
(1963) 05 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No. 68 of 1962

Nand Kishore Agarwal

APPELLANT

Vs

B.N. Rai and Others

RESPONDENT

Date of Decision : 10-05-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1963 Patna 394

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : B.C. Ghosh, Chitranjan Ghosh, S.N. Misra and Devendra Prasad Sharma, for the Appellant; Balbhadra Prasad Singh, Ramanand Sinha, Radha Raman and Amreshwar Narain Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner Nand-kishore Agarwal has moved the High Court for grant of a writ in the nature of certiorari under Article 226 of the Constitution for the purpose of calling up and quashing the order of the Vice-Chancellor of the Patna University, dated the 17th January, 1962, which is annexure A to the writ application and which reads as follows: -

"Sir.

I am directed to inform you that the Vice-Chancellor has been pleased to approve the constitution of the Governing Body of the College, constituted at the meeting of the Governing Body held on the 12th October, 1961, with the following persons for the next term to fill the seats as noted against each; -

1. Principal - Ex-Officio
2. Teachers" Representative ?

Shri Jainendra Kumar and Shri Gulzar Grain, Hilsa College, Hilsa (Patna).

3.

4. University Representative ?

Dr. Kameshwar Prasad Singh, Nalanda College, Biharsharif.

5. Government officer ? S. D. O. Bihareharif.

6. Legislature ?

Shri Girbardhari Singh, M. L. A, Village Lodi-pur, P, O. Eambhawan, Dist. Patna.

7. to 9. Founder, Donors and Benefactors. ?

Shri Vishnu Prakash Udasin, P. O. Hilsa, Dist. Patna. Shri Shrikrishna Prasad Sinha, Ex-Vice-Chairman, Dis-strict Board, Kada-mknan, Patna 3. Shri Ragho Prasad Sinha, Vill. & P. O. Kacharia, (Patna.)

10. Old Boys" Association ?

Shri Syam Sundar, M. L. A., Flat No. 25, Gardiner Road, Patna 1.

11. Guardians" Representative ?

Shri H. K. Agrawal, c/o Hind Electrical, Fraser Road, Patna 1.

Yours faithfully,

Sd. S. Y. Hussain, Deputy Registrar, Patna University."

The petitioner has also prayed for grant of an injunction restraining respondents Nos. 2, 3, 4 and 5 from interfering with the administration of the S. U. College, Hilsa.

2 Cause has been shown by learned counsel on behalf of the respondents Nos. 2 to 5 to whom notice of the rule was ordered to be given.

3. On behalf of respondent No. 1 Mr. Ramanand Sinha appeared and said that he would not oppose the writ application.

4. On behalf of the petitioner the main argument put forward by learned counsel is that three members of the Governing Body, namely, Shri Shrikrishna Prasad Sinha, Shri Girbardhari Singh and Shri Ragho Prasad Sinha, took part in the proceedings of the meeting of the Governing Body on the 12th October, 1961, and they elected respondents Nos. 2 to 5, but these three persons were not competent to take part in the proceedings because their term of membership of the Governing Body had already expired in April, 1961. In paragraph 4 of the writ application it is stated on affidavit that Shri Shrikrishna Prasad Sinha, Shri Girbardhari Singh and Shri Ragho Prasad Sinha were elected as members of the Governing Body on the 24th April, 1958, for three academic Sessions.

It is also alleged that only five members of the Governing Body were present at the meeting of the 12th October, 1961, including Shri Shrikrishna Prasad Sinha,

Shri Girbardhari Singh and Shri Ragho Prasad Sinha. The two other members present at that meeting were Shri Jainendra Kumar and Shri Gulzar Grain.

On behalf of the petitioner reference was made to Statute XIII, Paragraph 2 (2), Clause (b),

which states that

"the term of membership of the Governing Body of every admitted college shall be three academic sessions from the date of the election, nomination or co-option, except in the case of ex-officio members, the representatives of teachers and the University representative".

For these reasons it is submitted on behalf of the petitioner that the election of respondents Nos. 2 to 5 to the Governing Body of the college was ultra vires and without jurisdiction and the order of the Vice-Chancellor dated the 17th January, 1962, approving the election of respondents Nos. 2 to 5 is also ultra vires and without jurisdiction.

