
(2006) 09 DEL CK 0075

In the Delhi High Court

Case No : Writ Petition (C) 18216-17 of 2004

Prakash Chand and Dr. Kishan Gopal

APPELLANT

Vs

Jawahar Lal Nehru University

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

General Clauses Act, 1897 — Section 14, 27(2)

Citation : (2007) 136 DLT 91

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Sarabjit Sharma, for the Appellant; S.C. Dhanda, for the Respondent

Final Decision : Allowed

Judgement

J.M. Malik, J.—Both the petitioners have called into question the selection of Dr. Muttayya Koganuramath, respondent No. 2, who was selected to the post of Librarian in the Jawahar Lal Nehru University on 11.11.2004. The genesis and sequence of this case is as follows. The post of Librarian was lying vacant since 2001. During the first attempt, Dr. Krishan Gopal, petitioner No. 2 was not called for the interview. As a matter of fact, Dr. R.K. Sharma was selected in absentia. Dr. Krishan Gopal filed a writ petition, which was disposed of on 07.08.2002, wherein the counsel for the University made a statement that the selection of respondent No. 2 in that case would not be given effect to. Consequently the same stood quashed as the counsel for the University stated that the University would constitute a new selection committee and the University would not consider any person in absentia. It was specifically stated that the case of Dr. Krishan Gopal would also be considered in the selection committee/screening committee as per rules.

2. The post of Librarian was again advertised in Employment Newspaper on December 27, 2003. Both the petitioners applied for the said post. Although, Parkash Chand, petitioner No. 1 submitted his application for the post of Librarian through Proper Channel, yet, he was not called for the interview by the

respondent No. 1. Petitioner No. 1 submitted a representation to respondent No. 1 on 25.10.2004, the University realised its mistake and issued a interview letter on 05.11.2004 Petitioner No. 1 received it on 08.11.2004, just two days before the date of interview. The interview letter required petitioner No. 1 to submit an Essay typed on Computer/Typewriter in 5000 words on the subject, "My Vision of 21st Century University Library," and three references from persons in the field of library. However, other aspirants were sent the interview letters on 30.09.2004 They could get time for submission of the said Essay up to 25.10.2004, meaning thereby that the other candidates were given 20-23 days time for submission of the Essay, whereas the petitioner No. 1 was given only one day for submission of the same. The petitioner No. 1, however, submitted the requisite 5000 words Essay to respondent No. 1 on 09.11.2004 through e-mail and the same was duly received by respondent No. 1. The petitioner came to know on 10.11.2004 that respondent No. 1 had constituted a selection committee consisting of following members:

1. Professor G.K. Chadha Chairman

Vice-Chancellor

2. Professor Balveer Arora Member Rector (Academic)

3. Professor N. Laxman Rao Visitor's Nominee

Chairman, BOS

Dept. of Library and Inf. Sci.

Osmania University

Hyderabad

4. Dr. E. Rama Reddy Member

Librarian

University of Hyderabad

Hyderabad

5. Dr. S. Venkadesan Member

Indian Institute of Sciences

Bangalore

6. Shri Bipin Bihari Das Member

Librarian

Jadavpur University

Calcutta

3. On 11.11.2004, it transpired that Dr. Muttayya Koganuramath had been selected for the post of Librarian, Mr. D.R. Jotwani, respondent No. 3 and one more candidate had been selected on the panel next to that of the respondent No. 2. The petitioners have filed the instant writ petition, wherein it is prayed to quash the constitution of the Selection Committee and the proceedings thereof including the decision of selection of respondent No. 2 and 3 and another candidate in the selected list approved by the Executive Council in its meeting held on November 11, 2004 for the post of Librarian in the Jawahar Lal Nehru University.

