

(1969) 07 MAD CK 0031
In the Madras High Court

Prof. A. Sankaranarayanan

APPELLANT

Vs

The University of Madras by vice-Chancellor and Another

RESPONDENT

Date of Decision : 15-07-1969

Acts Referred:

Madras University (Amendment) Act, 1966 — Section 54A(1)
Madras University Act, 1923 — Section 16

Citation : (1970) 1 MLJ 551

Hon'ble Judges : A. Alagiriswami, J

Bench : Division Bench

Judgement

A. Alagiriswami, J.—Till 1966, the Madras University had jurisdiction over the whole of the State of Madras. In that year the University of Madurai came into existence with jurisdiction over the District of Madurai, Ramanathapuram, Tirunelveli and Kanyakumari. I shall hereafter refer to this area as the Madurai University area and the rest as the Madras University area. Consequent on the exclusion of a portion of the area which was formerly within the jurisdiction of the Madras University, certain amendments were made in the Madras University Act. It is the consequence of those amendments that has given rise to this Writ Petition.

2. u/s 16 of the Madras University Act 1923 the Senate, which is the supreme governing body, has power to make statutes and amend or repeal the same. u/s 29 of the Act the statutes may provide among other matters for the maintenance of a register of registered graduates. "Registered graduates", had been originally defined under Clause (h) of Section 2 as graduates registered under the Act or the Indian Universities Act, 1904. This clause was amended in 1966 to read, "Registered Graduate" means a graduate registered under this Act. In pursuance of this power, the Senate had made a number of statutes. Chapter 19 of those statutes deals with elections to the authorities of the University. Part C of that Chapter deals with elections conducted by the University and Section 10(1) of that part provides that the syndicate shall maintain a Register in which any graduate of the University who became eligible for a degree in any faculty shall

be entitled to have his name entered and retained subject to certain provisions and it also provides that the graduate concerned shall apply in the prescribed form to the Registrar and pay a consolidated fee of rupees five, which will entitle him to have his name entered and retained in the register for life. After the passing of the Madras University Amendment Act, 1966, consequent on the constitution of the Madurai University, the whole of Chapter 19 above referred to was substituted by a new chapter and a new Section 11 took the place of the old Section 10.

3. It provides that the Registrar shall maintain a register on which any graduate of any statutory University in the territory of India who has been a graduate for at least three years and of any University in the territory of India shall be entitled to have his name entered and retained for a period of five years, subject to the condition that in either case he has been ordinarily resident in the Madras University area. Sub-rule 3 of that rule provides that a Graduate seeking enrolment should be ordinarily resident within the University area, i.e., within the State of Madras except the Districts of Madurai, Ramanathapuram, Tirunelveli and Kanyakumari. It will be noticed that while formerly only graduates of the Madras University were entitled to have their names entered in the register of graduates and to have their names retained in that register for life, the new rule provides that any graduate of any University can apply for and be included in the Register of graduates but that will be only for five years at a time. Even this is subject to the condition that they must reside within the Madras University area. In the previous rule there was no requirement that a Madras University graduate should necessarily be a resident in the Madras University area in order to enable him to be included in the register of graduates of the Madras University.

4. The petitioner is the principal and professor of Mathematics of a Tutorial College at Madurai. He is a graduate of the Madras University. He was elected as a member of the Senate by the registered graduates in the election held in 1964. The period of a member of the Senate so elected is normally three years. He alleges that he wanted to stand for the fresh election to the Senate and was told that his name was not in the electoral roll and he could not, therefore, stand for the election for the membership of the Senate. He has, therefore, filed this writ petition for a writ of mandamus directing the Madras University to forbear from removing his name from the register of graduates in the Madras University or in the alternative to restore the same in the register of graduates.

5. The main, if not the sole function of the register of graduates is to constitute an electorate for the purpose of electing a proportion of the members of the Senate of the University. The petitioner's contention is that by the latest amendment of its statutes by the Madras University, he has been deprived of his right to continue on the register of graduates of the Madras University for life as also of his right to stand, for election as a member of the Senate of the Madras University. It must be mentioned that in the Madurai University Act a provision was made similar to that introduced in the Madras University Act by the Madras

University Amendment Act, 1966, providing for a register of graduates consisting of graduates of any University who may be resident within the Madurai University area. If the contentions of the petitioner that his name should be continued on the register of graduates of the Madurai University were to be accepted, it would mean that he would be entitled to have his name included in the register of graduates and to stand for election to the Senate from the Registered Graduates constituency of both Universities. On the other hand the graduates who may be resident in the Madras University area would not be entitled to have their names included in the register of graduates of the Madurai University or to stand for election to the Senate of the Madurai University. Of course, if the relevant statutory provisions produce such a result, they would have to be given effect to notwithstanding that it may confer an extra advantage on persons whose names were found in the old register of graduates of the Madras University.

