
(1978) 05 GUJ CK 0005
In the Gujarat High Court

Haryant C. Shelat and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-05-1978

Acts Referred:

Constitution of India, 1950 — Article 133(1), 58(I)
Gujarat Agricultural University Act, 1969 — Section 2(8), 2(9)
Representation of the People Act, 1951 — Section 3, 4, 5, 5A, 6

Citation : (1978) 19 GLR 970

Hon'ble Judges : B.J Divan, C.J;D.P. Desai, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—The petitioners herein challenge the appointment of the second respondent by the State Government as Vice-Chancellor of the Gujarat Agricultural University. The petitioners state-that they are vitally interested in ensuring proper constitution of the various authorities of the Gujarat Agricultural University and proper appointment of the Vice-Chancellor. The facts leading to this litigation are not in dispute. The second respondent, Ishwarbhai Jivabhai Patel who has been working as the Vice-Chancellor of the Gujarat University since last many years as been appointed as Vice-Chancellor of the Gujarat Agricultural University by the State Government. The second respondent was born on November 2, 1914; and hence he was clearly more than 62 years of age on January 31,1978 when he was appointed as Vice-Chancellor of the Gujarat Agricultural University. The second respondent assumed the office of Vice-Chancellor of the Gujarat Agricultural University on February 1 1978. The petitioners have prayed that the appointment of the second respondent as the Vice-Chancellor of the Gujarat Agricultural University may be quashed and set aside. There are two grounds on which the appointment of the second respondent as Vice-Chancellor has been challenge. The first ground is that under the provisions of the Gujarat-Agricultural University Act, 1969 thereafter referred to as "the Act"), the vice-chancellor of that University is required to be a whole-time officer of the University and since the second respondent is also holding the

office of the Vice-Chancellor of the Gujarat University, he cannot be a whole-time officer of the Gujarat Agricultural University; and hence his appointment is bad. The second ground of challenge is that according to the relevant Statutes of the University which are the First Statutes of the University, the Vice-Chancellor of the Gujarat Agricultural University at the time of his appointment should be below 62 years of age; and since admittedly, the second respondent was more than 62 years of age at the time of his appointment, the appointment was contrary to the provisions of the Statutes of the University and, therefore, his appointment should be quashed and set aside.

2. In order to appreciate the rival contentions which have been urged before us, it is necessary to refer to some of the provisions of the Act. u/s 2(8), "Officer" means an officer of the University as specified in Section 9 or any other person in the employment of the University declared as an officer by the Statutes; and under Sub-section (9) of Section 2 "prescribed" means prescribed by Statutes. u/s 24, the authorities of the University are the Board of Management, the Academic Council, the Faculties, the Boards of studies of each faculty including Board of Postgraduate Studies, and such other bodies of the University as may be declared by the Statutes to be the authorities of the University. u/s 31, subject to the provisions of the Act, the Statutes may provide for all or any of the matters which have been set out in the said section. We will come to those provisions later on. But the Statutes have to be passed under Clause (t) of Section 26(1) by the Board of Management. Under the said clause one of the functions of the Board is to make, amend or repeal the Statutes. The Constitution of the Board of Management is provided u/s 25 of the Act.

3. u/s 9 of the Act, the officers of the University are the Chancellor, the Vice-Chancellor, the Directors of Campuses, the Registrar, the Comptroller, the Director of purchase and Properties, the Librarian, the Director of Student Affairs, the Deans of Faculties, the Director of Research and Dean of Postgraduates Studies, the Director of Studies in Basic Sciences and Humanities, the Director of Extension Education, and such other officers in the service of the University as may be declared by the Statutes to be officers of the University. We are not concerned in this case with the officers other than the Vice-Chancellor who figures at serial No. 2 in Section 9. Section 10 provides that the Governor of the State of Gujarat shall be the Chancellor of the University. Under Sub-section (1) of Section II, the Vice-Chancellor shall be the whole-time officer of the University and shall be appointed by the State Government. Under Sub-section (2) of Section 11, the Vice-Chancellor shall hold office for a term of three years and shall be eligible for reappointment to that office for one additional term of three years, Sub-section (3) of Section 11 which requires to be considered in this case provides:

The emoluments and other terms and conditions of service of the Vice-Chancellor shall be such as may be prescribed and shall not be varied to his disadvantage after his appointment, without his consent.