4. I have heard the learned Counsel for the parties and perused their respective synopsis. The learned Counsel for the petitioners has laid emphasis on the following grounds:

i) Power of V.C. to nominate outside experts in terms of statute 27, delegated to him by Executive Committee stood exhausted for the reasons (1) the Constitution of the EC had undergone change when the present selection committee was constituted and no fresh validation was sought from EC (2) having exercised the power to appoint experts of the selection committee in response to the first advertisement the power to delegate stood exhausted.

ii) The Selection Committee had been conducted by the Vice Chancellor without the presence of the visitor nominee (nominated by MHRD).

iii) Mr. S. Venketash did not belong to the field of Library Science.

iv) Respondent No. 2 in his capacity as a President in the Indian Library Association constituted a Committee to confirm the honour of the best of Librarian award in August, 2004 about two months before the Selection Committee to one of the members of the Selection Committee namely Dr. E. Rama Reddy.

v) The constitution of the Selection Committee was unknown to the candidates.

vi) The approval obtained from the Executive Council is in haste i.e. on the next following day.

vii) The Screening Committee relaxed the experience required and called respondent No. 3 for selection. He did not fulfill the eligibility criteria laid down in the advertisement.

viii) Submission of an Essay on the topic "My vision of a 21st Century University Library" added to the qualification advertised which is not permissible.

5. I find force in the arguments of the petitioners in a large measure. However, few grounds set up by the petitioner cannot stand scrutiny even for a fleeting moment e.g. ground No. (ii), (viii). First of all, I advert to ground No. (ii). It is not essential that visitor nominee must attend the meeting. This view neatly dovetails with the orders of this Court in Jayashekara v. Jawahar Lal Nehru University and Ors. WP(C) No. 432/1979 dated 18th September, 1979 and Dr.

A.S. Jawatkarr v. Jawahar Lal University and Ors. WP (C) No. 513/1975 decided on 21.03.1979.

6. Regarding ground No. (viii), since the petitioners appeared, tried their luck, Therefore, they are estopped from taking such like faint plea.

7. However, the gut issue lies in objection No. 1 which should be read in conjunction with grounds (iii), (iv), (v), (vi) and (vii). The Executive Council meeting was held on 19.07.2001, It authorized the then Vice Chancellor to nominate on its behalf three persons not connected with the University, who had special knowledge of the subject for the post of Librarian in terms of Section 27(2) of the Statutes of the University. Accordingly the Selection Committee meeting was held, one Mr. A.R. Sethi was selected in absentia and the said selection was quashed by the Hon'ble High Court of Delhi in CWP No. 4544/2002 filed by petitioner No. 2 as already mentioned above. The post was re-advertised in December 27, 2003. By that time, the members of earlier Executive Council had changed and the then Vice Chancellor had superannuated. The new Vice Chancellor used the authority given by the then Executive Council vide resolution No. 7.1 dated 19.07.2001 and constituted the Selection Committee. The Minutes of 212th meeting of the Executive Council held on 19.07.2001 runs as follows:

7.1 Considered nomination of three persons on the Selection Committee for the post of Librarian, and Resolved to authorize the Vice Chancellor to nominate three persons not connected with the University, who have special knowledge of the subject of Library Science on the Selection Committee for the post of Librarian in terms of Statute 27(2) of the Statutes of the University.

8. Learned Counsel for the respondents made the following submissions. A corporate body exercises its will through its resolutions. Once a resolution is passed its operation or validity will not come to an end by a change in the members of the said corporate body. A resolution once passed will remain valid and binding on the corporate body, unless repealed, rescinded or varied subsequently. It does not come to an end by the change of its members. The corporate body continues, its members may go on changing from time to time. Any resolution once passed does not require validation by the said body corporate if its members change. It may be added that Parliament is a body corporate. The Acts or any resolution once passed by the Parliament remains in full force, even though its constitution changes every 5 years. No action of the Parliament requires validation the next Parliament after the selections. There was no selection pursuant to the first advertisement and the authority to nominate outside experts already delegated to the Vice Chancellor was not expertised in law at that time. Again powers once delegated then the delegate may exercise the said power from time to time. Learned Counsel for the respondent referred to Section 14 of the General Clauses Act which is reproduced as follows: -

Where by any central Act or Regulation made after the commencement of this Act, any power is conferred, then, unless different intention appears, that power

may be exercised from time to time as occasion arises.

