

(1987) 07 OHC CK 0029

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1355 of 1987

Narayan Sahu and Another

APPELLANT

Vs

Vice Chancellor, Utkal University and Another

RESPONDENT

Date of Decision : 22-07-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Utkal University Act, 1966 — Section 17, 22(1)

Citation : AIR 1988 Ori 106

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S.C. Roy, for the Appellant; P.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—Whether a meeting would be convened or not, a dispute which though common in political or para political spheres but unusual in academical activities, has landed itself in the arena of the Court. The petitioners who are Lecturers by profession and are Fellows of the Senate of the Utkal University, the oldest University of the State, have filed this petition for a direction to the Vice-Chancellor and the Registrar opposite parties 1 and 2 to convene a Special Meeting of the Senate of the University in accordance with the requisition sent on 19-4-1987 by them along with 78 others. The opposite parties having not responded to such requisition, the petitioners have come before this Court for issue of a mandamus to compel them to perform their statutory duty of calling the requisition meeting.

2. From the facts disclosed from the affidavits of the respective parties, it appears that in the Senate meetings of 19-3-1987 and 20-3-1987, the subject of grant of affiliation to different Colleges for B. Ed, B. Ed (SS/CC), B. P. Ed. and Engineering courses were on the agenda but however no decision could be taken on such topics for want of quorum. On 19-3-1987 itself eighty Fellows including the petitioner sent a requisition to the Vice-Chancellor the relevant extract of

which is as follows : --

"xx xx xx We would request kindly to convene the special meeting of the Senate on the date and time stated above.

BUSINESS TO BE TRANSACTED :

1. Grant of affiliation to the Colleges received Government concurrence for B. Ed. B. Ed. (SS/CC), B.P. Ed. and Engineering courses.

Resolution :

Resolved that affiliation be granted to the Colleges for/from the sessions 1986-87 as per the Government concurrence to the respective Colleges for B. Ed, B. Ed (SS/CC), B.P. Ed. and Engineering courses as the case may be."

Proposed by : Seconded by : Sd/- Sd/-

2. Acceptance of life membership under 9(1) K of the Utkal University Act and Statute.

3. Discussion on Annual report.

XX XX XX"

2A. The meeting was required to be held at 11 A.M. on 24-4-1987. In the counter affidavit filed by the opposite parties it is not disputed that the signatories to the requisition were Fellows of the Senate and that they formed the required number of eligibility to ask for convening a Special Meeting of the Senate. The claim of the petitioners is however resisted on the ground that the requisition is incompetent and misconceived as it is in violation of different provisions of the Statute of the University (for brevity, the Statutes) framed under the Utkal University Act, 1966 and that the petitioners have no right to demand convening of a Special Meeting on such requisition.

3. The provision of calling a Special Meeting of the Senate is as provided under Statute 23 which may be usefully extracted : --

"Special Meeting -

23(1) The Vice-Chancellor, whenever he thinks fit, may convene a Special Meeting of the Senate.

(2) The Vice-Chancellor shall, upon a requisition in writing signed by not less than, as near as may be, one-fourth of the members of the Senate, also convene a Special Meeting of the Senate.

(3) A requisition for a Special Meeting shall be forwarded to the Registrar, so as to reach him at least twenty clear days before the date on which it is desired to convene a Special Meeting. The requisition shall state the nature of the special business proposed to be transacted and shall contain a copy of the resolution or resolutions, if any, to be moved at the Special Meeting, as also the name of the

proposer of each resolution."

The petitioners urge that since they have submitted a valid requisition, there is no option for the Vice-Chancellor to play inaction on the same and hence must be compelled to convene the meeting.