6. The argument on behalf of the petitioner is as follows : Under old Section 10 of Chapter 19 of the statutes of Madras University, the petitioner was entitled to have his name in the register of graduates of the Madras University for life. The new Section 11 (which corresponds to the old Section 10) takes away his vested right of having his name continued in that register and also his right to stand for elections to the Madras University. This amounts to retrospective legislation. The power of the Senate of the Madras University u/s 16 read with Section 29 of the Madras University Act to make statutes is a power of subordinate legislation. No subordinate legislation can have retrospective effect unless the statutory power under which such subordinate legislation is framed specifically enables retrospective effect being given to the subordinate legislation. There is no such power specifically found either in Section 16 or in Section 29 enabling the statutes being given retrospective effect. Therefore, it should be held that notwithstanding the provisions of new Chapter 19 of the statutes of the Madras University the old register of graduates of the Madras University should be held to continue and the petitioner's name also should be held to continue on that register.

7. This contention is sought to be supported by a reference to Craies on Statute Law, 6th edition, page 386 where the following passage occurs:

A statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.

At page 387 is found a reference to the Judgment in *Bardo v. Bingham* (1870) L.R. 4 Ch. App. 735, 739, where it is stated that the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to receive a retrospective construction.

8. In answer to this contention Mr. V. K. Thiruvengkatachari appearing for the

Madras University contends that the power granted to the Senate of the Madras University to frame statutes under Sections 16 and 29 of the Madras University Act is general, that it is not subject to any conditions, that the Legislature has given complete discretion to the Senate in respect of the framing of statutes and that it was open to the Senate to lay down any standard or criteria for the inclusion of any graduate or exclusion of any graduate from the register of graduates of the Madras University, and that the Senate which conferred such rights on the graduates, whose names it placed on its register of graduates could by the same taken take away their names from the register and there is nothing to prevent it from doing so.

9. In In the matter of G. A. Natesan and K. B. Ramanathan I.L.R.(1917) Mad. 125: 31 M.L.J. 634, a Bench of this Court in relation to this very University stated the position with regard to the general scheme of the Act in the following terms:

The general scheme of the Act and the regulations to be framed would appear to be this, that the Senate should be the legislative and the Syndicate the executive Government of the University, the powers of the Senate being subject, in certain matters, to the control of the Government, that the Senate should pass general rules in the form of regulations u/s 25 of the Act of 1904 and that the Syndicate should deal with the administration of specific matters and the application of the regulations to them. It is, I think, further clearly involved that the syndicate should exercise its functions subject to and in conformity with the regulations and from that I think too it necessarily follows that a proceeding of the Syndicate which is contrary to the regulations would be invalid, and that the Syndicate cannot adopt measures or pass resolutions, or whatever else they may be termed which would be in conflict with or effect a modification of the existing regulations or bring about a result, such as by the Act is reserved to the Senate to effect by the passing of a regulation. This, as I say, seems to be a clear deduction from the general scheme of the Act.

Emphasis is placed on this statement of law wherein the Senate is referred to as; the legislative Government of the University and it is contended that there are no restrictions on the powers of this Legislature, that the action of the Senate in substituting a new Chapter 19 in place of old Chapter 19 and a new Section 11 in place of the old Section 10 is merely the exercise by the University of this legislative power upon which there are no restrictions and in making the substitution above referred to the Senate was only exercising its legislative power and the right to continue on the register of graduates for life which was conferred on any graduates by the legislature of the University could be taken away by that very Legislature and such exercise of power cannot be questioned on the ground that it is subordinate legislation which has been given retrospective effect. I am afraid this argument cannot be accepted. While the Senate may be the Legislature of the University it is not a Legislature as normally understood and its powers are strictly limited by what is conferred on it by the statute. I consider that the power of the Senate of the Madras University to

frame statutes under Sections 16 and 29 of the Act is analogous to the rule making power conferred on the executive in Various statutes to frame rules and regulations in furtherance of the objects of the statutes under 10. which they are framed. Such power to make rules and regulations, is quite often given under specific heads. Bu sometimes it is generally given without referring in particular to any of the purposes for which such rules and regulations may be framed. But that does not mean that in framing such rules and regulations retrospective effect can be given.. I find it difficult to accept the argument that no retrospective effect has been given in this case or that the Senate was simply exercising legislative power. Under the old statutes of the Madras University, the registered graduates had the right to have their names continued in the register of graduates for life and, therefore, to stand for the elections of the University. There is no doubt that that right has been taken away by the new statutes. Inframing the statutes, the Senate of the Madras University is only exercising the powers of making subordinate legislation and if the support for the validity of the new statutes is to be found only in the argument that the Senate. is the Legislature of the University and its powers are unlimited and that it can take away the rights which it conferred by another legislative enactment subsequently the Madras University is bound to fail.

