Senate as a College Teacher. On the 13th of June 1972, the Petitioner's nomination was rejected on the ground that he was not a College Teacher and as he did not represent a general constituency in the Senate, he could not seek election to the Syndicate from a Non-College Teacher Constituency. On 19th June 1972, the Petitioner made this writ application challenging the rejection of his nomination paper and it was placed for admission on the following day. A Bench of this Court directed as follows:

...Issue notice on the question of admission, hearing and stay. Pending disposal of this writ application the Petitioner Shri Haraprasad Nayak be allowed to contest for the election to the Syndicate as a College Teacher. The result of the election will be subject to the decision in the writ application....

The Petitioner did contest in terms of the aforesaid order and failed. He filed an election dispute before the Chancellor u/s 5(4) of the Sambalpur University Act, but did not ultimately press the same.

2. The opposite parties in their counter affidavit have supported the rejection of the nomination paper and have also raised certain preliminary points to the maintainability of the writ application. To the extent it is necessary to advert to them, reference would be made in due course.

3. The following facts are not in dispute. A Law college at Sambalpur came into existence in September, 1965. On 21-11-1965, it was named as the Lajpatrai Law College and became affiliated to the Utkal University with effect from the academic year 1955-66. With effect from 1st of June, 1967, the Sambalpur University Act (Orissa Act 22 of 1966) (hereafter referred, to as the "Act") came into force. During 1967-68, the Petitioner registered himself as a life member from the Registered Graduates Constituency. During that year he also came to be appointed as a part-time lecturer of the Law College. His registration was transferred to the College Teachers Constituency. u/s 19 of the Act, the Lajpatrai Law College continued to be an affiliated Law College under the Sambalpur University. On 11-1-1969, the Syndicate of the University resolved that "the Lajpatrai Law College be taken over by the University from the next academic year and the financial implication be worked out". On 5-6-1969, the Syndicate further resolved that "the Lajpatrai Law College be treated as a College of the University."

O.J.C. No. 507 of 1971 was filed in this Court by one Dr. Nabin Kumar Sahu and another-two Teachers of the University-challenging rejection of their nominations for election to the Syndicate from the Registered College Teachers' Constituency. On 22-3-1972, the said writ application was disposed of by this Court. This Court held that an institution which formed an integral part of the University itself could not be affiliated to the University and, therefore, an institution of the university would not be a College as defined in Section 2(c) of the Act. An University Teacher not being a College Teacher was not entitled to election to the Syndicate qua College Teacher.

The following observation was made by this Court:

During the hearing of this application we noticed it that the Law College and the College of Engineering which are two institutions of the University have been treated differently from the other faculties of the University without any basis. Even Mr. Ashok Das appearing for the University failed to give a harmonious basis for the stand of the opposite parties in this case and the advantages extended to these two institutions in the matter of representation in the elected bodies of the University. It is for the appropriate authorities to remove discriminatory treatment, if any, without the least delay. There should be no scope for dispute and discord within the citadel of learning.

On 22-5-1972, the Chancellor communicated to the University that the Law and

the Engineering Colleges were not Colleges as defined u/s 2(c) of the Act.

On 10th May, 1972, nomination papers for election to the Syndicate were invited. On 1st of June, 1972, the Petitioner filed his nomination as a College Teacher. On 8th of June, 1972, he filed another nomination paper as a Registered Graduate for being elected to the Syndicate out of the Senate as a person other than a College Teacher. On 10th of June, 1972, both the nomination papers were rejected.

The Petitioner's election to the Senate from the College Teachers' Constituency was cancelled and his name from the Register of Registered College Teachers was also removed. On 10-11-1972, during the pendency of this writ application, the order canceling the membership of the Senate so far as the Petitioner is concerned was recalled. The Petitioner, therefore, continues to be a member of the Senate having been elected from the Registered College Teachers Constituency.

4. In the decision reported in *Dr. Nabin Kumar Bahu and Anr. v. Bambaipur University and Anr.* ILR 1972 Cutt. 508, this Court on an examination of the provisions of the Act and the Statutes made thereunder has come to the conclusion that:

(1) "College" means an institution admitted to the University in accordance with the provisions of the Act and the Statutes;

(2) An institution which forms an integral part of the University itself cannot be affiliated to the University as being a part of the University it would ipso facto carry with it the privileges of the University;

(3) Though the terms "College Teacher" has not been defined, in view of the definition of "College" in Section 2(c) of the Act, a College Teacher must be a Teacher in a College as defined

(4) Statute : 106(2) requires a College Teacher to pay a fee before he can be registered as such but confines it to Teachers of Colleges admitted to the privileges of the University. Statute 106(3) provides that every College Teacher thus registered shall be entitled to take part in the elections. The registration of a Teacher of any other institution as a College Teacher must, therefore, be ab initio void; and

(5) The right to vote or to stand as a candidate does not arise merely by virtue of an entry in the electoral roll. The basic requirement is that a person must be a College Teacher.