4. Contesting the move of the petitioners to get Special Meeting of the Senate so convened on requisition, it is firstly contended by the opposite parties that under Statute 27(2), at a Special Meeting of the Senate convened by Vice-Chancellor on a requisition by members, only the resolutions given notice of by the requisitionists and the amendments thereto shall be considered and such urgent business as may be brought forward by the Syndicate or the Vice-Chancellor shall be transacted. It is thus urged that since the requisitionists are required under the Statute 23(3) to attach a copy of the resolution or resolutions sought to be moved at the Special Meeting and the requisition is to state the special business proposed to be transacted in the Meeting and only such resolution is to be considered in the Meeting, the requisition of the petitioners of which the item No. 1 only specifies a resolution but there is no resolution so far as items Nos. 2 and 3 thereof are concerned, the requisition is not in order and no action can be taken thereupon. Such argument advanced by Mr. P. K. Mohanty, the learned counsel for the opposite parties, does not sustain for long. It is true that at a Special Meeting of the Senate only the resolution accompanied by requisition is to be discussed besides other urgent business that may be brought forward by the Syndicate or the Vice-Chancellor and that so far as items Nos. 2 and 3 of the requisition are concerned, there was no resolution attached in respect of them. If however it was felt by the opposite party No. 1 that items Nos. 2 and 3 i.e. acceptance of life membership under 9(1)K of the Utkal University Act and Statute and discussion regarding the annual report were not matters on which a requisition meeting could be convened, yet there was no prohibition to convene the Special Meeting only for the purpose of discussing the resolution under item No. 1 informing the requisitionists that the other items were not included in the agenda of the meeting as they could not properly form the subject matter of the requisition meeting. In other words, merely because the Vice-Chancellor felt that the requisition was not in order so far as items Nos. 2 and 3 of it were concerned, there was nothing in law to arrest the process of convening the Meeting as required so far as item No. 1 was concerned.

5. It was next contended by Mr. Mohanty that even the resolution on item No. 1 of the requisition was not in order since the Statute 44(1) directs that every resolution to be moved at a Meeting shall be affirmative in form and shall begin with the word "That". The objection is most ill-taken and appears ex facie frivolous. It should be the business of the high authorities heading the affairs of the University to see that normal functioning of the statutory provisions are not stifled on technicalities. The anxiety should be to act with a view to further the operation of the Statute and not impede it. A mere look at the resolution in the requisition shows that it is in the affirmative form, but however instead of

beginning with the word "That" it has been drafted as "Resolved that". This itself is complete compliance with the requirements of the Statute 44 (1). The objection is hyper technical in nature and is to be outright rejected.

6. It has been next contended that the resolution was not admissible under the Statute 26 (3) (i & ii). To appreciate the contention, it is necessary to set out the respective provisions of the Statute.

"26.(1) xx xx xx (2) xx xx xx (3) No resolution shall be admissible which does not comply with the following conditions, namely;

(i) it shall be clearly and precisely expressed and shall raise substantially one definite issue;

(ii) it shall not raise issues which do not fall within the powers of the University and the Senate;

(iii) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the character or conduct of persons except in their official capacity;

(iv) it shall not refer to any matter which is under adjudication by a Court of Law."

Mr. Mohanty stresses that the resolution in item No. 1 of the requisition does not make out a definite issue since according to him, affiliation to the Colleges are not granted in a general manner but individually to the different Colleges and hence a resolution in a blanket manner to grant affiliation to many Colleges without naming them makes the resolution impermissible under the Statute 26(3) (i). Such an objection also betrays more an attitude to scuttle the requisition at any cost. A glance at the requisition shows that it has raised a very specific and definite issue seeking that affiliation be granted for the sessions 1986-87 as per the Government concurrence to the respective Colleges. There is no difficulty in identifying the Colleges regarding whose affiliation the discussion was to take place. The concurrence of the Government had been individually received in respect of the Colleges. As a matter of fact, the very Annexure-A to the counter affidavit filed by the opposite parties itself names 26 Colleges regarding whom Government concurrence had been received and the cases of all those Colleges were before the Senate for affiliation in the Meetings dated 19-3-1987 and 20-3-1987 even though no decision could be taken for want of quorum. Besides Statute 27 (2) itself stipulates that in a requisition Meeting not only the resolution given by the requisitionists but also the amendments thereto are to be considered, and hence if there would have been any difficulty in the resolution at the time of discussion in the Meeting, the same could have been appropriately amended which could be done only after the Meeting was convened and the discussion on the subject was set in motion. This submission thus must also fail.

