

(1951) 05 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 6 of 1951

Ramani Kanta Bose

APPELLANT

Vs

Gauhati University

RESPONDENT

Date of Decision : 14-05-1951

Acts Referred:

Constitution of India, 1950 — Article 220, 226, 228, 30
Gauhati University Act, 1947 — Section 13, 21, 22, 3, 5

Citation : (1951) 05 GAU CK 0004

Hon'ble Judges : Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : S.K. Ghose, P. Chaudhuri and J.C. Sen, for the Appellant; J.N. Borah, for the Respondent

Judgement

Ram Labhaya, J.—This is a petition from Ramani Kanta Bose of Dhubri, under Article 226 of the Constitution of India. He has alleged that he is the founder-Secretary of the Governing Body of the Bholanath College at Dhubri. He also claims to be a guardian of two wards who are students of the said College. According to the allegations contained in the petition, Bholanath College is governed by a Governing Body constituted under the rules of the Institution. The principal is the ex-officio member of the Governing Body. He is also the Joint Secretary. The members of the teaching staff have the right to elect two members of the Governing Body from amongst themselves. The Governing Body has also to co-opt 3 members from amongst the guardians of the students and 3 members from amongst the donors, including a member of the Marwari community. The Governing Body has also two life members.

2. The Executive Council of the Gauhati University in its meeting held on the 5th July 1950 decided upon a scheme of re-organisation of the Governing Bodies of non-Government Colleges in the State of Assam. According to the scheme of reorganisation contained in the resolution of the Executive Council of the University, the Governing Body of non-Government colleges is to be constituted

as follows:

- (i) Deputy Commissioner or Sub-divisional Officer--Ex-officio;
- (ii) Principal--Ex-officio;
- (iii) Vice-Principal--Ex-officio;
- (iv) & (v) Two elected representatives of the teaching staff;
- (vi) & (vii) Two members nominated by the Government;
- (viii) & (ix) Two members nominated by the University;
- (x), (xi), (xii) & (xiii) 4 members other than members of the teaching staff to be co-opted by the other members.

Donors paying Rs. 10,000/- or more or their nominees shall be co-opted as life members, not more than one person being nominated by each donor. The President shall be elected from among the members. The Principal will be the Secretary of the Governing Body; where he is not the Secretary, he shall be appointed Joint Secretary.

3. By Anr. Resolution No. 7 of the same date (the 5th July 1950) the Executive Council decided to direct the Principals of the non-Govt. Colleges to take steps to re-organise the Governing Bodies of their colleges before the 30th September 1950 and the Deputy Registrar of the said University by his circular, dated, the 10th July 1950, addressed to the Principals of affiliated (non-Government) colleges, forwarded a copy of the scheme of re-organisation adopted by the Executive Council enclosing at the same time a copy of the Resolution No. 7, for necessary action. The Executive Council of the University has already nominated two members for the new Governing Body. The Governing Body of the Bholanath College could continue to function till the end of the year 1952. The grievance of the petitioner is that if the committee is re-organised according to the scheme of re-organisation decided upon by the Executive Council of the University, the existing Governing Body will practically be dissolved and the administration of the College would be transferred to a body dominated by members nominated by the Government and the University. It is urged that the direction of the University requiring re-organisation of the Governing Body of the Bholanath College constitutes an infringement of the fundamental right conferred on linguistic minorities by Clause (1) of Article 30 of the Constitution of India. It is also urged that the scheme of re-organisation adopted by the Executive Council of the Gauhati University for Governing Bodies of non-Government Colleges was "ultra vires" of the University.

4. The petition is supported by an affidavit.

5. The Registrar of the University has also put in an affidavit by which he has challenged the correctness of the statement contained in para. 12 of the petition. He has stated that the statement of the petitioner that the Bholanath College at

Dhubri is to all intents and purposes a minority college does not represent the true state of affairs. It is further stated that when the college was established, it was not even mentioned that it would be managed by any minority community. On the contrary, donations were asked for on the understanding that the College would be for the benefit of all communities irrespective of their language and religion and donations were collected from non-Bengali communities including the Assamese, the Marwaris, the Tribals and Ors. . Nothing was said in this affidavit about other allegations made in the petition.

