

(1974) 01 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3666 of 1973

K.L. Jaura

APPELLANT

Vs

G.S. Pathak and Others

RESPONDENT

Date of Decision : 15-01-1974

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Gram Panchayat Act, 1952 — Section 7(2), 8(2)
Punjab University Act, 1947 — Section 13(1), 31, 38

Citation : AIR 1974 P&H 261

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. The petitioner is a Reader in the Chemistry Department of the Punjab University, Chandigarh, while respondent 3 is a Lecturer in the Department of Botany in the same University. The election to the Senate of the University were held on September 12, 1972, and the petitioner and respondent 3 contested for the seat of an Ordinary Fellow u/s 13(1)(c) of the Punjab University Act, 1947, (hereinafter referred to as the Act). Under that provision, two Ordinary Fellows, one each from the Arts and Science Departments, were to be elected by Readers and Lecturers on the staff of the teaching departments of the University from amongst themselves. There were in all 9 contestants for these two seats, their names being Sarvshri S.P. Choda (respondent 3), K.L. Jaura (Petitioner), D. D. Kapoor, R. D. Anand, Jaswant Singh Jiwan, Vishwa Nath Tewari, Madan G.Gandhi, R. S. Marya and Jagdish Chandra Sen. 300 votes were polled out of which 15 were held to be invalid and the quota was fixed as 96 under Rule 9 of the Rules relating to Election of Ordinary Fellows printed in Volume III of Punjab University Calendar, 1972, at page 91. From the Arts side Shri Vishwa Nath Tewari was declared elected and from the Science side the petitioner was declared elected by the Returning Officer under regulation 20 of the Regulations relating to Election of Ordinary Fellows contained in Chapter II (B) of the Punjab University Calendar, Volume I. This election had to be approved by the Chancellor. Shri S.P. Choda,

respondent 3, filed an election petition which was entrusted for disposal to the Committee consisting of the Vice-Chancellor, S. Narinder Singh and Shri G. L. Chopra. The Chancellor thereupon directed that the approval of the election of the petitioner shall remain in abeyance till the decision of the election petition by that committee. The petitioner then filed Civil Writ No. 3658 of 1972 in the Court objecting to the constitution of the Committee for the decision of the election-petition and prayed for the quashing of the order of the Chancellor. That petition was heard by R.N. Mittal, J., and myself and was accepted. It was held by us that regulations Nos. 17.2 and 17.3 under which the Committee for deciding the election-petition had been constituted, were ultra vires Sections 31 and 38 of the Act. That judgment is reported as *Dr. K. L. Jaura v. Punjab University* (1973) 75 PLR 833. As stated in paragraph 3 of the report, the first contention of the learned counsel for the petitioner in that case was that the Chancellor was the only authority to settle disputes regarding election of the members of the Senate and no Sub-Committee could be constituted under the Regulations framed under clause (a) of sub-section (2) of S. 31 of the Act as it had been expressly provided in Section 38 that all disputes relating to the constitution of the University were to be referred to the Chancellor for decision. It was further urged that the provisions of Regulations 17.1, 17.2 and 17.3 of Chapter II(B) of the Calendar were ultra vires the provisions of the Act so far as they authorised the Syndicate to appoint a Committee to decide the election petition. The Bench came to the conclusion that Regulations 17.2 and 17.3 were ultra vires the Act and quashed the order of the Chancellor keeping in abeyance the approval of the petitioner's election as an Ordinary Fellow till the Committee had decided the election-petition. As a result of that decision, the Punjab University forwarded the election-petition of respondent 3 to the Chancellor for decision u/s 38 of the Act. The Chancellor gave a decision in favour of respondent 3 after hearing the petitioner, respondent 3 and the University. The order passed by the Chancellor is a speaking order giving reason in support of his decision and does not suffer from any legal infirmity. The petitioner has, however, felt aggrieved and has filed the present petition which has been opposed by the University and respondent No. 3.

2. The first point argued by the learned counsel for the petitioner is that Section 38 of the Act is ultra vires Article 14 of the Constitution as it gives an arbitrary and unguided power to the Chancellor to decide election-petitions without prescribing any guidelines or the grounds on which the election can be challenged or set aside and no appeal has been provided against his decision. The argument is that the Chancellor can decide each election dispute according to his own notions which can result in discrimination. In my view, the petitioner can not be allowed to urge this plea in this petition. In the earlier petition decided by the Division Bench, the position expressly taken by the petitioner was that the Chancellor alone, u/s 38 of the Act, was the authority to decide election disputes and no Committee could be constituted under the regulations framed by the Senate of the University for the purpose. He did not urge at that time that Section 38 of the Act was ultra vires and the decision of the Returning Officer

declaring the petitioner as elected could not be challenged by respondent 3 by way of an election-petition before any forum. It was open to the petitioner to have urged that plea in that writ petition. He did not raise that plea and after the success of his petition, he submitted himself to the jurisdiction of the Chancellor and invited his decision in the election dispute with respondent 3 without raising any objection to his jurisdiction. Now that the decision has gone against him, he cannot be allowed to urge that the Chancellor had no jurisdiction to decide the matter. A Division Bench of the Bombay High Court (Chagla, C.J., and Dixit, J.,) observed in *Gandhinagar Motor Transport Society Vs. State of Bombay*, , as under:--

