

(2012) 08 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 10780 of 2012 with Writ Petition (P.I.L.)
No. 169 of 2012 with Civil Application No. 9371 of 2012 in Spl. C.A.
No. 10780 of 2012

Narhari H. Amin and Another

APPELLANT

Vs

Gujarat University and Others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Gujarat University Act, 1949 — Section 12, 12(5), 15, 16, 19

Citation : (2013) 1 GLR 430

Hon'ble Judges : G.B. Shah, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Ashish H. Shah, Y.N. Oza, with Ms. Srushti A. Thula and V.H. Desai,
for the Appellant; S.N. Shelat with Mrs. V.D. Nanavati and Ms. Dhara M. Shah,
for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—Amendment, as per the Draft Amendment 6-8-2012 in Writ Petition (P.I.L.) No. 169 of 2012 is allowed. Both the petitions and civil application are, by consent and at the request of learned Counsel appearing for the parties, heard for final disposal and disposed by this common judgment. Spl. C.A. No. 10780 of 2012 is filed by two members of the Court (popularly known as "Senate") and members of the Executive Council of respondent No. 1, the Gujarat University. They are aggrieved by inaction of the respondents in not notifying and conducting election of the Executive Council despite the election programme and date of election having been fixed by the then Vice-Chancellor of the University and such programme having been unanimously approved by the Executive Council of the University of which the term is expiring on 30-8-2012. According to the petition, extensive powers and duties of the Executive Council are prescribed under Sec. 20 of the Gujarat University Act, 1949 (for short, "the Act"). The Executive Council has to be constituted in accordance with Sec. 19 of the Act and it consists of 13 representatives elected by the Court, two members

elected by the Academic Council, 4 persons nominated by the State Government, two members nominated by the Hon"ble Chancellor from amongst the members of the Court, besides one representative of the governing bodies of affiliated colleges elected by the Court. By virtue of the provision of sub-sec. (2) of Sec. 19, the term of office of the elected and nominated members is restricted to three years. Besides such 15 elected and seven nominated members of the Council, it consists of the Vice-Chancellor, the Pro-Vice-Chancellor, if any, the Director of Higher Education, the Director of Technical Education and the Director of Health and Medical Services & Medical Education. By virtue of the provisions of Secs. 28 and 29 of the Act, the Court of the University is empowered to make, amend, repeal or add to Statutes and election to the authorities of the University has to be held in accordance with Chapter XII according to Statute 137. And according to Statute 138, subject to Sec. 56 of the Act, the Vice-Chancellor has the power to fix the date of election. Statute 161 of Chapter XIII provides that, notwithstanding anything contained elsewhere in the Statutes, election of the Executive Council has to be held in accordance with the Statutes and in the manner prescribed in Statute 159. With the above backdrop of statutory provisions, it is averred for the petitioners that considering the importance of the Executive Council and the role it plays in the administration of the University and with a view to ensuring that it is duly elected in time, the then Vice-Chancellor had fixed 30-8-2012 as the date for election of the Council. The Vice-Chancellor had also fixed the election programme with dates for conducting various steps for the election. That programme was declared in the meeting held on 9-5-2012 of the Executive Council, and it was unanimously approved by the entire Council, which included respondent No. 2, who is, by now, the Pro-Vice-Chancellor and exercising the powers of the Vice-Chancellor. Pursuant to the resolution approved in the subsequent meeting of the Executive Council held on 23-6-2012, the In-charge Registrar, respondent No. 3 herein, had already initiated the process for constituting new Executive Council, and after obtaining approval of respondent No. 2, addressed letters dated 18-7-2012 to the State Government as well as the Hon"ble Chancellor requesting them to nominate representatives to the Executive Council under Sec. 19 of the Act. Accordingly, the Registrar was required to notify the election on 3-8-2012 under Statute 161(1); but he did not do so. The petitioners have averred and alleged that they came to know that respondent Nos. 2 and 3, under pressure of the State Government, wanted to delay/postpone the election, and therefore, by representation dated 3-8-2012 they demanded that the election be held and notices be issued as per the programme. They were orally informed by respondent No. 2 that he is instructed by the State Government not to hold elections till the elections of the Legislative Assembly are over, according to the petition. Then, it was reported in the newspaper of 5-8-2012 that Shri B. V. Patel, In-charge Registrar, had tendered his resignation and he was forced to resign as a part of strategy to delay the election, according to the allegation.