7. Mr. Mohanty then tenaciously urged that the resolution as proposed was also

not admissible under the Statute 26(3) (ii) since the Senate is not the authority to grant affiliation to the Colleges and hence it does not fall within its powers and thus would be hit by the aforesaid provision. It is urged that the power to grant affiliation to a College vests in the Syndicate as per u/s 17 of the Utkal University Act read with Statute 188 and that while grant of affiliation by the Syndicate is only to be approved by the Senate, the refusal to grant affiliation is only required to be reported to the Senate for information which shows that the Syndicate is the real authority to grant affiliation. For an examination of the issue, it is necessary to refer to different provisions of the Act. u/s 4 (3) of the Act, the different authorities of the University are the Senate, the Syndicate, the Academic Council and such other authorities as the Statute may declare to be the authorities of the University. Section 17 declares that no educational institution shall be admitted as a College unless the opinion of the Syndicate on the application made by the College for the purpose has been approved by the Senate. Section 10 (4) which deals with the powers and functions of the Syndicate does not mention anything regarding the power of grant of affiliation of the Colleges whereas Section 9(4) dealing with the powers and functions of the Senate provides in Section 9(4) (h) that the Senate shall exercise the powers of the University not otherwise provided for. Statute 21 states that the Senate has the power to approve admission of any College to the privileges of the University and subject to some provisions, the power to deprive a College either in whole or part of such privilege in accordance with the provisions of the Statute also vests in the Senate. Statute 75(8) vests power in the Syndicate to admit , Colleges,subjecttotheprovisionsoftheAct, " to the privileges of the University. The procedure of grant of affiliation is dealt with in Statutes 169 to 191 under Chapter XX thereof. The scheme of the Chapter is that an application is made for the purpose of grant of affiliation which is required to be considered by the Syndicate within four weeks of the date of receipt of the application and either the Syndicate may call for further information or may advise that the application is premature, or may also proceed with the application and may direct a local enquiry by competent persons and after considering the report of the enquiry, if any, as provided in Statute 188, decide whether the application should be admitted and affiliation granted or refused. If the affiliation is refused, no further action is to be taken by the Syndicate in the matter except reporting the fact to the College concerned and reporting to the Senate of the matter at its next meeting for information. Statute 189 directs that no affiliation shall be granted without approval of the S enateand it shall be incumbent upon the Syndicate to place before the Senate at its first available meeting each and every application which it recommends and to record its opinion thereon. A reading of the different provisions as above does not show that the Syndicate is the authority to grant affiliation. No doubt, under Statute 188 the Syndicate is to decide whether affiliation should be granted or refused but however as Statute 189 declares, it is to merely recommend grant of affiliation to the Senate which if approves of the proposal, the affiliation can be granted. Section 17 itself does not state that the Syndicate is the authority to grant affiliation and instead directs that when an

opinion is recorded by the Syndicate on the application for affiliation, approval of the Senate must be obtained before the institution is admitted as a College. Statute 25 (8) merely speaks of the executive function of the Syndicate to admit the College to the privileges of the University but however does not speak of the Syndicate being the authority to grant such affiliation. It is as such without doubt that affiliation of a College to the privileges of the University is a dual function of the Syndicate and the Senate and while the Syndicate performs the executive act of examining the application, enquiring into the facts stated therein and conducting the local enquiry for the purpose if necessary, it has to only record an opinion that affiliation be granted which thereafter comes before the Senate which deliberates upon the recommendation made by the Syndicate and may either grant or refuse approval. Only after the Senate has decided to approve proposal of the Syndicate, the real executive act of grant of affiliation is performed. Thus it cannot be said that grant of affiliation to a College is not within the powers of the Senate so as to exclude a resolution concerning it as being not admissible under Statute 26 (3) (ii). Indeed, the submission made by Mr. Mohanty is wholly inconsistent with the statutory provisions as referred to above since if a resolution dealing with the affiliation cannot be admitted on the ground that the Senate does not have the power to grant affiliation, then it would also logically follow that the Senate does not have power to approve any affiliation because the Senate can approve such affiliation only by the shape of a resolution and not otherwise and a resolution would necessarily involve discussion on the question.