As already stated above, in view of the definition given in Sub-section (9) of Section (2), the term "prescribed" means prescribed by Statutes; and the power to make Statutes is with the Board of Management; the matters to be provided by the Statutes are set out in Section 31. It may be pointed out that just as in the Case of Vice-Chancellor, the emoluments another terms and conditions of service of the other officers whose names are set out in Section 9 have to be provided by the Statutes, because in each case it is stated that the emoluments and other terms and conditions of service of the officer concerned shall be such as may be prescribed. So far as officers other than the Vice-Chancellor and the Directors of Campuses are concerned, such other officers have to be appointed by the Vice-Chancellor subject to the approval of the Board of Management. u/s 31, subject to the provisions of the Act, the Statutes may provide for all or any of the following matters, namely:

- (a). (b) the powers, functions, duties, manner of appointment and conditions of, service of the officers of the University other than the Chancellor;
- (c) the designations, qualifications, method of recruitment, pay, allowances, and other conditions of service of various categories of employees of the University and their powers and duties.

Section 54 occurs in Chapter IX of the Act; and this Chapter deals with transitory provisions. Section 53 provides:

Notwithstanding anything contained in Section 11, the first Vice-Chancellor shall be appointed by the State Government as soon as practicable after the passing of this Act for a period not exceeding three years and on such terms and conditions as the State Government thinks fit.

Section 54 deals with transitory powers of the Vice-Chancellor. Under Sub-section (1) of Section 54, it is the duty of the first Vice-Chancellor to make arrangements for constituting the Academic Council and other authorities of the University, other than the Board of Management, within six months after the date of his appointment or such longer period not exceeding one year in the aggregate as the State Government may, by notification in the Official Gazette, direct. Sub-section (2) of Section 54 provides that the first Vice-Chancellor shall, with the assistance of an Advisory Committee consisting of not more than fifteen members nominated by the State Government, subject to the provisions of the Act and the approval of the Chancellor, make provisional Statutes necessary for constituting the authorities of the University and regulating the procedure at the meetings of such authorities and the Board of Management and the transaction of their business. The first Vice-Chancellor has also to frame the First Statutes and regulations under the Act and submit them for confirmation to the respective authorities when they commence to exercise their functions. It is under these transitory powers that the first Vice-Chancellor of the Gujarat Agricultural University, got the first Statutes made and the Board of Management confirmed the first Statute as framed by the Vice-Chancellor; and those First Statutes were

notified in the Government Gazette of February 22, 1973. These Statutes are called "the Gujarat Agricultural University First Statutes, 1972," and they came into force with effect from the date of the Notification i.e. from February 22, 1972. Statute 3 of these First Statutes provides; "The Vice-Chancellor, at the time of appointment should be below 62 years of age." The State Government and the second respondent Ishwarbhai Jivabhai Patel both contend that these Statute 3 of the First Statutes is ultra vires the powers of the Board of Management as being beyond the scope of the Statutes making power conferred on the Board and, therefore, it was not open to the Statutes-making authority to provide in the First Statutes that the Vice-Chancellor, at the time of appointment, should be below 62 years of age.

4. We will deal, at this stage with the second ground of challenge to the appointment of the second respondent as Vice-Chancellor of the third respondent University viz. Gujarat Agricultural University. The contention urged on behalf of the respondents is that u/s II of the Act, it is for the State Government to appoint the Vice-Chancellor of this Agricultural University. There is nothing in Act prescribing qualifications for the post of Vice-Chancellor, though there is some indication in Section 11 (2) restricting the power of the State Government to make an appointment. For example, in Sub-section (2) of Section 11, it has been provided that the Vice-Chancellor shall hold office for a term of three years and shall be eligible for reappointment to that office for one additional term of three years. Hence, the Statute itself provides for some sort of eligibility test and qualification viz. that no person can be appointed as Vice-Chancellor for more than two terms, each term being of three years. Therefore, when the Statute wanted to provide for qualifications it has in terms provided for the qualifications. But, barring this requirement of eligibility, under Sub-section (2) of Section 11, there is no other provision in the Act laying down qualifications or test of eligibility for a person who can be appointed as Vice-Chancellor by the State Government. The words "the emoluments and other terms and conditions of service of the Vice-Chancellor occurring in Sub-section (3) of Section 11, and the words "the powers, functions, duties, manner of appointment and conditions of service of the officers of the University other than the Chancellor" occurring in Clause (b) of Section 31 do not, according to the contentions of the respondents, include qualifications for being appointed as officers of the University, particularly, so far as the officers other than the Chancellor are concerned. In this connection, we find that in case of officers other than the Chancellor, different provisions of the Act provide that the emoluments and other terms and conditions of service of different officers concerned shall be as may be prescribed; and in the light of these different provisions, in Section 31(b) it is specifically provided that the Statutes may provide for the powers, functions, duties, manner of appointment and conditions of service of the officers of the University other than the Chancellor. As regards other employees of the University, i.e. employees other than the officers mentioned in Section 9 Section 23(1) provides that subject to the provisions of the Act, the designations,