6. The Constitution of the Governing Body of the Bholanath College is not before us. The name of the College does not suggest that it was founded for the benefit of any linguistic minority. According to the statement of fact contained in para. 7 of the petition, 3 members of the Governing Body have to be co-opted from amongst the guardians of the students, and 3 from amongst the donors including a member of the Marwari community. The Governing Body has got two life members. The petitioner has admitted in para. 2 of the petition that the College owed its existence to the munificence of the public whose untiring efforts brought it into existence.

7. It is clear that no linguistic minority was responsible for the foundation of the College. It was the public of the locality and no particular section of the public that brought it into existence. Donations apparently have been received from all communication. A Marwari had to be taken on Use Governing Body and 3 members had to represent the donors and 3 were to represent the guardian's of the students. These members apparently could come from any community. It has not been stated that there was any provision in the constitution of the Bholanath College that it was a college established for the benefit of any linguistic minority. There is no such statement contained in the petition. It is also a question as to whether Bengalis could be regarded as a linguistic minority in the area or the locality with which we are concerned. The figures given by the petitioner in para. 12 of his. petition show that there is a preponderance of Bengali students in the College.

8. Article 30 of the Constitution confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The question is whether the direction of the University requiring re-organisation of the Governing Bodies of non-Government colleges amounts to an infringement of the right of any minority community guaranteed to it by Article 30 of the Constitution of India. In order to bring the case under the first part of Article 30, a minority community has to establish its character first as a religious or linguistic minority. It is then to show that an institution was established by it and it will then follow that it will have the right to administer the educational institution according to its choice. There is no statement contained in the petition that the Bholanath College was an institution established by a minority. All that is said in para. 12 is that the Bholanath College is to all intents and purposes a minority College. The correctness of the statement has been

challenged by the Registrar of the University. But, even if correct, it would not bring the case under Article 30, for there is no statement that it was a College established by a minority. Without establishing the College, a minority cannot claim the right to administer it. On the other hand, facts stated in the petition show that the College was founded by the public, and it did not owe its existence to the efforts of any particular section of the population. It has not even been alleged that the purpose of the institution was to promote the interest of any minority community by administering the institution according to its choice by reason of its language or religion. The learned Counsel for the petitioner had no difficulty in realising that the facts stated in the petition itself do not help him to bring the case under Article 30 of the Constitution of India. He did not press that any other fundamental right guaranteed to the petitioner was infringed. We have no hesitation in finding that the scheme for the re-organisation of the Governing Bodies of non-Government Colleges which the University wants to enforce has not infringed any fundamental right of the petitioner or of any linguistic or religious minority.

9. The second contention raised is that the Resolution of the Executive Council for the re-organisation of the Governing Bodies of affiliated Colleges is "ultra vires" of the University. Mr. Ghose, the learned Counsel for the petitioner, has drawn our attention in this connection to Section 13 of the Gauhati University Act, which enumerates the powers of the Executive Council of the University. Under Clause (j), it can exercise all the powers of the University not otherwise provided for. The powers which the Act confers on the Gauhati University are given in Section 5 of the Act. Mr. Ghosh points out that the only power that the University has with respect to Colleges and Halls not maintained by the University is to recognise them or to withdraw their recognition. He urges that there is no other Clause of Section 5 which authorises the University to interfere with the management of a college not maintained by it, by directing it to constitute its Managing Committee or Governing Body in a certain manner. Mr. Bora, who has appeared on behalf of the University, has argued that the University is empowered by Clause (q) of Section 5 to do all such other acts and things which may be regarded as requisite for furthering the objects of the University as a Teaching and Examining body, and to cultivate and promote Arts, Sciences and other branches of learning. The learned Counsel on both sides have not referred us to any other provisions of the Act.

10. The question whether the University can give directions for regulating the formation of the Governing Bodies of colleges not maintained by it does not depend on a very large measure on the interpretation that may be placed on Clause (q) of Section 5. The purposes for which the University is constituted are given in Section 3, Clause (3) which provides that the University shall be deemed to be constituted for the purposes, among others, of making provisions for imparting education, for research and for the advancement and dissemination of knowledge in such subjects as the University may deem fit. The clause is apparently not exhaustive of the purposes of the University. Clause (q) of Section

6 by necessary implication, if not expressly, includes among the objects of the University, the cultivation and promotion of Arts, Sciences and other branches of learning. The word "purposes" in Clause (3) of Section 3 and "objects" in Clause (q) of Section 5 have been used in the same sense. The University has to function admittedly as a Teaching and Examining body besides. The question is whether the constitution of a Governing Body of a college not maintained by the University has any connection with any of the objects of the University mentioned in Clause (q). Mr. Ghosh does not find any connection between the furtherance of these objects and the rules which may govern the constitution of the Governing Body of a college. He thinks that the cultivation and promotion of Arts, Sciences and other branches of learning is essentially connected with the functions of the University as a Teaching body and therefore it can do all acts and things which promote its objects as a Teaching-body. In relation to colleges not maintained by it, it is merely an Examining Body and its power is limited to granting or withdrawing recognition under Clause (j).