8. Reliance was placed by Mr. Mohanty, in support of his proposition, on ILR (1974) Cut 964 Kali Charan Das v. Vice-Chancellor of Berhampur University, as an authority that the Senate has no powers for a blanket review of the functions of the Syndicate. The decision has no application to the present case. There is absolutely no question in the instant case of a review of the action of the Syndicate since, as will be presently seen, the Syndicate has taken no action. The submission proceeds on a pre-supposition that the Senate does not have the power to grant affiliation which has already been found not to be correct. Annexure-A to the counter affidavit shows that the question of grant of affiliation to the Colleges was itself brought forward by the Syndicate before the Senate. The question could not be taken up for consideration because the meeting of the Senate failed. It is this reason which impelled the requisitionists to desire a Special Meeting to be convened to consider the question since they felt that urgency of the situation warranted such action. Mr. Mohanty very fairly produced before us the file relating to the requisition. It appears that the Chancellor was alive to the situation and addressed a letter to the Vice-Chancellor on 7-4-1987 that it had been brought to his notice of a debate in the Orissa Legislative Assembly on 23-3-1987 regarding grant of affiliation to about 23 B. Ed Colleges where 3000 students were waiting to appear in the examination during the academic session 1986-87 and advising the Vice-Chancellor to convene a Special Meeting of the Senate to consider the question of those B. Ed students. Next day

the Vice-Chancellor sent a letter to the Chancellor taking the stand that since the requisition was on 19-3-1987 on which day the Senate met and continued till 20-3-1987 and discussed the matter in detail but no decision could be taken because of lack of quorum, the resolution must be treated as redundant and that further the requisitionists had presupposed that there was definite recommendation of the Syndicate for affiliation in favour of the institution which was wrong and hence calling the Senate for the purpose was infructuous as there was no agenda for the meeting. A further letter was sent by the Vice-Chancellor again on April 10/13 of 1987 stating that on request from the Education Minister he had granted affiliation to 14 B. Ed. Colleges and had arranged for the rest 9 Colleges to sponsor their candidates for the 1987 B.Ed examination as private candidates and that such fact had been intimated to the Education Minister who had informed the Assembly accordingly. There was a categorical assurance given in the letter that the students would not be deprived from appearing in the University examination. On the same day a letter from the Chancellor was also received by the Vice-Chancellor advising the Vice-Chancellor as follows : --

"xx xx xx As letters from Government conveying concurrence for grant of affiliation to the B.Edr Colleges have been received much earlier and the same have not so far been placed before the Syndicate and Senate immediately after receipt, which should have been done then and there and which was also possible, the concurrence letters may be placed before the Syndicate at its next meeting for decision and decision of the Syndicate may be placed before the Senate. In this connection, this office letter dated 7-4-87. may kindly be referred to. xx xx xx".

To, our specific query Mr. Mohanty categorically informed us that no reply has been sent to the Chancellor on the last letter.