"It must be borne in mind that in exercising its jurisdiction under Articles 226 and 227 the High Court is not exercising an ordinary jurisdiction. It is always open to a petitioner to assert his rights in a suit properly filed, but when he chooses to assert his rights by calling upon the High Court to exercise its special jurisdiction, the High Court must itself lay down certain principles for the exercise of that jurisdiction and must not make the exercise of that jurisdiction a matter of ordinary occurrence. A suit may well be filed within the period of limitation; the Judge trying the suit does not non-suit the plaintiff because he came to Court towards the end of the period of limitation; but this Court tells the petitioner "you must come to this Court expeditiously."

Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction upto the stage of the Privy Council or the Supreme Court, yet if the Court has no jurisdiction, the highest Court in the land will allow the point to be raised and decide it in favour of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner: "It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ."

3. On the parity of reasoning, it can be said in the present case that the petitioner took a chance of decision in his favour by the Chancellor and after having taken full part in the proceedings before him, he cannot now be heard to say that those proceedings were held by the Chancellor without any jurisdiction.

4. In any case, I do not find any substance in the plea of the petitioner in this behalf. The learned counsel has relied on a Division Bench judgment of this Court in *Harke v. Giani Ram* ILR (1962) P&H 74, wherein clause (a) of Section 8(2) of the Punjab Gram Panchayat Act, 1952(Act IV of 1953) was declared as void and unconstitutional on the ground that in enacting that provision there had been an excessive delegation of legislative powers amounting to an abdication of its functions by the legislature. That clause read as under:--

"(2) The prescribed authority may--

(a) If it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the said election, and a fresh election shall thereupon be held. In the Act or the Rules no grounds were mentioned on the basis of which an election could be challenged or set aside. In that case, it was urged on behalf of the State that the Preamble of the Gram Panchayat Act as also the expression "failure of justice" appearing in Section 7(2) were indicative of the policy and purpose of the Legislature underlying that section. The Preamble simply stated:--

"An Act to provide for better administration in the rural areas of Punjab by Panchayats."

It was observed that the Preamble did not furnish any guidance for the reasons or grounds on which an election could be set aside u/s 8(2)(a) of the said Act. As regards the expression "failure of justice",. It was contended that--

"it connotes certain basic principles of equity, fairplay and good conscience and, therefore, the prescribed authority can decide whether a failure of justice has occurred in a particular case." After referring to the provisions of some enactments in which such an expression was used and the judicial pronouncements in respect of them, it was observed by the Bench as under on page 89 of the report:--

"It would seem that wherever the expression "failure of justice" or "miscarriage of justice" has been employed, it has reference to and has been construed in the light of the substantive or procedural provisions of a particular law in the observance of which there has been some irregularity or error and the Court has to satisfy itself that the same has not led to failure or miscarriage of justice before interfering with the sentence, order or judgment."

5. With regard to the provisions in Section 8(2)(a) of the Act, Grover, J. Speaking for the Court, said:--

"In the case of the prescribed authority under the Act it cannot be said that there is any rule or principle indicated in the Act which can enable that authority not to set aside an election even if any corrupt practice has been committed but other circumstances exist which would justify a decision that the election need not be set aside. There is no uniform definition of corrupt practices so far as election law is concerned to which the prescribed authority can have recourse for determining whether such corrupt practice has been followed which would justify the setting aside of an election on the ground that there has been failure of justice. In this situation it cannot but be held that the legislature has not decided its policy and purpose so as to guide the prescribed authority constituted under the Act with regard to the ground on which it would come to the conclusion that there has been a failure of justice. No appeal has been provided against the decision of the prescribed authority with the result that there is no machinery by which its decision setting aside an election on the ground of failure of justice can be challenged before any superior Tribunal which would serve as a check or curb on

its acting arbitrarily. It is true that it cannot be presumed that the prescribed authority will not act in a reasonable way and will set aside an election in an arbitrary manner but the whole difficulty that arises is that the prescribed authority itself will not know in what set of circumstances it must hold that a failure of justice has occurred in the matter of an election. As has been mentioned before, even the procedure for enquiry has been left by sub-section (2) of S. 8 to be regulated by the prescribed authority according to whatever it considers to be necessary. This again introduces an element which can well bring about discrimination. One prescribed authority may consider that evidence may be examined on affidavits. Another prescribed authority may be of the view that only some of the witnesses out of those tendered by that statements of others need not be recorded. Discretion has thus been vested in the prescribed authority clothing it with unguided powers which may well enable it to discriminate."