qualifications, method of recruitment, pay, allowances and other terms and conditions of service of all employees of the University and their powers and duties shall be such as may from time to time be determined by the Statutes. Clause (c) of Section 31 reproduces those very words viz. the designations, qualifications, method of recruitment, pay, allowances, and other conditions of service of various categories of employees of the University and their powers and duties" referring to the subjects with which the Statutes deal with (vide Clause (c) of Section 31 of the Act). Under these circumstances, it is obvious that so far as other employees of the University are concerned, the Statutes make provision not only for conditions of service such as pay, allowances etc. but also for the designations, qualifications and method of recruitment; whereas in the case of officers other than the Chancellor, the Statutes make provision for conditions of service of the officers of the University; and in this context, we are concerned with the phrase "conditions of service." The learned Advocate General has rightly pointed out that in legal terminology, there is a basic distinction between "qualifications of service" and "conditions of service." The Constitution of India, in Article 58 provides for qualifications for election as President; and inter alia restriction as to age is one of the qualifications set out in Sub-Clause (b) of Clause (1) of Article 58. Article 59 deals with conditions of President's office. Similarly Section 157 deals with qualifications for appointment as Governor; and Article 158 deals with conditions of Governor's office. Article 84 deals with qualification for membership of Parliament. Same thing is also provided in Sections 3, 4, 5, 5A and 6 of the Representation of the People Act, 1951. Under Article 309 of the Constitution of India, also there is a distinction made between recruitment and conditions of service. In view of all these legislative illustrations, it is obvious that in India and in Indian legal drafting a clear distinction prevails between the qualifications of service or qualifications for being appointed to a post and the conditions of service for that post. This distinction is clearly reflected in the provisions of the Act. Thus, only in Sections 23(1) and 31(c) qualifications of service as distinguished from conditions of service are both referred to; and by way of context in Section 11(3) as well as in Clause (b) of Section 31 only conditions of service are referred to. Moreover, u/s 11(3), emoluments and other terms and conditions of service would refer to terms and conditions of service which apply after a person is already appointed to a post which may be called post-appointment or post-recruitment terms and conditions of service.

5. Mr. Mehta for the petitioners urged before us that conditions of service should be held to have a wider meaning and this wider meaning would include qualifications as well. In this connection he has relied upon certain observations of the Allahabad High Court in Chandra Mohan Vs. State of U.P. and Others, of the judgment the learned Single Judge of the Allahabad High Court observed:

The proviso to Article 309 confers powers to make rules to govern the conditions of service. The conditions of service mean and include various aspects like appointment, scale of pay, confirmation, seniority, promotion, payment of

pension, etc.

In support of this proposition, the learned Single Judge relied upon two decisions of the Supreme Court, namely, *The Accountant General, Bihar and Another Vs. N. Bakshi*, and *The General Manager, Southern Railway Vs. Rangachari*, and then proceeded to state further:

Article 233 deals with only one aspect of the conditions of service, namely, appointment to the post of the District Judge. That has to be made in consultation" with the High Court. The rules did not comply with this condition. The rules relating to appointment alone would be bad on that ground. Rules relating to other aspects of conditions of service having been validly framed under Article 309 would remain unaffected by the non-compliance with Article 233(1) of the Constitution.