1.1. It is generally alleged on oath by petitioner No. 2 that respondent Nos. 2

and 3 are acting under the dictates of the State Government and the ruling political party does not desire election of the Executive Council; that respondent No. 2 owes alliance with the ruling political party and has contested election of Ahmedabad Municipal Corporation on the ticket of that party and was elected as Mayor. Respondent No. 2 has been nominated by the State Government on the Executive Council and he is also appointed by the State Government as Pro-Vice-Chancellor. Thus, according to the petitioners, respondent Nos. 2 and 3, who are themselves holding their posts as "In-charge" do not want to hold the elections so as to exercise the powers of the Executive Council, resulting into centralisation of powers in a handful of persons. In that context, it is also averred on oath that, while Division Bench of this Court (Coram: Hon"ble the Chief Justice and J. B. Pardiwala, J.) had directed respondent No. 1 to appoint a regular Registrar at the earliest by order made in L.P.A. No. 2485 of 2010 in Spl. C.A. No. 13411 of 2010, the State Government had issued a circular directing the respondents not to make appointment of Registrar, and appointment of regular Registrar was not made as yet. On the basis of the aforesaid averments and statutory provisions, a writ of mandamus is sought to order the respondents to hold election of the Executive Council of the Gujarat University at the earliest.

2. Writ Petition (P.I.L.) No. 169 of 2012 is filed by a student, aged 20, in public interest on his own, with the main prayer to direct the authorities of the University to hold election for the students' representatives for the year 2012-13, prior to the election of the Executive Council, for the term 2012-15; and in the mean time, stay the election of the Executive Council. As recorded in the order dated 7-8-2012 (Coram: Hon"ble the Chief Justice and J. B. Pardiwala, J.), the Court was of the view that the matter could not be treated as a P.I.L. and upon submission of learned Senior Advocate appearing for the petitioners, the petition was treated as an ordinary writ application and ordered to be placed before this Court on account of Spl. C.A. No. 10780 of 2012 being pending before this Court. Civil Application No. 9371 of 2012 is filed by eight members of the University Court with the prayers to be made party-respondents in the main petition on the basis that, as Senate Members, they are entitled to vote and contest for membership of the Syndicate (Executive Council) and they are interested in seeing that election for the students' representatives in the Senate is held before the election of Syndicate. Clearly, the P.I.L. and the Civil Application are filed with ill-concealed purpose of delaying election of the Executive Council of the University, at least till election of the students' representatives to the University Court is held. It is contended on their behalf that the Senate has total 146 members, including 11 representatives of the students; and holding election to the Executive Council prior to the Court (Senate) would be total sabotage of the democratic structure, insofar as the students, for whom the University is established, would have no voice in the election of members of the Executive Council. It is also contended that the Gujarat University Court (Senate) had resolved on 24-3-2012 that it would be ideal if election of the students' representatives to the Senate were held in the

month of October, 2012 and that resolution is ignored by the Executive Council. It is also contended as a ground in the P.I.L. that only representatives of the students suffer because their term expires with each academic year and their elections are held almost at the fag-end of the year, whereby they are given hardly a few months as Senate members and they also stand to lose the right to vote as members of the Senate or to contest election for membership of the Executive Council.

