

(2005) 06 MAD CK 0026

In the Madras High Court

Case No : W.A. No. 1088 of 2005 and W.A.M.P. No. 1978 of 2005

Prof. Arun Nigavekar, Chairman, University Grants
Commission

APPELLANT

Vs

Dr. R. Natarajan, The Secretary to Government, Ministry of
Human Resources Development, Department of Secondary
and Higher Education, Union of India (UOI) and The
Secretary to Government, Ministry of Law, Justice and
Company Affairs, Union of India (UOI)

RESPONDENT

Date of Decision : 18-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226

University Grants Commission Act, 1956 — Section 5(3), 6, 6(1)

Citation : (2005) 3 LW 429 : (2005) 3 MLJ 336

Hon'ble Judges : Markandey Katju, C.J.; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : K.M. Vijayan, for A. Sasidaran, for the Appellant; K. Chandru, for M. Lakshmipathy for Respondent-1 and Gopal Subramaniam, for Muralikumaran, ACGSC for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge dated 10.05.2005 by which

the learned single Judge quashed the appointment of the appellant as Chairman of the University Grants Commission (hereinafter referred to as the

UGC") by notification dated 16.07.2002.

2. We have heard learned counsel for the parties and have perused the record as well as the impugned judgment.

3. The ground for quashing the appointment of the appellant as Chairman of the UGC was that according to the learned single Judge the said

appointment was in violation of the second proviso to Section 6(1)(c) of the University Grants Commission Act, 1956 (hereinafter referred to as

the "Act") Section 6(1) of the Act states:-

6. Terms and Conditions of Service of members, --

(1) A person appointed as Chairman, Vice-Chairman or other member after commencement of the University Grants Commission (Amendment)

Act, 1985 shall, unless he sooner becomes disqualified for continuing as such under the rules that may be made under this Act, --

(a) in the case of Chairman, hold office for a term of five years or until he attains the age of sixty-five years, whichever is earlier.

(b) in the case of Vice-Chairman, hold office for a term of three years or until he attains the age of sixty-five years, whichever is earlier;

(c) in the case of any other member, hold office for a term of three years;

(i) a person who has held office as Chairman or Vice-Chairman shall be eligible for further appointment as Chairman, Vice-Chairman or other

member; and

(ii) a person who has held office as any other member shall be eligible for further appointment as Chairman, Vice-Chairman or other member;

Provided further that a person who has held office for two terms, in any capacity, whether as Chairman, Vice-Chairman or other member

excluding a member referred to in clause (a) of sub-section (3) of Section 5, shall not be eligible for any further appointment as Chairman, Vice-

Chairman or other member.

4. According to the learned single Judge the appellant was disqualified from being appointed as Chairman of the UGC because he had held office

for two terms, one as member of the UGC and the other as ViceChairman of the UGC, and hence, he was disqualified in view of the 2 nd proviso

to Section 6(1)(c) of the Act. We do not agree.

5. Admittedly, the appellant held office as member of the UGC from 3 1.05.1992 to 30.05.1995, i.e., for one full term as a member. He was then

appointed as Vice-Chairman for a term of 3 years from 28.09.2000.

However, he did not continue as Vice-Chairman for a full term of 3 years because by order dated 16.07.2002 (the impugned order) he was

appointed as Chairman of the UGC and admittedly, he has been functioning as

Chairman from 16.07.2002. Hence, factually he did not complete the 3 years full term as Vice-Chairman of the UGC.

6. It was contended by the appellant before the learned single Judge that since the appellant (respondent-1 in the writ petition) had not completed a full term of 3 years as Vice-Chairman, it could not be said that he was disqualified under the 2nd proviso to Section 6(1)(c) of the Act as he had not held office for two terms. It was also contended by him that the writ petition should have been dismissed as belated as it was filed only on

18.10.2004 i.e., after a lapse of more than two years and three months from the date of his appointment as Chairman.

7. Mr. Gopal Subramaniam learned Senior Counsel for respondents 2 and 3 submitted that the word "term" would include a part of a term also.

He submitted that if this contention is not accepted then if a Vice-Chairman functions for 2 years and 364 days as Vice-Chairman, it cannot be

held that he had put in a full term as Vice-Chairman, simply because he relinquishes his post at the fag end of the full term of 3 years. He submitted

that this will go against the very intention of the 2nd proviso to Section 6(1)(c). Hence, he submitted that a term would include a part of the term as

also held by the learned single Judge.

8. We cannot agree with this submission. If this submission is accepted we will logically have to go to the extent of holding that if a person has been

appointed as Vice-Chairman and assumed office on the same day, but resigns on the very next day, he will have held the office of Vice-Chairman

for a term. In other words, we have to hold that holding office even for one day is holding office for a term. In our opinion, such an interpretation

will not only go against common sense but it will also go against the very language of Section 6(1)(b) which states that the term of Vice-Chairman

is 3 years or until he attains the age of 65 years whichever is earlier.