5. As we have already said, the application was not opposed on behalf of respondent No. 1, the Vice-Chancellor of the Patna University. On behalf of respondents Nos. 2 to 5 also it is not seriously challenged that the election of respondents Nos. 2 to 5 was illegal and that the approval of the Vice-chancellor granted on the 17th January, 1962, was also illegal. But learned counsel on behalf of respondents Nos. 2 to 5 submitted that the petitioner Shri Nandkishore Agarwal has no locus standi to present this writ application. It was pointed out that Shri Nand Kishore Agrawal was elected as a member of the Governing Body on the 27th September, 1959, (vide paragraph 4 of the counter affidavit of respondents Nos. 2 to 5) and his term of membership of the Governing Body would, therefore, expire on the 31st May, 1962, (vide paragraph 2 of the writ application). Reference was made in this connection to Statute XIII, paragraph 2 (2), Clause (c), which provides that

"the Governing Body of every admitted college shall, at its first meeting elect the following office bearers who shall hold office for three academic sessions from the date of their election, but they shall cease to hold office if and when they cease to be members of the Governing Body:-

(i) President,

(ii) Secretary,

(iii) Joint or Assistant Secretary."

It was, therefore, argued that the petitioner in this case had no locus standi to make this writ application after the 31st May, 1962, when his term of membership of the Governing Body expired and consequently his term of office as Secretary also expired under the Statute. We are unable to accept the argument advanced on behalf of respondents Nos. 2 to 5 as correct. It is the admitted position that on the date the writ application was presented, that is, on

the 23rd January, 1962, Shri Nandkishore Agrawal was Secretary of the Governing Body of the college and he was competent to maintain the writ application on that date. It is true that the petitioner's term of membership of the Governing Body expired on the 31st May, 1962, during the pendency of the writ application, and by virtue of Statute XIII, paragraph 2 (2), Clause (c), the term of office of the petitioner as Secretary of the Governing Body also expired on that date. But the crucial fact to remember in this case is that on the 24th January, 1962, the date on which the writ application was admitted, there was an order of stay made by the High Court to the following effect: -

"This application will be heard. Issue notice. Pending the hearing of this application there will be temporary injunction restraining the respondents from holding the meeting in pursuance of the notice which is Annexure B to this application."

We wish also to refer in this connection to the order of stay made by the High Court on the 9th March, 1962, in Miscellaneous Judicial Case No. 237 of 1962 filed by Shri Shyam Sunder Prasad and others against Shri Nandkishore Agrawal, which is to the following effect: -

"This application will be heard. Issue notice; pending the hearing of this application there will be temporary injunction restraining the respondents from holding the meeting in pursuance of the notice dated the 21st of February, 1962, which is Annexure E to this application."

The legal effect of these two stay orders was that no meeting could be called by the Governing Body for election of a new Secretary after the term of office of Shri Nandkishore Agrawal expired. In other words, Shri Nandkishore Agrawal continued to be in the eye of law the Secretary of the Governing Body so long as the writ applications were pending in the High Court, in spite of Statute XIII, paragraph 2 (2), Clause (c). In the special circumstances of this case, therefore, we think that the petitioner Shri Nand-kishors Agrawal had locus standi to prosecute this writ application, namely. Miscellaneous Judicial Case No. 68 of 1962, and we reject the submission of learned counsel for respondents Nos. 2 to 5 on this point.

6.. For the reasons we have already given, we hold that this writ application must succeed and a writ in the nature of certiorari should be granted for quashing the order of the Vice-Chancellor of the Patna University dated the 17 January, 1962, which is annexure A to the application, and an injunction should also be issued against respondents Nos. 2 to 5 directing them not to interfere with the administration of the S. U. College at Hilsa.

7. We accordingly allow this application. There will be no order as to costs.

8. In paragraph 8 of the application there is a statement made by the petitioner that there was a meeting of the Governing Body of the college on the 14th November, 1961, and at this meeting Shri Satyendra Narain Sinha, Education

Minister of Bihar, Shri Jagdish Sharma, M. L. C. the Sub divisional Officer of Bihar Sharif and Shri Krishnadeo Prasad were elected members of the Governing Body in the vacancies caused by the expiry of the term of membership of Shri Satyendra Narain Sinha, Shri Shrikrishna Prasad Sinha, Shri Girbardhari Singh and Shri Ragho Prasad Singh. The allegation of the petitioner is denied by respondents Nos. 2 to 5. In paragraph 8 of their counter-affidavit it is alleged on their behalf that there was no meeting of the Governing Body held on the 14th November, 1961, and even if such a meeting was held it was an illegal meeting and the election of the new members of the Governing Body was illegal. It is not necessary for the purpose of the present writ application to decide the legal validity of the election held at the meeting of the 14th November, 1961, and we refrain from expressing any opinion on this point.