Learned Counsel for the respondents urged, if the said principle is good for the Acts and regulations of one corporate body it shall also be good for any actions of another corporate body as the same stands on the same footing. When the power is delegated then the action of the delegate is that of the corporate body itself. It is, Therefore, wrong to say that the outside experts were not nominated by the Executive Council.

9. The learned Counsel for the respondent lastly pleaded that in any case the action of Vice Chancellor was ratified by the Executive Council.

10. His arguments carry no conviction. First of all, after disposal of writ CWP 4544/2002 and CM 7712/2003, it was incumbent upon the Vice Chancellor to seek validation of his delegated power. There was a sea change in the facts and circumstances of this case viz.

(a) the E.C. stood changed;

(b) the new Vice Chancellor had taken over;

(c) the High Court had quashed the selection made on the basis of the alleged delegated power. Again old E.C. reposed faith in Ex. Vice Chancellor. How this fact can be said about the New E.C. in regard to new Vice Chancellor

11. Resolution R-5 dated 11.11.2004 was produced for the perusal of the Court. 6.24 is reproduced as under:

6.24 Considered the recommendations of the Selection Committee for the post of Librarian, and

Resolved to ratify the action taken by the Vice Chancellor in nominating, in consultation with some members of the Executive Council, expert members of the Selection Committee for the post of Librarian, in pursuance of the authorization given to him by the Executive Council vide Resolution 7.1 dated 19.07.2001, and thereafter the Executive Council resolved to approve the recommendations of the Selection Committee that Dr. Muttaya M. Koganuramath, Mr. Daulat Joptwant and Dr. Amjad Ali may be offered the post of Librarian in that order.

12. Clause 5 regarding ratification is reproduced as follows:

Clause 5 : If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires immediate action to be taken, the Vice Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided that, if the action taken by the Vice-Chancellor is not approved by the authority concerned, he may refer the matter to the Visitor, whose decision thereon shall be final:

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.

13. What has raised eyebrows further is what was the need of ratification" If Vice Chancellor was cock-sure about the said delegated power there should have been no need for ratification. Again, Clause 5 has no application in the given facts and circumstances. There is no inkling on the record which may go to show that there was any emergency when the above said order of ratification was passed on 11.11.2004 Ratification can be passed only whenever there is an emergency. Secondly, the requirement of law is, "that the Vice Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority, which in the ordinary course, would have dealt with the matter." Again, needful was not done. Thirdly, it appears that ratification was done after selection of respondent No. 2. It is noteworthy that order of selection and ratification form part of same order and same para. Lastly, the affected persons were denied the right to appeal to the Executive Council.

14. In an authority reported in *Sree Sankaracharya University of Sanskrit v. State* 1996 (2) KLT 378, while dealing with the case of the above said University, the Division Bench of the Kerala High Court was pleased to hold,

That the Vice Chancellor cannot derive any power of the Act to act ignoring the mandates of the Act and the statutes. While the first Vice Chancellor is acting in the matter of appointment of teachers, he is only exercising the powers and performing the duties and functions of the syndicate and the Academic Council. Therefore, such powers, duties and functions are subject to whatever restrictions or qualifications prescribed by the Act and the statutes. Therefore, the argument of the learned senior Counsel that all the powers of the First Vice Chancellor in the matter of appointment of teachers which trace his powers to Section 24(5) (b) can be exercised without any respect to other provisions of the Act and the statutes cannot be countenanced at all. To accept such an argument will be definitely encouraging illegality, arbitrariness and nepotism on the part of the highest executive of the academic body like a University.