11. The question would not have been so easy to decide if there had been no other provision in the Act bearing on the question before us. Section 21 of the Act, however, to which no reference was made by either of the counsel, supplies the answer to the question in no uncertain terms. It provides that subject to the provisions of this Act, the Statutes (of the University) may provide for among other matters described in the section.

The condition for the recognition by the Executive Council of Colleges and Halls not maintained by the University and for the withdrawal of such recognition and the management of such Colleges and Halls.

12. It is clear that the Statutes of the University may provide for the conditions which qualify a college not maintained by the University for recognition by the University and also for the withdrawal of such recognition. The Statutes may also provide for the management of such Colleges and Halls. An institution like a College requires for the efficient performance of its functions a Governing Body consisting of responsible persons of recognised status and qualifications. The University may by its Statutes lay down the pattern for the constitution of Governing Bodies or give directions with respect thereto and may not grant or may withhold recognition until the Governing Body is of the requisite pattern. Clause (g) of Section 21 does recognise the power of the University to provide for the management of Colleges and Halls not maintained by it and unless it is argued (which has not been done) that this clause is ultra vires of the Legislature; it will have to be conceded that it is not outside the powers of the University to make provisions for the management of the Colleges falling in the category of Bholanath College. Making provisions for the management of Colleges and Halls not maintained by it would undoubtedly involve giving directions regulating the constitution of the Governing Bodies in whom the management vests.

13. But though the University may provide for the management of Colleges and

Halls not maintained by it, the provisions that it may make must be made in conformity with the rules or the procedure prescribed in the Act. The provision for the management can only be made by Statutes u/s 21. The Statutes must be approved by the "Court" of the University as provided by Section 22. The Executive Council has the power to submit any Statute that it proposes to the "Court" under Clause (3) of Section 22. If the "Court" approves the Statute, it must be submitted to the Chancellor for his assent. It is only when the Chancellor has assented to it that it assumes validity.

14. Specific provisions of the Act, namely, Sections 21 and 22, embody procedure by which the University may make provisions laying down the conditions for recognition and its withdrawal and also for the management of Colleges and Halls not maintained by it. In these circumstances it would be die to claim that the powers could be exercised by the Executive Council or by the University through the Executive Council. The provisions coming under Clause (g) of Section 21 must have the approval of the "Court" and the Chancellor.

15. The Resolution of the Executive Council which has been forwarded to the Governing Body of the Bholanath College by the Deputy Registrar of the Gauhati University, though not in excess of the powers of the University, has been passed or adopted by the Executive Council in total disregard of the provisions contained in Sections 21 and 22 and it has not got the force or validity of a Statute.

16. This takes us to the question whether in the circumstances of this case any relief can be allowed to the petitioner under Article 226 of the Constitution.

17. It is conceded by Mr. Ghosh that the petitioner is applying for relief in his own right. His petition is not in a representative capacity on behalf of the Governing Body or its constituents. He has described himself as a founder-Secretary. He also claims to represent two wards. His office as a member and Secretary of the Governing Body carries no remuneration. It is honorary. He can function as a Secretary if the existing Governing Body is allowed to continue its existence till the end of 1952 when its life comes to an end under the existing Constitution of the College.

18. Mr. Ghosh has not urged that any of the prerogative writs expressly mentioned in Article 226 can be issued in this case. The direction complained of emanates from an executive authority. It is also an order of an executive nature. It cannot be contended that the University was acting as a quasi-judicial body and its direction or order was quasi-judicial in character. A writ of certiorari does not obviously lie.

19. Mr. Ghosh agrees that a remedy by suit would be available. His contention is that a legal right of the petitioner has been infringed. A remedy by action by suit should be available if the infringement of a legal right can be proved. A writ of mandamus cannot be issued when Anr. remedy is available, vide "Wishnath Ramkrishna v. 2nd Addl. Dist. Judge, Nagpur AIR 1951 Nag 6 & Bukhtiarpur Bihar Light Rly. Co. Ltd. Vs. State of Bihar and Others, No effort has been made

to show that any other writ specifically mentioned in Article 226 can be issued appropriately. The learned Counsel has however, argued that there being an infringement of a legal right of the petitioner, even though not of a fundamental right, this Court has the power to issue a suitable writ or order not covered by the description of any of the prerogative writs.