3. A common affidavit-in-reply in both the petitions is filed by the In-charge Registrar to, inter alia, state that, under the Scheme of the Act, the University Court was constituted under Sec. 16 vide notification issued on 8-12-2010 and the term of members of the University Court is for five years ending on 7-12-2015. The term of office of the members of the Executive Council constituted under Sec. 19 of the Act is three years from 30-8-2009 to 29-8-2012. It is conceded that tenure of the office of student member on the University Court is for the academic year and for every academic year elections are to be held for 12 members' constituency, from amongst the students as per the provisions of Sec. 16 of the Act. At the meeting of the University Court held on 24-3-2012, when the former Vice-Chancellor was in the Chair, a resolution was passed that election of the students' representatives on the University Court should be held by the end of October, 2012. Thus, at present, there are no representatives of the students on the University Court. When the Executive Council passed resolution dated 9-5-2012, the office did not appear to have drawn attention of the Vice-Chancellor that it may not be within the province of the Executive Council to declare the programme for election. When the Executive Council had resolved to hold election on 3-8-2012, the Vice-Chancellor and the members were not apprised of the fact that students' representatives of the University Court were not yet duly elected, that the schedule of election was required to be fixed by the Vice-Chancellor having regard to the exigency of the situation, on consideration of several relevant factors and that members of the Executive Council and the students were both agitating for holding election of the Executive Council and the University Court. It is averred for the respondents that the election of the University Court was also required to be respected and having regard to Statutes 14-C and 138 and Sec. 56 of the Act, it is the Vice-Chancellor who has to fix the date of election having regard to the exigency of the situation. It is further stated that the Vice-Chancellor has deferred his decision to hold the election as per the resolution of the Executive Council and he shall fix the date of election for the members of the Executive Council immediately after election of the University Court. The other allegations attributing motives to the respondents are denied.

4. Arguing for the petitioners in Spl. C.A. No. 10780 of 2012, it was submitted by learned Counsel Mr. Ashish Shah that, in view of clear provisions of Sec. 19(2) of the Act, the term of office of elected and nominated members of the Executive Council has to end at the end of three years and in absence of any provision for extension of such term, it becomes obligatory and mandatory to constitute the

Executive Council by elections and nominations immediately on expiry of the existing term of office of the elected and nominated members. He submitted that, in view of the Scheme of the Act and the important functions and duties required to be discharged by the Executive Council in terms of Sec. 20 of the Act, the important Executive Body of the University cannot be left in a limbo without elected and accountable members and only in the hands of four ex-officio unelected members of the Executive Council. He further submitted that the election was already resolved to be declared and after unanimous approval of the resolution, no election notification was required to be published. Thus, the respondents were required to hold election in terms of its own decision and the Pro-Vice-Chancellor deferring the election, even without an order or decision in writing or any legal basis, was obviously illegal and arbitrary. He also submitted that the election was not being held on the basis of extraneous considerations and election to the Senate of the students' representatives was being used as a convenient shield with the mala fide intention of sabotaging the democratic process and administration of the University and securing concentration of all the executive powers in the Pro-Vice-Chancellor himself.

5. Per contra, learned Senior Advocate Mr. Y. N. Oza, vehemently argued that representatives of students is the largest constituency in the Senate and they could not be denied the opportunity of participating in the election for the Executive Council. He submitted that election to the Council being by single preferential transferable vote, even a few votes were extremely important and decisive in the election. He also submitted that the Scheme of the Act need to be so interpreted and applied that election of the students' representatives to the Senate precedes election to the Executive Council.

6. Learned Senior Advocate Shri S.N. Shelat submitted that decision of the former Vice-Chancellor and resolution of the Executive Committee to hold election for members of the Executive Council were in the nature of recommendation made without reference to the Resolution dated 24-3-2012 of the University Court (Senate). He submitted that under Statute 138, it is the privilege of the Vice-Chancellor to fix the date of election and the former Vice-Chancellor having retired and the present Pro-Vice-Chancellor, respondent No. 2, being in-charge, he has the legal authority and powers of the Vice-Chancellor under Sec. 12(5) of the Act. He submitted that the decision to defer the election for members of the Executive Council was legal and reasonable and the election may be held immediately after election of ten representatives of the students on the Court are concluded on 30-10-2012. Learned Senior Counsel has placed on record relevant papers to show that the then Vice-Chancellor Dr. P. H. Trivedi has handed over charge to respondent No. 2 on 26-6-2012 and the State Government has, in exercise of the powers conferred by sub-sec. (1) of Sec. 12 of the Act, appointed respondent No. 2 to be Pro-Vice-Chancellor of the University for a term of three years, pursuant to which he has taken over charge on 15-7-2012.

