

(1956) 12 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 10-N of 1956

Phoolchand Sethi

APPELLANT

Vs

Nagpur University and Another

RESPONDENT

Date of Decision : 21-12-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Nagpur University Act, 1923 — Section 40(1)
Nagpur University Rules — Rule 4

Citation : AIR 1957 Bom 215 : (1957) 59 BOMLR 300

Hon'ble Judges : Mudholkar, J;Kotval, J

Bench : Division Bench

Advocate : M. Adhikari and L.D. Khapre, for the Appellant; D.B. Najbile, S.K. Wankhede and V.R. Manohar, for the Respondent

Judgement

Mudholkar, J.—This is a petition by a registered graduate of the Nagpur University for the issue of a writ of mandamus to the University of Nagpur under Article 226 of the Constitution Quashing the order of the Registrar of the University dated the 21st of November 1956 rejecting the petitioner's nomination paper, of a writ against the respondents directing them to receive the said nomination paper as having been validly delivered to the respondent No. 2, the Registrar, and a writ ordering them to hold fresh elections. He has also applied for an interim order restraining the respondents from announcing the results of the elections to the University Court which have in the meanwhile been held.

2. It is common ground that the petitioner was duly proposed and seconded as a candidate for election to the University Court by the registered graduates of the Nagpur University. It is also common ground that the nomination paper was sent by registered post by the proposer to the Registrar of the University and it was received by him within the time fixed for receiving the nominations. Again, it is common ground that the envelope containing the nomination paper though properly dosed did not bear any seal with a sealing wax.

3. On the date of scrutiny of the nomination papers an objection was raised by some of the candidates to the effect that some envelopes containing nomination papers were not received in sealed covers, i.e., in covers on which seals with wax were affixed. After considering this objection the Registrar upheld it and rejected six nomination papers. The petitioner alone from among these six graduates has come up to this Court asking for the relief's which we have already set out above.

4. Shri Adhikari who appears for the Petitioner has raised the following points : In the first place, according to him, what the rule requires is merely the sealing, that is, the closing of the cover in which the nomination form is sent, and that there is no requirement in the rule for putting a seal with a sealing wax. His second contention is that the provision made, in this regard is merely directory and that non-compliance with this provision would not justify the rejection of a nomination paper. The third point taken by him is that it is the Registrar who alone is entitled to reject a nomination paper, that is to say, acting suo motu and that it is not open to any candidates to object to the reception or acceptance of such a nomination paper at the time of the scrutiny of the nomination papers. According to him, the candidates can only object "to any defect in the nomination paper itself and not to a defect in the sealed cover.

5. During the course of arguments Shri. Adhikari also urged that even the Registrar must confine himself to the defects in the nomination papers and has no power to consider whether the envelope in which a nomination paper was sent was properly sealed or not.

6. On behalf of the University Shri Wankhede urged that the University, which is an, autonomous body, has framed its own statutes and rules for the purpose of carrying out its duties under the Act, that in the rules framed by it it has specifically provided that certain things should be done in certain ways; as for instance, the nomination papers should be sent in sealed envelopes, that this provision is mandatory and that non-compliance with this provision would necessarily have the effect given to it by the Registrar. Further according to him, sealing does not mean merely closing an envelope but that there should be a seal with a sealing wax on the flap of the envelope. He also urged that the Registrar in rejecting the nomination paper exercised a" discretion committed to him by Rule 4 (iv) of Statute No. 18 and that it is not open to this Court to interfere with the exercise of that discretion by the Registrar.

7. Two other points have also been taken by Shri Wankhede; one is that though the scrutiny of the nomination papers took place on the 21st and the petitioner came to know, on the very next day, about the non-inclusion of his name in the list of candidates whose nominations were accepted, he did not make the petition early enough and that therefore this Court should not entertain it. Shri Wankhede pointed out that as required by the rules of the University the voting papers were despatched to about 4000 voters by registered post on the 28th of November, that the University had incurred an expense of over Rs. 5,000 in this

matter, and that all this could have been obviated if the petitioner had made his petition before the despatch of the nomination papers. In the circumstances, therefore this Court should not entertain the petition.

8. The other point taken by him is that the petitioner had another remedy open to him and that is the one provided by Sub-section (1) of Section 40 of the Nagpur University Act of preferring an appeal before the Chancellor and that his failure to avail himself of that remedy should be regarded as a sufficient ground for non-Interference by this Court under its extraordinary powers under Article 226 of the Constitution.

9. In our opinion there is no substance in the contention advanced on behalf of the University that the petition has been unduly delayed. It may be mentioned that the petitioner was officially informed by the Registrar of the University of the rejection of his nomination paper by a letter despatched on the 28th. This letter could not have reached him before the 29th and perhaps by that time the voting papers had been despatched by the University. The petitioner did not wait for an inordinate length of time, after he received the information from the Registrar of the University, in filing the petition. We are therefore not prepared to hold that the petitioner is guilty of delay or laches and as such disentitled to a relief on this ground.

10. It seems to us however, that there is force in the contention advanced by Shri Wankhede based upon Section 40 (I) of the Act. That section reads as follows:

"(1) An appeal may be made by petition to the Chancellor against the order of any officer or authority of the University affecting any class of persons in the University. The Chancellor shall send a copy of any such petition to the officer or authority concerned, and shall give such officer or authority an opportunity to show cause why the appeal should not be entertained." No doubt, this section provides for an appeal only where an order of an officer is such as affects any class of persons in the University. In this case, as we have already pointed out, the nomination papers of five other candidates were also rejected on the same ground on which the petitioner's nomination paper was rejected. Thus, a class of persons to which the petitioner belonged were affected by the decision of the Registrar. He had thus a right of appeal to the Chancellor. Bearing in mind the fact that the University is an autonomous body it is all the more necessary for a person aggrieved by the decision of any subordinate body of the University or of an officer of the University to avail himself of the remedy provided by the Act itself. It was therefore obligatory upon the petitioner to present an appeal to the Chancellor.

11. Shri Adhikari however points out that it is not an inflexible rule that where another remedy is provided by a Statute this Court would refuse to interfere under Article 226 of the Constitution, we agree. But while exercising our powers under Article 226 we have always held that these powers should be exercised

with due circumspection and with due regard to the powers of other tribunals. If we were to interfere with the matter which obviously is with the competence of the Chancellor, we would be encroaching" upon the powers of an authority created by State. In the circumstances, therefore, we would is not be justified in entertaining the petition.

12. Before parting with the case, We would like to bring to the notice of the University authorities that though sealing means sealing, with a wax, as has been pointed out by Dr. Niyogi, who was a former Vice-Chancellor of the Nagpur University and who was a former Judge of the Nagpur High Court, the word "sealed" in the Election Rules mean? "Vamped with a seal" and not "closed by gum" and that this is borne out by the sense given to the term in the Shorter Oxford Dictionary; the requirement of scaling with a wax is not such that non-compliance with it would justify so serious a consequence as the rejection of a nomination paper not sent in a sealed cover. If it is the intention of the University to penalise a prospective candidate to the extent of rejecting his nomination paper for non-compliance with this requirement, it would be desirable to make a specific provision to this effect as has been done with respect to late submission of the nomination papers (Rule IV (ii)) and not scaling of cover D of the voting paper (Rule VI (g)).

13. With these observations, we dismiss the application. In the circumstances we make no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.

14. Petition dismissed.