20. There are two aspects of the question, namely, (1) whether writs or orders other than the prerogative writ can issue at all and (2) if so, whether they should be issued only when a fundamental right is infringed.

21. There can be no doubt that directions, writs or orders other than writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari can issue. The High Courts have been given powers in express terms to issue "to any person or authority, including in appropriate cases, any Government" within the territories in relation to which it exercises jurisdiction directions, orders or writs, including writs in the nature of habeas corpus, etc. The writs specifically named are included in the writs that may issue. In the matter of the description of the writs or orders that may issue, the Article is not exhaustive. Other suitable writs or orders can, therefore, undoubtedly issue. In *Shyamapada Ganguly Vs. Abani Mohan Mukherjee*, Bose, J. held at p. 330 that:

under Article 228 of the Constitution the power of the Court is not confined to the power to issue writs in the nature of mandamus and other writs mentioned therein.

The same view was expressed by the learned Chief Justice of the Patna High Court in *Brajnandan Sharma Vs. The State of Bihar*,

22. The writs or orders which may issue under Article 226 can admittedly be issued for enforcement of any of the rights conferred on the citizens by part III of the Constitution of India. These writs can also be issued for "any other purpose". The words "any other purpose" ought to mean any purpose other than the enforcement of fundamental rights. Enforcement of other rights, legal or enforceable at law, would, therefore, be covered by the words "any other purpose". If the purposes of the writs are confined merely to the enforcement of fundamental rights, we would not be giving effect to the words "for any other purpose". These words cannot be regarded a surplusage. They have an obvious significance and a purpose. They are meant to confer on the High Courts power to issue prerogative writs and other writs, order or directions even in cases of infringement of rights which are not covered by the chapter on Fundamental rights. The result is that the powers of the High Court are not confined to the issue of prerogative writs only. Other suitable writs or orders can also issue and infringement of legal rights other than fundamental rights can, also, be remedied by suitable writs under Article 226 of the Constitution.

23. A Pull Bench of the Bombay High Court interpreted this Article in *Emperor Vs. Jeshingbhai Ishwarlal*, Chagla, C.J. observed as follows:

Further its jurisdiction is not merely confined to the writs which it issued in the past, but power has been conferred upon it to issue directions, orders or writs for the enforcement of any of the rights conferred by Part III which deals with fundamental rights. It is not possible to read directions, orders or writs as being ejusdem generis with what follows, because these "directions, orders or writs" refer to a larger category in which writs in the nature of habeas corpus, mandamus, quo warranto and certiorari are included. The article further confers upon this Court the power to issue not only writs in the nature of various categories specified in that article, but these writs themselves, and further the article goes on to state that these writs or orders can be issued not only for the enforcement of fundamental rights but for any other purpose.

24. The decision bears on both aspects of the question under consideration.

25. In *Bagaram Tuloule Vs. The State of Bihar*, a Full Bench decision, the learned Chief Justice observed as follows:

Undoubtedly, therefore, Article 226 contemplates the issue of writs and directions for purposes other than the enforcement of the fundamental rights. At the same time, the words can hardly mean that the High Court can issue writs for any purpose it pleases. I think the correct interpretation is that the words mean for the enforcement of legal right and the performance of any legal duty. To that extent the words must be read ejusdem generis, which is the ordinary principle of construction.

In *"Harendra Nath v. State of Madh. B"* AIR 1950 MP 46, it was held (at p. 51) that:

Consistently, therefore, with the object of the article the words "any other purpose" must be construed to refer to all purposes for which at English Common law the high prerogative writs are issued to wit, for the protection of the rights of the individuals, to check excess or abuse of powers.

26. The petitioner (in the above case) was found entitled to invoke the jurisdiction of the Court under Article 226 to secure the enforcement of his rights under the Indore Municipal Act.

27. These authorities are all agreed that the words "for any other purpose" were meant to include even cases in which no infringement of any fundamental right was alleged. Enforcement of, legal rights compelling the performance of a legal duty, checking abuse of power or excess of jurisdiction, can legitimately be regarded as other purposes for which the jurisdiction of the Court under Article 226 may be invoked.