We are unable to agree with these observations of the learned Single Judge of the Allahabad High Court because, with respect to him. We find that the two decisions of the Supreme Court in *Accountant General, Bihar v. Bakshi* and *General Manager, Southern Railway v. Rangachari*, do not support the conclusion which he has sought. In any event, so far as this High Court is concerned, a Full Bench of this High Court has held in *Special Civil Applications Nos. 1099 of 1962, 422 and 957 of 1970 and 1418 of 1971* decided by common judgment on July 14, 1973 that conditions of service in the context of Article 309 of the Constitution do not include the qualifications for service. Bhagwati C.J. delivering the Judgment of the Full Bench observed in that case:

The first question which arises for determination on these contentions is as to what is the true meaning of the words "condition of service" in Section 241(2) (b). Now there are three distinct concepts which are well-known and well-recognised in Service Law namely, classification of service, methods of recruitment and conditions of service. The first deals with organization of different classes of services, the second with modes and conditions of recruitment and the third with conditions of service of persons so recruited. We are not concerned here with the first concepts and we may not say anything more about it. So far as the second and the third concepts are concerned, there is a clear and well-recognised distinction between recruitment and conditions of service: they are basically different. Recruitment is entry into service whereby the relationship of master and servant is created while conditions of service govern the relationship of master and servant which comes into being as a result of recruitment.

Using the same terminology, qualifications for the appointment to a particular post govern the question of entry whereas the conditions of service govern the relationship of employer and employee or master and servant which comes into being after an appointment is made. Hence, with respect to the observations of Satis Chandra J. in the Allahabad case, we are unable to follow his reasoning and we will follow the distinction between conditions of service and recruitment or

between qualifications for appointment and conditions of service which is distinct in the Act before us.

6. It may be pointed out that this decision of the Full Bench of the Gujarat High Court was confirmed by the Supreme Court in *S.B. Patwardhan and Another Vs. State of Maharashtra and Others*, though not on the point which is under consideration before us but the distinction between conditions of service and recruitment to service which was made by the Full Bench has not been disturbed by the Supreme Court in *S.B. Patwardhan's* case.

7. It may be pointed out that in *A.J. Patel v. State of Gujarat* AIR 1965 Guj 23 an earlier Full Bench of this High Court had observed in paragraph 27 as under:

The expression "conditions of service" is an expression which finds a place in Article 309 of the Constitution. That Article appears in Chapter I, Part XIV of the Constitution. The words "conditions of service" appearing in Section 115(7) can only have the meaning which is attributable to those words in Article 309 of the Constitution.... From this Article it is evident that rules relating to the recruitment of persons to public services and posts are distinct from rules relating to the conditions of service. The conditions of service are conditions-applicable to person who have been appointed to public services and posts The terms and conditions relating to recruitment and relating to appointment to public services and posts must, therefore, be regarded as distinct and different from the conditions of service" governing persons on their appointment to public services and posts.

8. It is thus clear from these two Full Bench decisions of this Court that conditions of service as understood in legal parlance particularly in the context of what has now come to be known as service jurisprudence are quite distinct from qualifications for appointment and in our opinion, this distinction between qualifications on the one hand and conditions of service on the other was present to the mind of the legislature when in Gujarat Agricultural University Act. 1969 in Section 11(3) the legislature did not give the words "qualifications for appointment" but only used the words "emolument and other terms and conditions of service." The fact that this distinction was present to the mind of the legislature is borne out when one refers to Section 23(1) of the said Act where the words "Qualifications, method of recruitment," are also referred to along with other terms and conditions of service. Hence it must be held that so far as the Vice-Chancellor was concerned the Statutes could only provide for his emoluments and other terms and conditions of service. That is, what emerges from the provisions of Section 11(3) of the Act as well as from Section 31(b) which speaks of the Statutes providing for the powers, functions duties, manner of appointment and conditions of service of the officers of the University other than the Chancellor. Under these circumstances it is clear that the Board of Management had no power to provide for age qualification of the person who can be appointed as Vice-Chancellor and therefore, the provisions of Statute No. 3 which lays down that the Vice-Chancellor, at the time of appointment, should be

below 62 years of age was beyond the power of the Board of Management to make Statute in this connection.

9. Mr. Mehta for the petitioners urged before us that it is not open to the State Government to challenge the vires of a piece of delegated legislation and in this connection he relied upon the decision of the Calcutta High Court in *The State Vs. Keshab Chandra Naskar*, . There, a Division Bench of the Calcutta High Court has held that the State cannot be allowed to lead before the Courts the unconstitutionality of its own Statutes. It was further held that it will be a very dangerous course to allow States in India the right to urge in Courts, that their own laws and Acts are unconstitutional and invalid. To do so will be to prevent the State by the backdoor to debunk the primary authority of Parliament and State Legislature to make repeal and amend Acts and Statutes. In this case it may be pointed out that the State does not challenge its own laws. All that it challenges is a Statute made by the Board of Management under the powers delegated to it u/s 31(b) of the Act. It is surely open to the State to point out not that a particular enactment of the legislature is ultra vires but that a particular body to whom subordinate or delegated legislation is entrusted has transgressed the limits of the power under which it was functioning and hence the particular piece of delegated legislation is ultra vires and invalid.-We see nothing wrong in the State of Gujarat coming before us and Urging that this particular Statute, namely, Statute No. 3 of the First Statutes made by the authority to whom powers of delegated legislation were entrusted was beyond the powers of that body and hence the Statute is invalid and of no legal effect.