It was further held,

Even a high ranking officer cannot be entrusted with absolute discretion as has been cautioned by the Constitution Bench of the Supreme court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . Their Lordships took the view that conferment of power on a high rank officer is not always an assurance, in particular when the moral standards are generally degenerated that the power would be exercised, objectively, reasonably, conscientiously, fairly and justly without inbuilt protection. So, in appropriate case, the court will have to give life and force to the Statute by ironing out the creases that have crept in the statute. The object must necessarily be to better public interest. It is settled

proposition of law that public employment is the property of nation which has to be shared equally subject, of course, to the qualifications necessary for holding the post. The public employment to the University cannot be allowed to be thwarted by the exercise of unbridled power claimed to have been conferred on the Vice Chancellor in this case.

Consequently to my mind the Selection Committee was not constituted in the manner prescribed by the Statute.

15. It was next submitted by the petitioners qua ground No. (vii) that respondent No. 3, who had been put at number 2 in the select panel did not fulfill the eligibility criteria laid down in the advertisement. The screening committee had received as many as 51 applications. The Committee added the following condition:

The Committee decided that these candidates which may be lacking experience up to six months as on 15.04.2004 or less may also be considered for calling for interview provided they possess other eligibility qualifications.

16. Learned Counsel for the respondent in his synopsis submitted that since respondent No. 2 has not been appointed in response to the said advertisement, Therefore, this objection has no meaning.

17. This plea is another square peg in a round hole. Suppose, in case respondent No. 2 did not join as Librarian or midway resigned, respondent No. 3 would have opted for the said post. It is crystal clear that the Committee had no power to add or delete or modify any of the essential qualifications and experience. This was done without any authority of law or rules. This fact evinces the arbitrariness on the part of the concerned authority.

18. I will decide the grounds (iv) and (v) together. The case of the petitioners is clear. They came to know about the names of the Selection Committee on 10.11.2004, itself, when they appeared for interview. The next equally important submission made by the learned Counsel for the petitioners was that one of the members of the Committee was biased against the petitioners. Dr. Muttayya Koganuramath in the capacity of President of Indian Librarian Association, constituted a Committee to confirm the honour of the post Librarian Award in August, 2004 about two months before the Selection Committee met. The name of Dr. E. Rama Reddy members of the Selection Committee, along with, four others were under consideration well before the constitution of the committee. The said committee gave its recommendation to give post Librarian Award to Dr. E. Rama Reddy, which was approved by respondent No. 2 in his capacity as President of the Indian Library Association.

19. In their rejoinder at para No. 16, the petitioners explained,

That the contents of para No. 16 are wrong and the same are denied. The Corresponding para are reaffirmed. It is submitted that it was only after appearing before the selection Committee and on seeing the faces of the

Members, the petitioner came to know the names of the Members present. So the question of raising any objection to the constitution/members of the selection committee does not arise before the appearing for interview.

20. Learned Counsel for the respondents pointed out that meeting of the Executive Council was generally fixed after a gap of every 3-4 months. In the meeting held on 11th November, 2004 as many as 35 recommendations of different Selection Committees including the one for Librarian post were placed before the Executive Council. Consequently, it cannot be said that the approval by the Executive Council was maneuvered in the case of Librarian post in haste. The meeting of Executive Council was convened for getting approval of the recommendations of the Selection Committee to the post of Librarian. Moreover, the offer letter in the present case was dispatched to the selected candidate on 11.11.2004 itself. Learned Counsel for the respondent vehemently argued that as a matter of fact, the petitioner have got no crow to pluck with the respondents and has cited four authorities in support of his case. In *G. Sarana Vs. University of Lucknow and Others*, , it was held at page 591

We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favorable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in *Manak Lal's* case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting.

It seems clear that the appellant wanted to take a chance to secure a favorable report from the tribunal which was constituted and when he found that he was confronted with an unfavorable report, he adopted the device of raising the present technical point.

Other authorities cited by him are reported in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, and *Suneeta Aggarwal Vs. State of Haryana and Others*, which are also to the same effect.