9. No doubt, the appellant held office as Vice-Chairman from 28.09.2000 till 16.07.2002 i.e., for about one year and 10 months, which is more

than half the full term of 3 years as prescribed u/s 6(1)(b). However, this Court cannot hold that holding office for more than half a term will be

deemed to be treated as holding office for the full term, as that would amount to legislation.

10. In this connection, we may refer to the 22nd amendment to the US

Constitution which states:-

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as

President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more

than once.

11. It is interesting to note the background in which the 22nd amendment to the US Constitution was enacted. Before the 22nd amendment there

was no provision in the US Constitution which de-barred a person from holding office of the President of the USA for more than 2 terms (of 4

years each). George Washington, the 1st President of the USA, was elected twice as President, but when he was offered the candidacy for a 3rd

term he declined saying that no one should be the President more than twice, as that would tend to make the office perpetual in one man, i.e. a

hereditary monarchy, which was precisely what the Americans fought against in their War of Independence. The subsequent Presidents of U.S.A.

followed this custom established by Washington. However, this was only a custom, and it was broken when President Franklin Roosevelt was

elected as President of the USA 4 times, viz., in 1932, 1936, 1940 and 1944 (the 3rd and 4th time when World War II was going on). Hence, to

prevent in future any person being elected President more than twice the 22nd amendment was enacted. However, it was provided therein that if a

person (the Vice-President in the case of death or resignation of a President) has acted for more than 2 years as President in the unexpired term of

the previous President that will be treated as one full term as President. Thus, President Truman became President on the death of President

Roosevelt in April 1945 after Roosevelt had served only 4 months of his 4th term. Hence, Truman was President for more than 2 years of the

remaining term of President Roosevelt, and thus that remaining term was treated as one full term for President Truman. Hence, he was, and could

be, elected only once again, i.e., in 1948.

12. The 22nd amendment to the US Constitution has provided that more than half of a term as President will be treated as a full term, but less than

half of a term will be disregarded. However, there is no such similar provision in Section 6 or any other provision of the UGC Act stating that more

than half a term will be treated as a full term. This Court cannot act as a legislature and by judicial interpretation amend Section 6 of the UGC Act.

Under the garb of interpretation the Court cannot legislate vide, J.P. Bansal Vs. State of Rajasthan and Another, (vide paragraphs 14 to 16). It is

for the legislature to amend the law and not for the Court.

13. Mr. Gopal Subramaniam may have made out a good case for amending the law as it is possible to hold that if a person relinquishes his office

one day before his full term that may defeat the intention of the statute. However, it is not for us to amend the law, and we cannot go into the

supposed intention of the legislature when the language of a provision is clear (which in our opinion it is), vide J.P. Bansal's Case (Supra). Thus, in

State of Haryana and others Vs. Ch. Bhajan Lal and others, (vide paragraph-42) the Supreme Court quoted with approval the following

observation of the Privy Council in P. Narayanaswamy v. Emperor:-

When the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions.

14. When the language of a provision is clear we have to go by that plain and literal language, and not try to twist it by probing into the intention of

the statute. Thus Craies on Statute Law, Seventh Edition, First Indian Reprint 1999 (published by Universal Law Publishing Co.Pvt. Ltd., New

Delhi p.65) quotes the decision of the House of Lords in Warburton v. Loveland (1832) 2 D. & CC. (H.L.) 480 wherein it was observed:

Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the

statute speak the intention of the legislature"".

15. In Kanai Lal Sur Vs. Paramnidhi Sadhukhan, the Supreme Court observed:

If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on

the ground that such construction is more consistent with the alleged object and policy of the Act"".

16. Similarly, in State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, the Supreme Court observed:

When a language is plain and unambiguous and admits of only one meaning, no question of construction of the statute arises, for the Act speaks

for itself"".

17. In AIR 1945 48 (Privy Council) the Privy Council observed (per Viscount Simonds, L.C.):

Again and again this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results,

injurious or otherwise, which may follow from giving effect to the language used"" (See also Ajay Pradhan Vs. State of Madhya Pradesh and

Others, , Rananjaya Singh Vs. Baijnath Singh and Others, , Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter,).

18. Where the language of a statute is plain and clear, the results of the construction are then not a matter for the Court, even though they may be

strange or surprising, unreasonable, unjust or oppressive, vide AIR 1945 21 (Federal Court) , AIR 1939 47 (Privy Council) , Duport Streets Ltd.

v. Sirs (1930) 1 All E.R. 529, Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, , Sri Nasiruddin Vs.