These findings so far as they are material for the present case are not disputed by Mr. Mohapatra for the Petitioner. The Petitioner's contention before us is that the Lajpatrai Law College has been an affiliated College and the Petitioner has rightly been elected to the Senate as a College Teacher and as his election as a College Teacher to the Senate has not been disputed, the nomination paper for

election to the Syndicate from that Constituency has been illegally rejected.

Undoubtedly by the time the Act came into force, the Lajpatrai Law College was an affiliated College of the Utkal University. By operation of Section 19 of the Act, the College continued to be an affiliated College of the Sambalpur University after 1967. But with the two resolutions referred to above of the Syndicate a change was brought about, the College was directly taken over by the University and it became an integral part of the University and ceased to be an affiliated College admitted to the privileges of the University. The separate identity of the Law College, therefore, ceased and it became merged with the University. Notwithstanding this position, by the time the judgment in Dr. Saku's case 1, was delivered, the law College was enjoying certain privileges. Therefore, the observation referred to above was made. The Chancellor rightly clarified the position soon thereafter.

5. The Petitioner's election to the Senate in 1970 had been cancelled immediately after the decision of this Court and the clarification given by the Chancellor. Later on, however, it was realised that the election of the Petitioner to the Senate having not been disputed as provided u/s 5(4) of the Act within the period prescribed, the validity of the election was no more questionable. Therefore, in November, 1972, the cancellation of the Petitioner's election to the Senate was rescinded and the Petitioner thus continues to be a Senator until the term is over. Continuance of the Petitioner as a Senator on the ground that the illegal election was no more open to challenge on account of lapse of time, does not give the Petitioner an unquestionable right to seek election to the Syndicate from out of the Senate. When election to the Syndicate comes for consideration and the Petitioner files his nomination, the said nomination is open to scrutiny and to be dealt with in accordance with law. Continuance of the Petitioner in the Senate is not the panacea to meet the challenge to his eligibility.

6. On the finding that the Lajpatrai Law College had ceased to be an affiliated institution and had become an integral part of the University, it must follow that the Petitioner as a teacher of the said Law College could not be considered as a "College Teacher" for the purposes of Section 10(1)(g) of the Act and Chapter XIII of the Status. On our finding that after 1969, the Petitioner had ceased to be a College Teacher, it would follow that he was not entitled to election to the Syndicate from the Senate as a College Teacher u/s 10(1)(g) of the Act.

The University has answered the claim of the Petitioner in regard to his eligibility from the Registered Graduates Constituency by saying that the Petitioner had come to the Senate as a College Teacher. Besides, the Petitioner himself has admitted before us in the written note furnished by Mr. Mohapatra that his registration was transferred from the Registered Graduates Constituency to that of College Teachers. The nomination paper from the Registered Graduates Constituency was therefore; not in accordance with law. On the analysis given above, the only irresistible conclusion that can be reached is that the Petitioner was not entitled to be elected to the Syndicate and the nomination paper had

been validly rejected.

7. On behalf of the University, two preliminary objections had been raised:

(i) the Petitioner having participated in the election pursuant to the order of this Court dated 20th of June, 1972, and having failed, he was not entitled to relief in the writ application; and

(ii) the Petitioner having challenged the election u/s 5(4) of the Act before the Chancellor and ultimately not pressed it is equally disentitled to relief.

In regard to both these preliminary objections, Mr. Mohapatra for the Petitioner had advanced cogent answers. If the Petitioner was succeeding on merit, we would certainly have, on a detailed examination of the preliminary objections and the answers furnished by Mr. Mohapatra, overruled the preliminary objections and given relief to the Petitioner. But as according to us on merit the Petitioner is not entitled to relief, it would be a futile exercise to enter into a detailed examination of the preliminary objections. We refrain from dealing with the preliminary objections at any length.

8. The writ application accordingly fails and is dismissed. We make no order as to costs.

B.K. Ray, J.

9. I agree.