
(1972) 09 GUJ CK 0003
In the Gujarat High Court

Josh I Mulshanker Somnath

APPELLANT

Vs

Gujarat Ayurved University and Others

RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Gujarat Ayurved University Act, 1965 — Section 14, 14, 15

Citation : (1973) 14 GLR 529

Hon'ble Judges : P.N. Bhagwati, C.J.;D.A. Desai, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—The petitioner is an Assistant Professor in the Sarkari Akhandanand Ayurvedic Mahavidyalaya, Ahmedabad, which is a college affiliated to the Gujarat Ayurved University, which is the first respondent before us. The second respondent is the Vice-Chancellor and the third respondent is the Registrar of the first respondent University. The first respondent University is constituted under the Gujarat Ayurved University Act, 1965. Section 14 of the Gujarat Ayurved University Act provides inter alia that the Senate shall be one of the authorities of the first respondent University. The constitution of the Senate is provided in Section 15 of the Gujarat Ayurved University Act, 1965. The members of the Senate consists of two classes, namely, Class I and Class II. "Class I consists of ex-officio members while Class II consists of ordinary members. There are several categories of ordinary members. One category consists of "five members to be elected by the teachers of affiliated colleges excluding the Principals thereof, from amongst themselves in the manner prescribed by the statutes". The election of the Senate was decided to be held on 24th September 1972. The last date for filing nomination papers was 9th September 1972. The petitioner who is a teacher in an affiliated college was nominated as a candidate for the election from the constituency of teachers of affiliated colleges. There were two nomination papers filed nominating the petitioner as a candidate. The first nomination paper was filed on 19th August 1972 while the second nomination paper was filed on 5th September 1972. Both the nomination papers were in the prescribed form and they were filed before the

last date for receiving nomination papers. The third respondent who was the scrutinising officer felt a doubt as to the validity of the nomination of the petitioner, since both the nomination papers mentioned the date at the foot thereof but they were not dated by the voters proposing and seconding the petitioner. He, therefore, referred the matter to the second respondent as the Vice-Chancellor of the first respondent University. The second respondent rejected the nomination of the petitioner on the ground that the nomination papers were not dated by the voters proposing and seconding the petitioner and therefore, they were not in accordance with Statute 117 which required that the nomination papers should be dated and signed by two voters. The petitioner thereupon preferred the present petition challenging the validity of the rejection of his nomination by the second respondent.

2. The short question that arises for consideration in this petition is, whether the nomination papers submitted on behalf of the petitioner were in conformity with the requirements of Statute 117. Statute 117 reads as follows:

117. Nomination papers shall be in the prescribed form and shall be dated and signed by two voters or by two members of the public associations or bodies entitled to vote and shall contain the names in full, addresses and designations, if any, of the signatories and of the candidates nominated. No person shall be nominated as a candidate for election unless he signifies his consent on the nomination paper. A nomination paper which does not comply with all the formalities required by the rules shall be rejected.

The material part of Statute 117 insists on three requirements. First, the nomination papers shall be in the prescribed form; secondly, the nomination papers shall be dated and thirdly, the nomination papers should be signed by two voters. The expression "by two voters" governs only the preceding verb "signed" and does not go backward to govern also the verb "dated". What is required to be done by two voters is only signing and not dating. If the intention of the draftsmen were that two voters should not only sign but also date the nomination paper, the language employed by the draftsmen would have been "signed and dated by two voters". That would have been grammatically the only appropriate language to carry out such intention because dating would follow signing and not precede it. But the draftsmen have advisedly used the words "dated and signed by two voters". What is, therefore, required by Statute 117 is that the nomination papers should be dated and further they should be signed by two voters. The requirement of dating is an independent requirement distinct from the requirement of signing by two voters. The form of the nomination paper prescribed by the authorities of the first respondent University also supports this construction of Statute 117. The prescribed form is a printed form. It set out various matters in the left hand column in regard to which particulars are expected to be given In the right hand column. These matters are broadly divisible under three heads; the first head of matters relates to particulars in regard to the proposer and the last matter set out under this head is "The

signature of the proposer". Then follows the second head of matters which relate to particulars to be given in regard to the seconder and it ends with "The signature of the seconder". Then there is the third head which consists of the declaration to be made by the candidate signifying his consent to the nomination and below the declaration there is on the righthand side, a blank for the "candidate's signature" and on the left hand side, a blank for the "date". This prescribed form clearly shows that the date is to be put at the bottom of the nomination paper in the blank against "date" and there is no indication in the prescribed form that the proposer and the seconder are also to mention the dates on which they put their respective signatures on the nomination paper. It is obvious from the prescribed form that the proposer and the seconder are not expected to mention the dates on which they respectively put their signatures. This is clearly supportive of the construction which we are inclined to place on the language of Statute 117.

3. We are, therefore, of the view that on a proper construction of Statute 117 read with the prescribed form, it is not necessary that the nomination papers should be dated by the proposer and the seconder and it is sufficient if they are signed by the proposer and the seconder and they bear a date at the foot thereof as shown in the printed form. It is common ground between the parties in the present case that the nomination papers were strictly in the prescribed form, they were signed by the proposer and the seconder and they bear a date at the bottom against the column "date" in the prescribed form. The second respondent was, therefore, clearly in error in rejecting the nomination of the petitioner.

4. We, therefore, allow the petition and make the rule absolute by issuing a writ of mandamus quashing and setting aside the decision of the second respondent rejecting the nomination of the petitioner and declare that the petitioner is a validly nominated candidate for the election of the Senate to be held on 24th September 1972 and we also direct the first respondent University and its authorities to include the name of the petitioner as a validly nominated candidate for the purpose of that election.

5. There will be no order as to costs of the petition.