10. Mr. Thiruvengkatachari referred to Halsbury's Laws of England, Third Edition Volume 13, page 708, para. 1442 and page 714, para. 1452. The statement of law in para, 1442 is as follows:

The Constitution, functions, and privileges of Universities are governed by the terms of their instruments of foundation, or by Acts of Parliament. In so far as. there can be said to be any general law relating to Universities or their Colleges, it belongs, strictly speaking either to the law of corporations or to that of charities. The statutes and instruments of foundation relating to individual Universities do in fact, however, result in producing characteristics capable to some extent of classification.

A University usually consists of a Chancellor, a body of graduates, and students. Its Government is usually provided for by the creation of a council or senate, which acts as the executive and has an initiative in such legislation as the university is. empowered to carry out, sometimes subject to the Queen in Council, sometime with the further assent of Parliament.

In the latter paragraph it is stated "the legislative body of the University of Cambridge is the Senate. The Council of the Senate offers to the Senate proposals for confirmation or rejection." I do not think that these two statements of Jaw in Halsbury's Laws of England can help the respondent. I have already deal with the argument that the Senate should be deemed to be the legislative body of the University. Even in regard to the statement of law found in paragraph 1442 referred to above, Mr. Thiruvengkatachari was not able to point out any case where a corporation was held capable of making subordinate legislations of a retrospective character.

11. From this point of view his reference to Schedule VII, List II, entry 32 of the Constitution of India, which clubs Universities and Corporations together cannot be of much help. I asked Mr. Thiruvenkatachari as well as the learned Government Pleader, who was appearing in support of the stand taken by the University, to point out any case where an authority making subordinate legislation is in pursuance of an authority conferred on it by a statute was held entitled to give retrospective effect to such subordinate legislation in the absence of a specific power in the statute itself to do so. They were not able to point out any such instances.

12. Mr. Thiruvenkatachari referred to the decision of the Supreme Court in *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, where at pages 766 and 767, the Supreme Court dealt with the argument that the doctrine *delegata potestas non potest delegare* cannot apply to actions of Legislatures and if these Legislatures delegate powers to some other authority to make rules or regulations or authorise the executive Government to enforce laws made by them or other Legislatures wholly or in part and with or without restrictions or modifications, the Legislatures are perfectly competent to do so. The learned Judges went on:

When a legislative body passes an Act it has exercised its legislative function. The essentials of such function are the determination of the legislative policy and its formulation as a rule of conduct. These essentials are the characteristics of a Legislature by itself. It has nothing to do with the principle of division of powers found in the constitution of the United States of America. Those essentials are preserved when the Legislature specifies the basic conclusions of fact, upon ascertainment of which, from relevant data, by a designated administrative agency, it ordains that its statutory command is to be effective. The Legislature having thus made its laws, it is clear that every detail for working it out and for carrying the enactments into operation and effect may be done by the Legislature or may be left to another Subordinate agency or to some executive officer. While this also is sometimes described as a delegation of legislative powers, in essence it is different from delegation of legislative power which means a determination of the legislative policy and formulation of the same as a rule of conduct. I find that the word "delegation" is quite often used without bearing this fundamental distinction in mind. While the so-called delegation, which empowers the making of rules and regulations, has been recognised as ancillary to the power to define legislative policy and formulate the rule of conduct the important question raised by the Attorney-General is in respect of the right of the Legislature to delegate the legislative functions strictly so called.

Again at page 770 after referring to the case of *The Queen v. Bura* (1877-78) 5 I.A. 178 Their Lordships quoted from the judgment of Markby, J., in that judgment which was to the following effect.

The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits

which circumscribe these powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has and was intended to have, plenary powers of legislation as large and of the same nature as those of Parliament itself....If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited....it is not for any Court of justice to inquire further, or to enlarge constructively those conditions and restrictions.

As I already pointed out while the Senate may be the Legislature of the University, it is in no sense as legislature as ordinarily understood and it was not exercising legislative power in making the statutes but was only exercising the power of subordinate legislation which is referred to by their Lordships of the Supreme Court in the extract quoted earlier, wherein their Lordships pointed out that the legislature having made its law, it is clear that every detail for working it out and for carrying the enactments into operation and effect may be done by the Legislature or may be left to another subordinate agency or to some executive officer. It is in that sense the detail for working it out has been left to the subordinate agency, that agency in this case being Senate.

13. Mr. Thiruvengkatachari referred to the decision of the Supreme Court in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, where at page 298, Bose, J., set out within a short compass the conclusions of the Supreme Court in the earlier cases but this does not in any way add to the strength of the arguments already noticed. Thus, the contention of Mr. Thiruvengkatachari that the Senate of the Madras University is a Legislature and that within the scope of its legislative power, it was competent to pass such legislation as it chose and, therefore, even though the new statutes framed by it might be retrospective in effect, it could be upheld, has to be rejected.

