

(1972) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 389 of 1972

Ram Ishwar Singh and Another

APPELLANT

Vs

The Patna University and Another

RESPONDENT

Date of Decision : 30-03-1972

Acts Referred:

Patna University Act, 1962 — Section 10(12), 20(1)

Citation : AIR 1972 Patna 502

Hon'ble Judges : S. Anwar Ahmed, J; B.D. Singh, J

Bench : Division Bench

Advocate : Basu Deva Prasad and Radha Mohan Prasad, for the Appellant; A.G. and Rash Bihari Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application under Article 226 of the Constitution of India by two members of the Patna University Syndicate, Ram Ishwar Singh and R.A.K.N. Sinha, to quash the notice (annexure 5) dated the 7th March, 1972, issued by the Registrar of Patna University. By this notice, item No. 4 of the preliminary Senate Agenda issued on 3-3-72 for the meeting of the Senate to be held on the 31st March, 1972, was deleted.

2. According to Section 20 of the Patna University Act, 1961 (Bihar Act III of 1962) the Senate has also to elect five non-teacher members to the Syndicate in the manner prescribed by the Statutes. It is admitted that three members of the Syndicate would cease to be its members by efflux of time. The membership of petition No. 2, Dr. A.K. Sinha, expires today, the 30th of March, 1972, whereas the membership of other two persons, Shrimati Krishna Shahi and Syed Nasir Haider, expired on the 25th of this month. It is also not in dispute that a notice with agenda was issued on the 3rd of March, 1972, under the signature of the Registrar, Patna University, wherein item No. 4 related to the election of three new non-teacher members to the Syndicate, but by a subsequent notice (Annexure 5) the part of the agenda relating to the election of new non-teacher

members to the Syndicate (item No. 4) was deleted under the signature of the Registrar, Patna University, by the order of the Vice-Chancellor. The petitioners being aggrieved by the deletion of item No. 4 from the agenda as originally notified have come to this Court for issue of a writ of certiorari quashing the impugned notice (annexure 5).

3. A show-cause filed to this application on behalf of the respondents is to the effect that at present the Senate is short by 59 members and in the opinion of the Vice-Chancellor, as there was a large number of vacancies, there could not be a proper election to the Syndicate. Accordingly, the Vice-Chancellor thought it proper to delete item No. 4 from the agenda,

4. Mr. Basudeva Prasad, learned counsel for the petitioners, urged that once the agenda had been notified containing a number of items including item No. 4, the entire meeting could have been postponed but it would be illegal on the part of the Vice-Chancellor to get item No. 4 of the agenda removed or expunged and still hold the meeting.

5. The submission of the learned Advocate-General was that as a matter of fact item No. 4 was wrongly included in the agenda of 3rd March, 1972, and when the mistake was discovered the Vice-Chancellor was well within his rights to have this item deleted from the agenda. In support of their respective contentions, learned counsel for the parties placed before us the relevant sections of the Patna University Act and the clauses of the Statutes. Section 16 of the Act relates to the Senate and its various sub-clauses lay down the qualifications for persons who could be elected as members of the Senate. Clause 13 of the Statutes framed u/s 16 of the Act runs as follows:--

"13. Reporting of vacancies by Registrar:--

(1) The Registrar shall report to the Vice-Chancellor every vacancy which is likely to occur or which has occurred in the office of a representative or nominated member.

(2) Such report shall be made-

(a) in the case of a vacancy which will occur by efflux of time, not less than six weeks before the date on which such a vacancy is likely to occur;

(b) in the case of a vacancy occurring otherwise than by efflux of time, as soon as possible after the vacancy has occurred."

Sub-clause (1) of Clause 13 of the Statutes, as quoted above, deals with the vacancies and the power of the Registrar to make report with regard to them. While Sub-clause (2) (a) lays down that if a vacancy is going to happen in future by efflux of time, the Registrar should report the same to the Vice-Chancellor at least six weeks before the date on which such a vacancy would occur, Sub-clause (2) (b) is to the effect that if the vacancy is not caused by efflux of time, the matter should be reported to the Vice-Chancellor as soon as possible after the

vacancy has occurred.