State Transport Appellate Tribunal, .

19. Thus, it is well settled that hardship, inconvenience, injustice, etc., cannot be gone into when the words of a statute are susceptible to only one

meaning. It is only when there is ambiguity or unclarity in a statute that the Court can go into these considerations or try to find out the intention of

the statute.

20. Thus, in Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., (vide paragraph - 21) the Supreme Court observed:-

In construing a statutory provision the first and foremost rule of construction is the literary construction. All that we have to see at the very outset is

what does the provision say? If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid

the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear"". 21.

Learned counsel for the respondents 2 & 3, Mr. Gopal Subramaniam, submitted that the word "term" in the second proviso to Section 6(1)(c) can

have 2 meanings i.e. the full term and also part of a "term". We do not agree. In our opinion, the word "term " has only one meaning i.e. the full

term, and it cannot mean part of a term.

22. It may be noted that the second proviso uses the words "had held office for two terms". The word "held" indicates that what has to be seen is

the factual aspect. In other words, factually the person must have held office for 2 terms, and it is not sufficient that he was appointed for 2 terms.

23. In the New International Webster's Dictionary Thesaurus the word "term" has been defined as ""A fixed period or definite length of time: a term of office"".

24. No doubt the word "term" can also have other meanings. One word can have several meanings, and there can be several words having the same meaning (synonyms). However, in the context in which the word " term" occurs in the second proviso to Section 6(1)(c) in our opinion it can have only one meaning, and that is a full term. This context is the language of Section 6 itself, wherein the terms of Chairman, Vice-Chairman and member are defined in Section 6(1)(a), (b) and (c).

25. The principle of interpretation known as "Noscitur a Sociis" will apply here. This principle has been explained by Lord Macmillan as follows:-

The meaning of a word is to be judged by the company it keeps"" (See also G.P. Singh's "Principles of Statutory Interpretation" Seventh Edition

1999 p. 347, and M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda, .

26. As observed by the Privy Council in Angus Robertson v. George Day (1879) 5 A.C.63 (69):-

It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them

(See also M.K. Ranganathan and Another Vs. Government of Madras and Others, .

27. Applying this principle we have to hold that the word "term" in the second proviso must take its colour from the use of the word in Section

6(1)(a), (b) and (c), and hence must be understood accordingly.

28. Secondly, the words "had held office for two terms" indicates that factually the person should have held office for two full terms. Mr. Gopal

Subramaniam, learned Senior Counsel for respondents 2 and 3 submitted that even if a person holds the office of Vice-Chairman for one day and

relinquishes it the next day he must be said to have held the office for a term. In our opinion such an interpretation cannot be accepted, because in

that case the language of the second proviso would have been as follows:-

Provided further that a person who has held office for any part of two terms ?

It is well settled that the Court cannot add to, or delete words from, a statute, as that is the function of the legislature. As observed by the Privy

Council in *Crawford v. Spooner* (1846) 6 Moo P.C. 1 :- "We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend

and, by construction make up deficiencies which are left there" (See also *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*,

, *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, , *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , and *State of*

Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another, . A matter which should have been, but has not been, provided for in a statute

cannot be supplied by Courts, as to do so will be legislation and not construction, vide *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63

, *Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others*, . The Court cannot supply a *causus omissus* or *lacuna* in a statute, vide *Shrimati Hira*

Devi and Others Vs. District Board, Shahjahanpur, .

29. Hence, we cannot agree with the contention that a term includes a part of the term. In our opinion, a term means a full term, otherwise, even if

a person serves only for one day, it will have to be held that he has served for a term. The word "term" has to be understood in the light of Section

6(1)(a),(b) and (c) of the Act, where the period of the term has been prescribed. Hence, it cannot be said that a term includes a part of the term. It

is well settled that this Court cannot direct legislation, vide *Union of India (UOI) Vs. Prakash P. Hinduja and Another*, . The learned single Judge in

paragraph -36 of his judgment has referred to the decision of the Orissa High Court in *M.M. Pani v. State of Orissa* AIR 1971 Ori 283 which has

relied on the definition of the word "term" in a dictionary. It must be understood that when we interpret some word, we have to see the context and

the entire statutory provision in which that word occurs and we cannot interpret the word mechanically.

31. As observed by Allen in "Law in the Making" 5th edn., p.482 no word has an absolute meaning, for no word can be defined in *vacuo* without

reference to a context. The same word or expression may have different meanings in different statutes or sometimes even in the same statute

depending upon the context, vide *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, ..

32. It is possible that in some statutes the word "term" may also mean a part of the term, but in our opinion, as discussed above, in Section 6(1)(a)

of the Act the word "term" has to mean the full term and not a part of the term for the reasons already stated above.

