

(1971) 07 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 307 of 1968

Niranjan Kumar Goenka

APPELLANT

Vs

The University of Bihar and Others

RESPONDENT

Date of Decision : 13-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Patna 85

Hon'ble Judges : U.N. Sinha, C.J;Anwar Ahmad, J

Bench : Division Bench

Advocate : Balbhandra Prasad Singh and T.S. Tetarvai, for the Appellant; Lal Narain Sinha, J.C. Sinha, S. Mustafi, Indushekar Prasad Sinha, Fanis Singh and A.B. Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has filed this application under Articles 226 and 227 of the Constitution of India, praying that the appointment of opposite party No. 7, as Principal of S. R. K. Goenka College. Sitamarhi, made on the 10th August, 1965, be quashed by an appropriate writ, order or direction. It appears from this writ application itself that the petitioner had filed an earlier writ application, numbered as Civil Writ Jurisdiction Case No. 640 of 1966 claiming an identical relief. It is stated that that writ application was withdrawn on the 7th October 1966. According to the petitioner thereafter, he had moved the Chancellor of the University of Bihar, for relief, but that relief has been denied.

2. The relevant facts are as follows. It is stated that in 1963, the election for the members of the governing body of this college was in process end for three seats, of which two were for donor of category "A" and one for donor of category "B". various dates had been fixed for filing nomination, scrutiny and withdrawal. As there were two valid nominations filed for the donor for category "A" the petitioner and Sri Jwala Prasad Goenka. the petitioner's father, were declared elected. Thereafter one Jagannath Prasad Singh challenged this election on the

ground that the voter's list had not been properly prepared and ultimately he filed a miscellaneous judicial case in this Court, numbered as Miscellaneous Judicial Case No. 150 of 1963. According to the Petitioner, there was some order of stay passed by this Court, as a result of which the vacancy for the donor in category "B" had not been elected. It is alleged that in spite of this vacancy, a new governing body started functioning from 1963. At that time, the post of the principal of the college was vacant and in due course, the Bihar State University Service Commission recommended the names of two candidates, who were (1) Dr. N. N. Tiwari, and (2) Sri D. P. Singh.

It is alleged by the petitioner that the governing body which had been constituted in 1963, as stated above, would have, in the usual course, met and appointed Dr. N. N. Tiwari as the principal, but an ad hoc committee was constituted on the 8th August 1965 and the petitioner was not included as a member of this committee. In an emergent meeting of the ad hoc committee held on the 10th August 1965, Sri D. P. Singh, opposite party No. 7, was appointed as the principal. It is alleged that this appointment was later on confirmed. The petitioner has made various other allegations in the writ application, which are not necessary to be given in detail and the contention raised on behalf of the petitioner by his learned counsel may now be narrated. The first argument is that as the petitioner was a member of the governing body as donor for category "A", he had a right to participate in the meeting convened on the 10th August 1965 for the appointment of the principal of the college. It is contended that as the petitioner was excluded from the meeting held on the 10th August 1965, the appointment of the principal was altogether void and the petitioner is sufficiently interested now to challenge the appointment. The substantial contentions raised in the counter-affidavit filed on behalf of opposite party No. 7 may now be narrated. It is alleged that the governing body of the college had ceased to exist after the 31st May, 1965 and this governing body had come into existence in or about January 1962. That is to say, according to this opposite party, the governing body which had existed from 1962, had come to an end at the expiry of three academic sessions and, therefore, there was no regular governing body after the 31st May, 1965. Thus, it is alleged that an ad hoc committee was appointed under Article 3(3) of Chapter XIII of the statutes of the University of Bihar, Muzaffarpur, and it is this ad hoc committee which had met on the 10th August, 1965 when opposite party No. 7 was appointed as the principal. These are the substantial contentions of the two parties and the learned counsel for the University of Bihar has also supported the stand taken by Opposite Party No. 7, as stated above.

According to the learned counsel for the petitioner, as poll was going to be held in 1963, as mentioned in paragraph 4 of the writ application, a regular governing body was in existence and it would have continued upto 1-966 and therefore, the formation of the ad hoc committee in August, 1965 was invalid. Moreover, it is urged that under Article 3(1) notice was required, as it was a case of dissolution of the old governing body. However, these contentions raised by the learned

counsel for the petitioner are not at all valid. What was happening in 1963 was an attempt to form the governing body and it cannot be held that a full-fledged governing body had come into existence in 1963. Paragraph 18 of the writ application itself makes it clear that the old governing body could not have been in existence in 1966. According to this paragraph, in the process of election as donor members of category "A", the petitioner and his father were elected as members of the governing body on the 28th February 1966. Therefore, the contention raised on behalf of the opposite parties is quite correct that the old governing body, which had come into existence in 1962 had ceased to exist by efflux of time on the 31st May, 1965. Therefore, Article 3(3) applied and an ad hoc committee had been constituted in August, 1965. Therefore, the main contention raised to the effect that the petitioner was a member of the governing body on the 10th August, 1965 must be negated.

3. According to the learned counsel of the opposite parties, this writ application is really in the nature of a writ of quo warranto and no such writ can issue in this case, as the opposite party No 7 is not holding a public office. There is a good deal of force in this contention. Moreover, it appears from the facts on the record that the appointment of opposite party No. 7 by the ad hoc committee had, in effect, been confirmed by the Chancellor in 1966 and when the previous writ application filed by the petitioner was withdrawn by him, there is hardly any reason for giving relief to the petitioner on the same facts and circumstances. This second attempt made by the petitioner by a writ application in this Court cannot but fail. Having heard learned counsel for the parties we do not think that any point has been made out for granting the relief prayed for. This writ application is, therefore, dismissed with costs payable to opposite party No. 7, which we assess at Rs. 200/-.