21. In his counter affidavit, respondent No. 2 explained,

Dr. E. Rama Reddy, Librarian, University of Hyderabad is a renowned Central University Librarian in the field of Library and Information Science. He has received many awards and honours from all over the country. Indian Library Association (a national professional organization of Librarians) announced the awards in the month of June-July, 2004 through its Newsletter published in

vol.21, No. 6-7 and invited applications by the Professionals. This is a regular feature of Indian Library Association. The Newsletter and connected papers are collectively enclosed at Annexure III. Indian Library Association's Executive Committee held on 28th August, 2004, nominated the Committee consisting of the members namely : 1) Dr. B.K. Suri, Librarian, IIPA; 2) Prof. S. Ansari, Department of Library and Information Science, Jamia Millia Islamia and 3) Mr. D.V. Singh, Librarian, Sri Ram College of Commerce to evaluate and recommend for the award. The resolution passed by the Constituted Committee as enclosed in Annexure IV. Indian Library Association has received 7 applications for the ILA KAULA best Librarian Award for 2003. All the applications had been handed over to the Nomination Committee. The Committee met on 20th November, 2004 adjudged Dr. E. Rama Reddy as the most suitable Professional and recommended his name for the Award. The resolution passed by the Committee is Annexure v. Indian Library Association accordingly requested to Dr. E. Rama Reddy to receive the award. Honourable Vice-Chancellor, University of Baroda, gave away the award on 1st December, 2004 in India Library Association Annual Conference.

22. I am of the considered view that the authorities cited by the learned Counsel for the respondents are not applicable to the facts of this case. In this case, the petitioners did not have prior knowledge about the members of the Selection Committee. [See *Sree Sankaryacharya University of Sanskrit v. State (Supra)*]. They appeared before the interview Board out of hand. They were not aware who were the members of the Executive Council. The petitioners have well explained that they came to know about the selectors after seeing their faces on the same day. Moreover, award as above said was given during those days only. The pleadings of respondent No. 2 depict that selection committee for giving award was constituted well before the date of interview of the petitioners i.e. on 28th August, 2004 All these facts and circumstances do not go to scotch the doubts which have cropped up regarding the bona fides of the Selection Committee and that of Dr. E. Rama Reddy particularly. What is the expectation of law and natural justice from the members of the selection committee" It is that like Caesar's wife they ought to be above suspicion.

23. It is thus crystal clear that the approval was obtained from the executive council in a haste, ground No. VI. Clause 5 supplies sufficient inkling to the effect that at least 2-3 meetings should have been held. First two meetings should have been held for getting the ratification done, thereafter third meeting should have been called to select the Librarian. It is surprising to note that interviews were conducted before the ratification action was done. Again ratification and selection of the Librarian was done in one go.

24. Now, I advert to ground No. (iii) i.e. Mr. S. Venketesh did not belong to the field of library science. The learned Counsel for the respondents cited CB 432/1979 wherein it was observed,

The Executive Council of the University is a statutory authority with special knowledge and in a position to assess as to who is an expert. It is for the

executive Council to judge the competence of an expert in a particular subject. Unless the decision is alleged as malafide and valid material is placed on record in that regard, the assessment of the Executive Council that KPS Menon had special knowledge and interest is not justiciable. There cannot be any interference in such academic matters.

Again, it was argued on behalf of the respondents that Dr. S. Venkatesan is holding the post of librarian in the II SC Bangalore for the last about 25 years. Since, I have held that selection committee was not validly constituted, Therefore this ground does not deserve consideration.

25. The whole gamut of all the facts and circumstances, detailed above, leans on the side of the petitioners. I, Therefore, allow the writs, quash constitution of the Selection Committee and the proceedings thereof including the decision of selection of respondents No. 2 and 3 and another candidate in the select list approved by the Executive Council in its meeting held on November 11, 2004 for the post of Librarian in the Jawahar Lal Nehru University. There will be no orders as to costs.