14. Mr. Thiruvengkatachari then contended that the right of the petitioner to have his name continued on the register of graduates of the Madras University was not a right which has been taken away by the new statutes. He referred to the decision in *Director of Public Works v. Ho Po Sang* (1961) A.C. 901, where the Privy Council held that in the case before them the aggrieved party cannot be said to have a right under the repealed ordinance and he had no more than a hope that a certificate would be given. The present case cannot be equated to that case because the petitioner had his name in the register of graduates and if elections were held as they were bound to be held once in three years, he had a right to stand for election. The main purpose, if not the only purpose, is already indicated of the preparation of the register of graduates is "to constitute an electorate which will elect a certain number of members to the Senate. Therefore, the petitioner did have a right which was taken away by the impugned statute.

15. I consider, however, that the validity of the new Chapter 19 and new statute 11 in that Chapter could be upheld on another ground. A power to frame laws

retrospectively need not necessarily be express. It could even be implied. In Craies-on Statute law, 6th Edition at page 391 it is pointed out:

If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation". " Baron Parke""", said Lord Hatherley in *Pardo v. Bingham* (1870) L.R. 4 Ch. Appl. 735, 740, did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed, and said that the question in each case was whether the Legislature had sufficiently expressed that intent on. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated."... In *Main v. Stark* (1890) 15 A.C. 384,388, Lord Selborne said : "Their Lordships, of course, do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words prima facie prospective a larger operation, but they ought not to receive a larger operation unless you find some reason for giving it....In all cases it is desirable to ascertain the intention of the Legislature. He went on : " Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed"; but in *Reynolds V. Att-Gen for Vova Scotia* (1896) A.C. 240, it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right.

I think it is plain from a reading of the Madras University (Amendment) Act, 1966 in conjunction with the Madurai University Act that the intention of the legislature was that a new register of graduates was to be prepared by the Madras University as well as by the Madurai University, that the register of graduates of the Madras University was to consist of graduates residing within the Madras University area that the register of graduates was to consist not of persons whose names were to be on it for life, but only for five years, and that the new register of graduates was to contain the names of graduates of any University whatsoever provided they were resident within the areas of the respective universities. The old state of the law and the intention behind the amendment carried out by the legislature being thus clear there is no difficulty in holding that even if the substitution of the old Chapter 19 and old statute 10 the statutes of the Madras University by the new Chapter 19 and new statute 11 were in the nature of retrospective subordinate legislation, it is permitted by implication of the new legislation.

16. Section 54-A (1) of the Madras University (Amendment) Act, 1966 provides as follows:

Every person ordinarily resident in the State of Madras except the area comprising the revenue districts of Madurai, Ramanathapuram, Tirunelveli, and Kanyakumari, who--(i) has been for atleast three years a graduate of any university in the territory of India; or (it) is a registered graduate of any

University in the Territory of India, shall be entitled to have his name entered in the register of graduates maintained under this Act for a period of five years on payment of such fee and subject to such conditions as may be prescribed by the Statutes.

(2) All applications for registration under Sub-sections (1) shall be sent to the Registrar together with the prescribed fee and such proof of qualifications as may be prescribed by the Statutes.

(3) The Registrar shall, on receipt of an application made under Sub-section (2) and after making such enquiry as he deems fit, enter in the register of graduates the name of the applicant.

(4) Every person whose name has been entered in the register of graduates under Sub-section (3) shall be entitled to have such entry renewed every five years on application made in that behalf to the Registrar within such time, in such manner and on payment of such fee as may be prescribed by the Statutes.

Section 56 of the same act is as follows:

The Statutes, Ordinances and Regulations in force at the time of commencement of this Act shall continue to be in force until they are replaced by Statutes Ordinances or Regulations framed under the said Act as amended by this Act.

Thus, what has been done by the new statutes introduced by the Senate of the Madras University is only to carry into effect the purpose of Sections 54-A and 56 above referred to. The Legislature has specifically expressed its intention that the register of graduates was to contain names of persons only for five years and not for life and that the old statutes in force at the commencement of the amending Act shall continue to be in force only until they are replaced by statutes made under the amending Act. Therefore, the Senate of the Madras University was competent under the amended Madras University Act to frame the new statutes regarding the register of graduates. It has carried into effect only the intenment of the Act. It is not correct to say that this has to apply only to the future. Where the old act was silent with regard to the persons who were entitled to have their names in the register of graduates and the period for which they were entitled to have their names on their register, the new statute has clearly laid down that only graduates who were residents in the Madras University area that were entitled to have their names entered in the register of graduates and that for a period of five years only. There is a clear intention to make a complete change and, therefore, the statutes of the University should be held to be valid. I hold, therefore, that there are no merits in this writ petition and it is, accordingly dismissed. There will, however, be no order as to costs.