6. The difference between that case and the present case is that there are no more than one authority to decide the election disputes and that authority is the highest dignitary of the University. There is no question of appeal against his order nor can any arbitrariness be presumed. In the case of Punjab Gram Panchayat Act, the prescribed authority for each district was different and, therefore, there could be difference in the approach of each prescribed authority to the election petition according to his own notions. Secondly, regulation 17.1 in Chapter II(B) *ibid* states the grounds on which a dispute with regard to an election can be raised. That regulation was not held to be ultra vires by us in the earlier judgment referred to above and the Chancellor can decide the disputes which are raised if they fall under regulation 17.1. In this view of the matter, the provisions of Section 38 cannot be said to be ultra vires Article 14 of the Constitution as giving unguided and unfettered powers to the Chancellor. In this connection, reference may be made to a Division Bench judgment of this Court in *Pala Singh v. Nathi Singh* ILR (1963) P&H 49, wherein the provision in the Punjab Panchayat Samitis and Zila Parishads Act, 1961, for challenging the election of a returned candidate was in identical terms as Section 8(2) of the Punjab Gram Panchayat Act, but Section 115 of that Act gave the power to the Government to make rules with regard to various matters regarding elections and election-petitions. In those rules, the grounds of challenge to an election were stated and it was held that those rules provided sufficient guidance to the prescribed authority and the "failure of justice" would be held to have occurred only if one or the other ground stated in the rules was proved to exist. On the parity of reasoning it can be said that if any of the grounds, mentioned in regulation 17.1 is made out to the satisfaction of the Chancellor, he can interfere in the decision of the returning officer, declaring the result. The submission of the learned counsel for the petitioner is, therefore, repelled and Section 38 of the Act is held to be valid and intra vires.

7. The second point vehemently canvassed by the learned counsel for the petitioner is that the Chancellor did not follow the proper procedure and method

of counting the votes while arriving at the decision that respondent 3 had been duly elected instead of the petitioner. The election of Ordinary Fellows is held on the basis of Single Transferable Vote and the method of counting votes is contained in Rules 14 to 18 of the Rules relating to Election of Ordinary Fellows, which are reproduced hereunder:--

"14(i) If, after all the surpluses have been transferred as hereinbefore directed, less than the number of candidates required, has been elected, the candidate lowest on the poll shall be excluded from the poll and his unexhausted ballot papers distributed among the continuing candidates according to the next preferences recorded thereon. Any exhausted ballot papers shall be set aside as finally dealt with.

(ii) The ballot papers containing original votes of an excluded candidate shall first be transferred.

(iii) The ballot papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfer in which he obtained them.

(iv) Each of such transfers shall be deemed to be a separate transfer.

(v) If the total of the votes of the two or more candidates lowest on the poll, together with any surplus votes not transferred, is less than the votes credited to the next highest candidate, those candidates may, in one operation, be excluded from the poll and their votes transferred in accordance with the directions given in clauses (i) to (iv) above.

(vi) The process directed by this Rule shall be repeated on the successive exclusions of the candidates lowest on the poll until the last vacancy is filled either by the election of a candidate with the quota, or as hereinafter provided.

15. If, as a result of a transfer of ballot papers under these Rules, the number of votes obtained by a candidate is equal to or greater than the quota, the transfer then proceeding shall be completed but no further ballot papers shall be transferred to him.

16. Subject to the provisions contained in Rules 11, 12 and 13:

(i) If, after the completion of any transfer, under these Rules, the number of the votes of any candidate shall be equal to or greater than the quota, he shall be declared elected.

(ii) If the number of the votes of any such candidate shall be equal to the quota, the whole of the ballot papers on which such votes are recorded shall be set aside as finally dealt with.

(iii) If the number of the votes of any such candidate is larger than the quota, his surplus shall thereupon be distributed in the manner hereinbefore provided, before the exclusion of any other candidate.

17. Subject to the provisions contained in the Rules 11, 12 and 13:

(i) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

(ii) When only one vacancy remains unfilled and the number of the votes of one continuing candidate exceeds the total of all the votes of the other continuing candidates, together with any surplus, not transferred, that candidate shall be declared elected.

