

(2021) 03 P&H CK 0408

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22229 Of 2020 (O&M)

Prof. Keshav Malhotra & Others

APPELLANT

Vs

Panjab University And Others

RESPONDENT

Date of Decision : 23-03-2021

Acts Referred:

Panjab University Act, 1947 — Section 8, 10(4), 11, 11(2), 13, 20, 31, 31(2)(c), 33, 38
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 P&H CK 0408

Hon'ble Judges : Fateh Deep Singh, J

Bench : Single Bench

Advocate : R.S. Cheema, R. Kartikeya, Satya Pal Jain, Govind Goel, Piyush Bansal, Subhash Ahuja, Sahil Sharma, Pankaj Jain, Jaivir Chandail

Judgement

Fateh Deep Singh, J

"Power will intoxicate the best hearts, as wine the strongest heads. No man is wise enough, nor good enough, to be trusted with unlimited power." Colton Little did the enactors of the Panjab University Act, 1947 (in short, 'the Act') would have realized that what they have framed as a comprehensive and exhaustive legislation would come to be a tool in the hands of its own academic officer pursuing not the educational goals but satisfying his own personal ends and thereby in the process virtually oust its own governing body looking after the management and superintendence of this August institution once of International fame and oldest in this country. Such is the unbridled exercise of powers that even the power of Government under Section 33 of the Act could not deter him or had any sobering effect, and what to the nullifying effect of special meetings provided under Section 11(2) and 31(2)(c) of the Act empowering the requisite members of Senate to requisition a meeting. It is thus what has led the present petitioners who happen to be the Senators of respondent No.1 University in knocking at the doors of this Court by way of instant Writ Petition having been rendered powerless, in spite of the fact that the Senate is the Supreme authority

of the University and managing its affairs in terms of Section 8 read with Section 11 of the Act as well as its powers of making regulations in conformity with Section 31 of the Act. Respondent No.2 being the Vice-Chancellor of respondent No.1 to usurp these powers of Senate appears to have chosen a way out and in this Scheme has managed to pass orders (Annexure P10) thereby putting off the Senate Elections 2020 indefinitely which was supposed to be held with effect from August 2020 as term of the 91-member Senate was to expire in October 2020. The allegations are to the effect that it was under influence of politically backed group that this manipulation has come about, when the election process has already begun and the deferment by Respondent No.2 was illegal and highly uncalled for, in exercise of powers under Regulation 12.2, Chapter II B of Panjab University Calendar Vol.I, by way of Orders Annexures P-16, P-19 and P-20. The petitioners have termed the advice by UT Administration and Standing Counsel to be biased for a motivated cause, and thus have questioned the powers of respondent No.2 to defer the Elections indefinitely without approval of the Syndicate/Senate as falling outside the powers of respondent No.2.

The resultant stand of the respondents in their respective responses is of total denial, the Senate term having expired and thus the locus-standi of the petitioners to challenge the same. Support is taken from the stand of various bodies of the University and the present COVID-19 pandemic being responsible for this deferment and so reluctance of the Administration in facilitating these elections which was spread over a number of constituencies in surrounding States with a large number of voters.

Heard learned counsel for the parties and had the opportunity to go through the records in detail.

Mr. R.S. Cheema, Senior Advocate assisted by Mr. R. Kartikeya, Advocate appearing on behalf of the petitioners had led a scathing attack upon the connivance of respondents with each other and their illegal conduct in scuttling due process of elections which had already been set into motion and appraisal of the Punjab Reorganization Act, 1966 as well as the Panjab University Act, 1947 was made. Learned counsel had stressed on the fact that it was respondent No.2 who had initiated the electoral process and subsequent thereto had postponed and upon political interference had deferred the same indefinitely. It was urged that it was nothing but a device intended by respondent No.2 to usurp the powers of the sacrosanct democratically elected body of the University harboring on the claim that under the Act and the Regulations, the University cannot lawfully function in the absence of the Senate and the Syndicate and has even highlighted that without there being introduction and implementation of the new education policy, the respondents are trying evade their obligations. It is under this plea the counsel had prayed that there cannot be any indefinite deferment when the electoral process for various legislative bodies throughout the country is taking place and it is nothing but a ploy to keep out the petitioners and simply force the Senators from exercising their powers that vest in them under the

University Act and the Regulations.