7. Before embarking upon discussion of the rival submissions, it may be appropriate to refer to relevant provisions of Sec. 58 of the Act, which have also been relied upon by learned Senior Advocate Shri S. N. Shelat. Section 58 of the Act reads as under:

58. Where any question arises as to --

(1) the interpretation of any provision of this Act, or of any Statute, Ordinance, Regulation or Rules, or

(2) whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or other body of the University,

(a) it may be referred to the State Government if it relates to a matter specified in clause (1), and

(b) it shall be referred to the State Government if --

(i) it relates to a matter specified in clause (2), or

(ii) if twenty members of the Court so require, irrespective of whether it relates to a matter specified in clause (1) or clause (2), and the State Government shall after making such inquiry as it deems fit (including giving opportunity being heard where necessary) decide the question, and its decision shall be final.

The decision of the Apex Court in Gujarat University Vs. N.U. Rajguru and Others, has been relied upon for the proposition that by enacting Sec. 58, the Legislature has constituted a forum for determination of the disputes in respect of matters specified therein and it is an effective remedy for challenging election of a member. The said provisions and the precedent are, however, besides the point insofar as, in the facts of the present case, no election is under challenge and the issue is related to not holding of election in subversion of the Scheme of the Act. Section 56 of the Act provides for filling up even casual vacancy of a member of any authority as soon as conveniently may be.

8. It is quite clear from bare perusal of Sec. 19 of the Act that the Executive Council, which is an important "Authority" under Sec. 15, has to consist of total 27 ex-officio elected and nominated members and the term of the office of the elected and nominated members is restricted to three years without any provision for any hiatus in the existence of the whole body of persons which constitute the Executive Council. Therefore, it is both mandatory and obligatory to hold the election of members in time and any discretion or power enjoyed by the Vice-Chancellor or Pro-Vice-Chancellor under Statute 138 for fixing the date of election cannot legally be so exercised as to defer the election indefinitely or on extraneous consideration. Due to different terms of office of the members of the Executive Council and the University Court (Senate) the dates of election of the members of Senate cannot have any co-relation and, in fact, no legal provision or precedent could be cited to support the argument that unless and

until election to the Senate, for a small number of its members, could be held, election to the Executive Council must be postponed or that in absence of such voters who are yet to be elected to the Senate, the election of Executive Council would in any way be illegal or vitiated. Therefore, even as no order or decision to postpone the election for members of the Executive Council is placed on record, the actual and undisputed act of deferring the election to the Council is found and held to be illegal and arbitrary. It being an implied statutory duty of the University to hold election of the Executive Council, to reconstitute that body as soon as may be on expiry of the term of office of the elected and nominated members, it is necessary and in the interest of autonomy of the University and for democratic and responsible functioning of its Executive Authority that the election is held at the earliest, even as the term of elected and nominated members of the Executive Council expires on 30-8-2012. Therefore, Special Civil Application No. 10780 of 2012 is allowed with the direction that election of the members of Executive Council of the Gujarat University shall be held as soon as practicable and preferably before the end of September, 2012, in accordance with law and without any unnecessary delay. The other petition and Civil Application are dismissed with no order as to costs.

Upon the judgment being pronounced today, learned Counsel Ms. Srushti Thula, appearing for the petitioner in Writ Petition (P.I.L.) No. 169 of 2012, requested to stay operation of the order for a period of two weeks. There being no justification for granting such relief, the request is rejected.