33. As held by the Supreme Court in *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, and in *Deputy Chief Controller of Imports and Exports,*

New Delhi Vs. K.T. Kosalram and Others, the meaning of words in a particular context must be ascertained by considering the subject matter and

the nature of the context in which the words are found, and the words in other statutes and in different contexts are of no value.

34. It is no sound principle of construction to interpret the words or expressions used in one Act with reference to their use in another Act. The

meaning of words and expressions in an Act take their colour from the context in which they appear. To take a word bearing a peculiar meaning in

a particular Act and to clothe that word with the same meaning when found in a different context in a different Act is a fallacious process of

interpretation, vide *Duraivelu v. Corporation of Madras*, AIR 1935 Mad 600. The decision of the Orissa High Court in *M.M. Pani v. State of*

Orissa AIR 1971 Orissa 282 was given in the context of a different Act (The Orissa Panchayat Samiti and Zila Parishad Act) and even the

relevant section has not been quoted in the judgment. At any event, we are not in agreement with the Orissa High Court for the reasons given

above.

35. On the facts of the case we are of the opinion that the appellant was not disqualified from being appointed as Chairman of U.G.C., since, in

our opinion, he had not held office for two terms. Hence, the second proviso to Section 6(1)(c) has no application.

36. Apart from the above, we are also of the opinion that the writ petition should have been dismissed on the ground of laches as it was filed very

belatedly. As already noted above, in this case, the impugned appointment order appointing the appellant was passed on 16.07.2002, whereas

the writ petition was filed on 18.10.2004 i.e., after a lapse of more than 2 years and 3 months. It is well settled that writ is a discretionary remedy,

vide *R. Nanjappan v. The District Collector, Coimbatore*, 2005 Writ LR 47 and *Chandra Singh Vs. State of Rajasthan and Another*, . One of the

grounds for dismissing a writ petition is that it is filed after unreasonable delay, vide M.D. Tamil Nadu State Transport Corporation (Madurai

Division IV) Ltd., Dindigul v. P. Ellappan, 2005-II-LLJ 300.

37. It is well settled that if there is undue delay on the part of the petitioner in filing a writ petition, he would not be entitled to the discretionary relief

under Article 226 of the Constitution of India.

38. In State of Maharashtra Vs. Digambar, , the Supreme Court observed that it is well settled by the decisions of the Court that no person is

entitled to obtain equitable relief under Article 226 of the Constitution of India if his conduct is blame-worthy because of laches, undue delay,

acquiescence, waiver and the like.

39. Similarly, in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, it was held that when there is inordinate delay

in filing a writ petition, the High Court in its discretionary powers under Article 226 of the Constitution of India can dismiss it on this ground without

going into the merits.

40. In Gian Singh Mann Vs. High Court of Punjab and Haryana and Another, a petition under Article 226 was filed by the petitioner about 11

years from the date on which he claimed promotion. The Supreme Court held that such inordinate delay could not be overlooked on the ground

that the petitioner was making successive representations.

41. In Jagdish Narain Maltiar Vs. The State of Bihar and Others, , it was held that where the petitioner, a dismissed Government servant after

being informed that his services were terminated for misconduct, spent about three years in sending memorials to the Government, a remedy not

provided by law, the High Court was justified in rejecting the petition on the ground of delay.

42. In Rajalaskshmi Setty K.V. v. State of Mysore AIR 1967 SC 993 the Supreme Court held that the appellants were guilty of laches because

after the impugned order was passed in 1950, they should have filed a writ petition within a reasonable time thereafter. Merely because the Chief

Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that

they could rest upon their oars if they really had a grievance.

43. In Srinivasa Rao and others Vs. State of Karnataka and others, , the Supreme Court held that the writ petition was rightly dismissed by the

High Court as belated since it was filed after a long delay of about 15 years. 44. Thus, it is well settled that writ jurisdiction being discretionary

jurisdiction it cannot be invoked by a party who approaches the High Court after unreasonable delay, vide S.A. Rasheed Vs. Director of Mines

and Geology and another, .

45. No doubt there is no specific limitation provided for under Article 226 for filing a writ petition. However, the principle of laches i.e. undue

delay certainly applies to writ jurisdiction. The High Court has to exercise its writ jurisdiction on settled legal principles, and one of these legal

principles is that a writ petition is liable to be dismissed if the petitioner has come to the High Court after undue delay, as has happened in this case.

Hence the writ petition deserved to be dismissed on the ground of laches without going into the merits, vide Delhi Administration and Others Vs.

Hira Lal and Others, .

46. In view of the above, this writ appeal is allowed, the impugned order of the learned single Judge is set aside and the writ petition is dismissed.

No costs. Consequently, connected W.A.M.P. is closed.