9. Annexure-A to the counter affidavit shows that Government concurrence for the affiliation of the Colleges in question had been received though late and the same had also been reported to the Senate without any recommendation of the Syndicate for grant of affiliations. It is for such reason that the Chancellor advised the Vice-Chancellor to place the matter before the Syndicate in its next meeting and to bring up the decision of the Syndicate before the Senate keeping in view the letter of 7-4-1987 which desired that a Special Meeting should be convened for the purpose. The Vice-Chancellor was alive to the situation, as disclosed from his letter of 8-4-1987, that after the Government concurrences were obtained, the Syndicate's deliberation on them was necessary. The only logical thing therefore to have been done was to convene a meeting of the Syndicate post haste and thereafter place the matter before the Senate. The Special Meeting of the Senate could have been convened for such purpose as per the requisition. As was communicated by the Chancellor, the fate of about 3000 students was involved. Instead, unfortunately a stand was taken that the resolution having not been carried out in the Senate due to lack of quorum, it must be deemed to have become redundant. The conclusion was wholly

unwarranted and there was no authority for it. As a matter of fact, without Syndicate's recommendation, the matter could not have come before the Senate and no discussion also could take place thereupon. The inclusion of the question of affiliation of those Colleges in the agenda of the Senate on 19-3-1987 and 20-3-1987 was a superfluous act and was of no legal consequences. Thus the only course open to the Vice-Chancellor was to have taken the course as suggested by the Chancellor of ; placing the matter before the Syndicate and thereafter bring the matter before the Senate in accordance with law.

10. It was even thereafter contended by Mr. Mohanty that no meeting on the requisition could be called since the question of affiliation of some of the Colleges are pending before this Court and that Statute 26 (3) (iv) directs a resolution not to refer to a matter which is under adjudication by a Court of Law. The submission is wholly misconceived since admittedly by the time the requisition was sent, the two cases to which reference has been made, i.e. O.J.C. No. 1399 of 1987 relating to Mohammed Moquim v. Utkal University and O J.C. 1804 of 1987 relating to the Cuttack City Women's Training College v. Utkal University were not pending and hence there was no incompetency in the requisition as such. Nothing prevented the Vice-Chancellor to convene a Special Meeting on such ground. If actually at the time of the meeting the question of affiliation of some of the Colleges would have been pending before this Court, it would have been a question for decision by the Senate then as to whether any resolution regarding the same would be admissible or not. It could not be said that merely because there may be in future some litigations, the resolution must be guillotined for such apprehension.

11. Thus all the objections raised by Mr. Mohanty fail. We cannot but feel that a simple question of grant or refusal of affiliation to some Colleges has been, without justification, blown into a volatile issue and that a situation which could have been well avoided was brought into existence making an urgent demand upon the Court's time. It is to be re-emphasised that high public functionaries discharging statutory obligations are required, by the very demand of the office they hold, to see that the Statute operates effortlessly rather than try to impede its operation. However a relieving feature is that the opposite party No. 1, in compliance with his letter to the Chancellor on 10/13th of April, 1987, has taken a decision on 29-6-1987 u/s 6(11-A) of the Act to permit the students admitted to the various Colleges having Government concurrence for affiliation for 1986-87 but not yet affiliated, to appear in the examination of 1987 as non-collegiate candidates in anticipation of the approval of the academic council. The decision has been communicated to the Court through a memo filed by Mr. Mohanty on 1-7-1987 after closure of the hearing of the case on 25-6-1987 and an order to such effect of the Vice-Chancellor has also been brought to our notice though the privilege is confined to B. Ed. and B. Bd. (SS/CC) courses. In view of such decision of the Vice-Chancellor much of the urgency of the situation is taken out though the question of convening the meeting to consider the question of affiliation still remains.

12. In the result, the writ application is allowed with costs and the opposite parties are directed to convene a Special Meeting of the Senate as per the requisition within six weeks from the date of the receipt of the order. Since it is necessary that before the question of affiliation is discussed, the Syndicate is to record its opinion and either recommend the grant of affiliation or refuse it, is further directed that the opposite parties should place the matter before the Syndicate before the meeting is held. A writ of mandamus be issued accordingly. Hearing fee is assessed at Rs. 200/-.

G.B. Patnaik, J.

13. I agree.