(iii) When only one vacancy remains unfilled and there are only two continuing candidates and those two candidates have each the same number of votes and no surplus remains capable of transfer, one candidate shall be excluded under Rule 18 and the other deemed elected.

18. If, when there are more than one surplus to be distributed, two or more surpluses are equal or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same number of votes had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall have his surplus distributed or shall be first excluded, as the case may be. If the number of their original votes is the same, the Returning Officer shall decide by lot which candidate, shall have surplus distributed or be excluded."

8. There is no dispute with regard to the elimination of Sarvshri Jaswant Singh, Jiwan, D. D. Kapur, R. D. Anand, R.S. Marya and Jagdish Chandra Sen and the distribution of their votes amongst the continuing candidates thereafter. After their exclusion the position of the 4 continuing candidates was as under:--

Original Votes Transferred Votes Total S.P. Choda (respondent 3) $87 + 5 = 92$
K.L. Jaura (petitioner) $71 + 7 = 78$ Vishwa Nath Tewari $63 + 3 = 66$ Mandan G. Gandhi $36 + 8 + 2 = 46$

9. It is common ground, that Shri Gandhi was to be eliminated and his votes had to be distributed amongst the other 3 candidates. According to Rule 14(ii), the original votes of Shri Gandhi had first to be transferred. In respect of those votes, 7 went to Shri Choda, 21 to Shri Jaura and 4 to Shri Tewari. On the distribution of these votes, the petitioner and respondent 3 got 99 votes each while Shri Tewari got 70 votes. According to Rule 15, no further ballot papers could be transferred to the petitioner and respondent 3 as they had obtained more than the quota fixed. Since they had got equal number of votes, according to Rule 18, one of them who had got the larger number of original votes had to be elected. Admittedly, respondent 3 had obtained 87 original votes as against 71 original votes obtained by the petitioner and, therefore, he has been rightly declared elected by the Chancellor. It is pleaded on behalf of the respondents that 4 votes, which were transferred to Shri Tewari, were wrongly transferred to him as on the elimination of Shri Gandhi, Shri Tewari, who was the only candidate from the Arts side, left in the field, had to be declared elected and those 4 votes should also have been transferred to the petitioner and respondent 3, the petitioner would have got 1 vote and respondent 3 two votes. In that

manner respondent 3 got 101 votes against 100 of the petitioner and, therefore, he was entitled to be elected. IF all the 46 votes of Shri Gandhi were distributed between the petitioner and respondent 3, each one of them would have obtained 103 votes and under Rule 18 Shri Choda had to be declared elected. The only way in which the petitioner could be declared to have been elected is that the 4 votes transferred to Shri Tewari were to remain with him and all the 10 transferred votes of Shri Gandhi should have been distributed between the petitioner and respondent 3. On that basis respondent 3 would have got 101 votes against 102 votes of the petitioner as out of the transferred votes of Shri Gandhi, 2 went to respondent 3 and 1 to the petitioner. It is the only method in which the petitioner could have been declared elected, but it is not in accordance with the rules set out above. According to the rules, the first method stated by me alone, was the proper method and had to be followed, that is, after the transfer of 36 original votes of Shri Gandhi to the continuing candidates according to their respective entitlements, the transfer of transferred votes of Shri Gandhi had to be stopped under Rule 15 as both the petitioner and respondent 3 had obtained more votes than the quota fixed. There is, therefore, no merit in the submission of the learned counsel that the counting of votes of the petitioner qua respondent 3 has not been made by the Chancellor in accordance with the rules, his submission is, therefore, repelled and the election of respondent 3 is held to be valid.

10. Lastly, it has been urged that u/s 38 of the Act, the Chancellor could either dismiss the election-petition or set aside the election, but he could not declare respondent 3 as a duly elected Fellow of the University. I find no merit in this submission. Section 38 reads as under:--

"38 Disputes as to Constitution of the University--

If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter will be referred to the Chancellor, whose decision thereon will be final."

11. Under this section, the Chancellor can decide whether any person has been duly elected as a member of any authority or other body of the University. The words "or is entitled to be" confer ample jurisdiction on the Chancellor to declare any person, who should have been declared as elected according to the rules, to have been duly elected if the Returning Officer did not announce the result in accordance with the rules and thus failed in the discharge of his duties as laid down in the regulations. On the language of the section it has to be held that the Chancellor had the jurisdiction to declare respondent 3 as duly elected Fellow of the University in place of the petitioner. This submission is also repelled.

12. For the reasons given above, I find no merit in this petition which is dismissed but the parties are left to bear their own costs.

13. Petition dismissed.