10. That takes us to the second contention urged on behalf of the petitioners. u/s 11 of the Act, it has been provided in Sub-section (1) that the Vice-Chancellor shall be a whole-time officer of the University and the contention is that since the second respondent is already working as Vice-Chancellor of the Gujarat University, he could not at the same time be a whole-time Officer of the Agricultural University. In this connection, it may be pointed out that under the provisions of Section 10 of the Gujarat University Act, 1949, the Chancellor shall in consultation with the State Government nominate the Vice-Chancellor from amongst three persons recommended by the Court (formerly referred to as Senate) provided that no person who has completed the age of 65 years or who if recommended would complete the age of sixty five years at the time of his appointment shall be recommended by the Court. Under Sub-section (2) of Section 10 the Vice-Chancellor can hold office for a term of five years and shall not be eligible for nomination for a further term in the University. Sub-section (4) of Section 10, as it stood at the relevant time, was in these terms:

(4) The Vice-Chancellor shall be an honorary officer, but the Court may, by Statutes, make the office of the Vice-Chancellor a whole-time salaried office; the Court may also determine the emoluments to be paid for such office, whether honorary or salaried and prescribe the conditions subject to which such office shall be held.

It is not in dispute that the Court of the Gujarat University has not made any Statute under which the office of the Vice-Chancellor was made a whole-time salaried office and under these circumstances it must be held that under Sub-section (4), first part, of Section 10, the Vice-Chancellor of the Gujarat University was an honorary officer.

11. We may point out that the Gujarat University Act, 1949 was amended by Gujarat University (Amendment) Act, 1978 (Gujarat Act No. 23 of 1978). The Governor assented to the Act on April 11, 1978 and that is the date on which amendment Act came into force. Section 10 of the principal Act has been amended and new Sub-section (3) of Section 10 runs as follows:

(4) The Vice-Chancellor shall hold office for a term of three years and he shall be eligible for re-appointment to that office for a further term of three years only: Provided that no person appointed as the Vice-Chancellor shall continue to hold his office as such after he attains the age of 65 years.

Sub-section (5) provides the emoluments to be paid to the Vice-Chancellor and the terms and conditions subject to which he shall hold office, shall be such as may be prescribed by the Statutes. Provided that such emoluments or such terms and conditions shall not, during the currency of the term of the holder of that office, be varied to his disadvantage without his consent. We have carefully gone through the provisions of the newly enacted Section 10 which has been substituted in the principal Act for the original Section 10 by the Gujarat Act No. 23 of 1978 and even under the new Section 10 which is just substituted with effect from April 11, 1978, there is no provision for a whole-time Vice-Chancellor in the Gujarat University. As we have pointed out earlier, the second respondent was appointed Vice-Chancellor of the Gujarat Agricultural University on January 31, 1978 and he assumed office as Vice-Chancellor on February 1, 1978. On February 1, 1978 the requirement of the Gujarat University Act was that the Vice-Chancellor was an honorary officer and not a whole-time officer of that University. It was only in the Gujarat Agricultural University Act that by Section 11(1) the Vice-Chancellor of the Agricultural University was required to be a whole-time officer. When the provisions of the two statutes, the Gujarat Agricultural University Act, 1969 and the Gujarat University Act, 1949, are read side by side it clearly emerges that it was not illegal for the Government to appoint the Vice-Chancellor of the Gujarat University, an honorary officer, to the post of the Vice-Chancellor of the Gujarat Agricultural University which was a whole-time office. Under these circumstances, the second contention urged on behalf of the petitioners also fails.

11.1 Both the contentions urged on behalf of the petitioners fail. This Special Civil Application, therefore, fails and is dismissed. Rule is discharged. There will be no order as to costs.

12. Mr. Mehta for the petitioners applies orally for leave to appeal to the Supreme Court under Article 133(1) of the Constitution of India. In our opinion,

though there is a question of law arising in this case, it is not a substantial question of law of general importance which is needed to be decided by the Supreme Court. Hence his application is rejected.