By Clause 14 of the Statutes, the Vice-Chancellor has been authorised to take necessary steps to ensure that the vacancy whether it has already occurred or is about to occur is duly filled. These clauses speak of two kinds of vacancies, one, by efflux of time, i.e. where a member of the Senate has completed three years from the date of his election, in which case the Registrar has to inform the Vice-Chancellor six weeks prior to the date on which the vacancy is to take place; and in other cases a report is to be made by the Registrar after the vacancy has occurred, i.e. in case a member of the Senate dies or resigns, it will be for the Registrar to inform the Vice-Chancellor as soon as possible after the vacancy has occurred.

6. Our attention was also drawn to Clause 2 of the Statutes "Relating to the Syndicate in accordance with Clause (vi) (a), Section 20 of the Patna University Act, 1961". Section 20 of the Act deals with the Syndicate. Clause (vi) (a) of Sub-section (1) of Section 20 lays down that five non-teacher members shall be elected from and by the members of the Senate in the manner prescribed by the Statutes. Clause 2 of the Statutes relating to Syndicate made in accordance with Clause (vi) (a) of Section 20 says that whenever a vacancy occurs either by efflux of time or due to any other cause an election to fill up the vacancy shall be held at the next meeting of the Senate, either ordinary or special. Thus, Clause 2 differs from Clauses 13 and 14 which relate to Senate, and to which reference has been made earlier, in this respect that while Clauses 13 and 14 give different time for report being made to the Vice-Chancellor in a case in which the vacancy is to occur by efflux of time and where it happens otherwise than by efflux of time, but Clause 2 makes no such distinction and lays down that whenever a vacancy occurs either by efflux of time or due to any other cause (death or resignation), the election to fill up the vacancy shall be held at the next meeting of the Senate.

It is admitted that in the present case we are concerned with the filling up of vacancy in the Syndicate. Learned Advocate General emphasised the fact that if Clause 2 is given its plain meaning it can only mean that unless a vacancy has actually occurred, no steps can be taken to fill it up. According to him, the vacancy in the present case occurred on the 25th and on the 30th of March, 1972. Therefore, steps for filling up the vacancy could have only been taken after the 25th or 30th of March, 1972, and not earlier, and thus item No. 4 was wrongly included in the agenda dated the 3rd March, 1972. When this fact came to the knowledge of the Vice-Chancellor, he having been empowered under Sub-section (12) of Section 10 of the Act was duty bound to correct the mistake and this he has done by deleting item No. 4 as per annexure 5.

It seems to us that the interpretation put by learned Advocate-General on Clause 2 is correct. Clause 2 has to be read along with Clauses 3 and 5 of the Statutes. Clause 3 lays down that at least seven days prior to the meeting at which an election is to be held, the names of candidates duly proposed and seconded by

qualified electors should be submitted in writing to the Registrar; and when this is done, the Registrar (according to Clause 5) has to circulate the names of all such candidates to each member of the Senate at least four clear days before the meeting. These two clauses (Clauses 3 and 5) taken together require that there should be at least a gap of eleven days between the date of the meeting and the date on which the vacancy occurred. Clauses 2, 3 and 5 form part of the Statutes and cannot be violated. As a matter of fact, item No. 4 should not have formed part of the notice (annexure 1) and the Vice-Chancellor was well within his rights to remove it from annexure 1.

7. Stress was laid by learned counsel for the petitioners on the words "at the next meeting of the Senate" occurring in Clause 2 of the Statutes (relating to the Syndicate) framed u/s 20 of the Patna University Act, 1961. According to learned counsel, the meeting fixed for the 31st of March, 1972, was the next meeting. This is so according to the dictionary meaning of the word "next", but according to the interpretation put by us on Clause 2 read along with Clauses 3 and 5 of the Statutes, item No. 4 could not form part of the agenda of the meeting to be held on the 31st of March, 1972, for election of members to the Syndicate.

8. Mr. Basudeva Prasad also contended that once notice was issued to the members it could not be withdrawn unless all the existing members of the Senate consented thereto, Even assuming that as a general proposition of law the submission of learned counsel is correct, in view of the interpretation which we have put to Clause 2, the Vice-Chancellor had a duty cast upon him as laid down in Section 10 (12) of the Patna University Act, 1961, to see that the proceedings of the University were carried on in accordance with the provisions of the Act, the Statutes etc.

9. In the result, there is no merit in the application; it is accordingly dismissed. There will be no order as to costs.