Mr. Satya Pal Jain, Senior Advocate assisted by Mr. Govind Goel, Advocate representing respondent No.1/University; Mr. Piyush Bansal and Mr. Subhash Ahuja, Advocates for respondent No.2/the Vice-Chancellor; Mr. Sahil Sharma, Dy. Advocate General, Punjab for respondent No.3/State and Mr. Pankaj Jain, Senior Standing Counsel assisted by Mr. Jaivir Chandail, Advocate appearing for respondent No.4 - UT Chandigarh, in their arguments have laid a fervent attack on the conduct of the petitioners claiming that out of 90 members of the Senate, only seven have come up before this Court, is suggestive in itself that majority of the members are happy with the deferment of the electoral process. It is highlighted that from the States of Punjab, Himachal Pradesh, Chandigarh, Rajasthan and Uttar Pradesh etc. a number of voters have to exercise their franchise and it is because of the prevailing pandemic it is not possible to carry on this process in holding the elections. Learned counsel have sought to claim that none of these States which have significant number of voters have responded to the letters of the University because of their legitimate apprehension as to threat to their health and well-being because of rampant spread of the pandemic. The counsel have sought to project that under the provisions of Sections 8 and 13 of the Act, the Senate is still continuing and though term of the Syndicate has expired, to support their submissions that in case of impossibility of completion of election process no writ lies and further in the absence of any tangible/evident plea that a legal duty cast upon the respondents has been not performed then only a writ of mandamus lies in terms of article 226 of the Constitution of India.

Upon appreciation of these respective submissions by the learned counsel for the two sides, it needs to be clarified that the present writ pertains to the act of the respondents in not facilitating holding of elections to the Senate and which process had been set into motion and thereafter deferred indefinitely without any tangible and legitimate cause. It is there evident from the records that the University is governed by the Act which has force of law and therefore by virtue of exercise of powers by this Court under Article 226 of the Constitution of India, a writ can be issued to compel the respondents for performance of their legal duties and which have an adverse impact on the legal rights of the petitioners which vested in them by virtue of the Act and the Regulations framed thereunder including the University Calendar. More so, it is more concerning the performance of public duties and to which the petitioners and even each one of the members of the Senate, Syndicate has a right to challenge in case of claim of being not in conformity with these provisions concerning the University. The ratios relied upon by learned counsel representing respondent No.1 i.e. 'Sharad Kumar Singh v. State of West Bengal' 2020 AIR Calcutta 252 and 'Dr. Rai Shivendra Bahadur v. Governing Body of Nalanda College' AIR 1962 SC 1210 as well as that of respondent No.2 i.e. 'Joyti Basu v. Debi Ghosal' AIR 1982 SC 983; 'Dr. Rai Shivendra Bahadur v. Governing Body of Nalanda College' AIR 1962 SC 1210; 'Election Commission of India v. U.O.I.' 1995 (Supp 3) SCC 643; 'Chiraag Malli v.

Panjab University' CWP-16962-2020 decided on 04.11.2020 (DB); 'Anirudh Sharma v. Panjab University' CWP-18993-2020 decided on 10.11.2020 (DB); 'Shalini v. Panjab University' CWP-17415-2020 decided on 23.11.2020 (DB); and 'Purushottam Kumar Jha v. State of Jharkhand' AIR 2006 SC 3655 are factually at much variance and inapplicable to the case of the petitioners nor the respondents can derive any advantage of the same. Moreover, the citations concerning the Election Commission are covered under the Representation of People (Amendment) Act, 1996 wherein proper procedure and remedies have been provided quite different from the case before this Court.

A close look into the Act ensures that the framers keeping in mind the running of affairs of the University have provided that it is a body corporate with perpetual succession and a common seal and its primary purpose was to make provisions for imparting education in various fields as well as to carry on research and manage the educational institutions that fell within its territorial jurisdiction. Under section 8 of the Act, the entire Scheme shows that the supreme authority of the University vested in the Senate which comprises of Chancellor, Vice-Chancellor, Ex-officio Fellows and Ordinary Fellows. Under Section 10(4), the Vice-Chancellor is the principal executive and academic officer of the University and is to exercise general control over its affairs in accordance with the statutes, rules and regulations and in his absence a contingency has been provided empowering the Chancellor to appoint a person from amongst the Fellows of the University or making such arrangements for the disposal of the business of the University. Further Section 11 enumerates the composition of Senate. Section 20 of the Act deals with Syndicate which is supposed to be the Executive Government of the University and comprises of the Vice-Chancellor; Director of Public Instruction, Punjab and the Director of Public Instruction, Chandigarh besides Ex-officio or Ordinary Fellows elected by the Faculties and further it enumerates the gamut of powers and the role of Syndicate. Chapter II(A)(ii) of the Act enumerates the Regulations framed under Sections 20 and 31(2)(c) of the Act detailing the manner of election of the Syndics and Ex-officio or Ordinary Fellows. These provisions highlight the fact that a new Syndicate shall be elected not later than December 31st of each year and its year of office shall commence with effect from 1st January and in case of urgency the Vice-Chancellor is supposed to refer the matter to the Syndicate at its meeting for approval. However, with dismay, this Court has observed that all these provisions have been thrown off to the winds and what stands enumerated thereby is that the University is being run as a one-man show who in oblivion how a University can function as per these provisions governing it in the absence of a Syndicate and Senate and therefore, sufficiently counters the submissions of the respondents' counsels that as on date none of these bodies is continuing and which argument is in itself contrary to what is enshrined in Sections 8 and 13 of the Act. A 'Body Corporate' by its dictionary meaning itself suggests as an artificial person established for prescribing in perpetual succession certain rights which if conferred on natural persons would fail in the process of time and therefore being an invisible,

intangible and existing only in contemplation of law as a mere creator of law and therefore its existence cannot be extinguished.

To the specific query of this Court as to any tangible consent to the act of respondent No.2 by the Chancellor of the University, who heads the institution of its corporate-being over and above that of respondent No.2 and others, and when under Section 38 of the Act in case of any dispute the matter ought to be referred to the Chancellor, the counsel was clearly at loss of words. The premise that out of 90 Senators, only 7 have come up before this Court is no ground and any violation of the Act and Regulations can be challenged in a writ petition even by one of the persons claiming to be the one who is sufferer and it need not be arraying of the entire group of Senators as a single Senator can act on behalf of the entire body. The claim of the respondents' counsel where reliance is sought to be placed on Annexure R1/1 to Annexure R1/3 that certain outgoing Senators have sought deferment, does not impress the Court much. The claim by the respondents on the basis of Annexure R1/4 that keeping in view the enormous election process spread over a number of States, the Disaster Management Act, 2005 does not allow such a process, is apparently a way to duck the obligations by the respondents when it is quite evident to an ordinary prudent man in the country that the elections are being conducted to various bodies including Assemblies and local bodies etc. throughout the Country, does not augur well for the respondents. More so, the guise that because of the new education policy being contemplated and the fair admission by Mr. Satya Pal Jain, Senior Advocate representing the respondent University that the new education policy is likely to be implemented by 2035, is too far-fetched a preposition for the Court to take cognizance of such a stand. The cause of postponement sought to be highlighted by way of Annexures P-8, P-10 and P-19 has ceased to hold good in the present scenario and no advantage can be drawn of such a feeble argument. A question comes to the mind of this Court that under the provisions of the Act and the Regulations governing the respondent University, especially Section 31 provides for regulations regarding procedure to be followed in holding the elections, meetings, appointments etc. besides dealing with the preparation and maintenance of annual accounts and audit as well as management/cancellation/alteration of the provisions of the Act and the by-laws. It cannot be accepted that this body of the University which has very important functions to perform has ceased to exist. More so, under Chapter II(A)(iii) of the Act, the Board of Finance of the University has in its composition besides two members of the Syndicate, two members elected by the Senate and which Board is to look after the entire financial running of the affairs including the budget of the University. The most intriguing fact is that schedule of the Senate elections was notified, as has been conceded by the two sides, way back in November 2019 and after easing of pandemic it was bounden duty of respondent No.2 to ensure holding of these elections. No doubt, under Regulation 12.2 Chapter II(B) Vol.I under the Act empowers the Vice-Chancellor to postpone for the time-being elections but this does not clothe respondent No.2 with unbridled powers to carry on with the

exercise of these powers indefinitely when throughout the country elections are being held to various institutions, abundantly shows this act is laced with malice and motive. Furthermore, what surprises the Court is that the respondents are carrying on this illegitimate exercise indefinitely, merely on an advice obtained from the Standing Counsel of the respondent Administration, are matters which further create a doubt in the mind of the Court that all was not well with the act and conduct of the respondents. Till the new education policy being envisaged and the mainstay of the respondents' submissions is implemented, which is likely to be introduced by 2035, it would be too preposterous for the Court to hold that till then the provisions of the Act and the Regulations governing the respondents have to be put in cold-freezer.

The term of the present Senate was with effect from 01.11.2016 to 31.10.2020 and the petition has been filed on 18.12.2020 whereas the term of the Syndicate has ended on 31.12.2020, are matters which further implore the Court that for the proper running of the respondent University and ensuring that the very purpose of its formation is not jeopardized, the election process needs to be held at the earliest so that it does not lead to autocratic governance in the University affecting its democratic functioning which could be a scar on its reputation being one of the oldest and prestigious Universities of this country and internationally acknowledged as well.

In a democratic system, elections need to be held periodically which in turn leads to democratic governance and thus is a very essential function in decision making. Besides it leads to accountability and raising of conscious level resulting in better and efficient running/governance of an institution. The purpose of elections in the University keeping in view the scheme of the Act and the Regulations of the University ensures that the main administration of the University is vested with the Senate which looks after each and every functioning of it and in the absence of any bona fide, legally legitimate and valid reasons such orders of the respondent University as highlighted in (Annexures P-10, P16, P-19 and P-20) with the efflux of time and easing out of situation cannot put to hold the elections to the Senate indefinitely and therefore, this act of the respondents in passing the same smacks of mala fide, caprice and in utter violation of the Act and the Regulations governing the respondent University and therefore, being unconstitutional the same are hereby set aside in toto. Respondent No.2 is directed to ensure that the electoral process, which has been set into motion, be completed by all means within two months of the date of receipt of a copy of this order. The petition stands disposed off as allowed accordingly.