28. No authority has been cited in support of the view that the jurisdiction of the Court under Article 226 can be invoked only in cases where the infringement of a fundamental right is involved. Mr. Bora has, however, insisted that the petitioner must show at least the infringement of a legal right before he could invoke the jurisdiction of this Court under Article 226. In the Patna Full Bench, relied on by

the learned Counsel for the petitioner, it was held that the extraordinary jurisdiction under Article 226 may be invoked where a legal right is infringed. It may, therefore, be regarded as common ground that the infringement of a legal right may in appropriate cases attract the exercise of the discretionary powers of the Court under Article 226. The Article does not however, entitle an aggrieved party to claim relief under it as of right. The issue of prerogative writs mentioned in the Article and also all other suitable writs or orders that the Court is authorised to issue is discretionary. Every infringement of a legal right was not intended to be remedied by Article 226. It does not provide a short cut in place of the usual remedies available at law. As held in *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*,

the powers under this Article should be sparingly used and only in these clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him.

The Pull Bench of the Patna High Court in the case referred to above *Bagaram Tuloule Vs. The State of Bihar*, held that

it court-never have been intended that resort could be had to this extraordinary procedure where an adequate remedy is available by ordinary legal process, for example, by suit, otherwise the ordinary legal procedure, including the payment of court-fees, would be abrogated. An application under Article 220 is and must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief.

29. In 56 C.W.N. 326, it was held that

a remedy under Article 226 of the Constitution is and must remain an extraordinary remedy only to be availed of where ordinary legal process cannot give adequate and prompt relief.

30. I am in respectful agreement with the view expressed in these cases. It is obvious to me that the framers of the Constitution never intended or thought of abrogating all ordinary modes of redress for the infringement of legal rights when conferring on the High Courts the power to issue prerogative writs and other directions, writs or orders for the enforcement of fundamental rights and for other purposes. The remedy is apparently extraordinary and should avail only when recourse to ordinary law cannot lead to adequate and prompt redress or where failure or miscarriage of justice flowing from the act complained of cannot otherwise be averted. Mr. Ghosh has not questioned the correctness of this proposition. His contention is that mere existence of a remedy, for example, by suit should not be a sufficient answer to a petition under Article 226. He points out that the law provides a remedy for every infringement of a legal right and if the aggrieved party must always be compelled to pursue that remedy, Article 226 would become redundant. But this, to my mind, is an unfair criticism of the view enunciated above. It is not merely the existence of an alternative remedy that should justify declining action under Article 226. It is only when adequate

and prompt relief is available otherwise that Article 228 would not be permitted to be utilised as an easy and inexpensive substitute for it. To persuade the Court to grant discretionary relief immediately by an extraordinary process it should be for the petitioner to show if he has alternative remedy that the recourse to it would not bring him adequate and prompt relief.

31. The learned Counsel for the petitioner concedes, that the petitioner has his remedy by suit. He has not shown how this remedy by suit is not adequate or sufficient for his purpose. It is not alleged that the existing Governing Body has been dissolved and a new Governing Body has been reconstituted. There is no allegation that the petitioner has been relieved or is about to be relieved of his position or charge as a Secretary by the order of any competent authority. The University may by its Statute duly passed and promulgated provide for the management of colleges not maintained by it. When such a Statute is passed, the Governing Bodies of such Colleges may agree to abide by the requirements, of the Statute or they may decide not to comply with them. If they decide not to comply, the University can merely withdraw the recognition. It has no power to compel compliance with its resolution in any other way. If in order to avoid withdrawal of recognition, the Governing Body agrees to reconstitute itself so as to bring it in conformity with the requirements of a valid Statute of the University, the petitioner may not be in a position to complain. He may possibly have the right to function as member and a Secretary of the existing Governing Body. But if this Body agrees to the proposed reconstitution of the Governing Body by dissolving itself, the petitioner can have no grievance and certainly not against the University. If there is any illegal dissolution of the Governing Body, his right to relief if any may be against his colleagues and not the University. In the event of the Governing Body not complying with the Statute of a University, recognition may or may not be withdrawn. It will depend on the University to decide whether to withdraw recognition. If the University actually withdraws recognition, the Governing Body and its constituents may have a grievance. What remedy would suit that situation, if and when it arises, is beyond the scope of the present proceeding. So far what has happened is that the Executive Council of the University has sent through the Deputy Registrar what may be regarded as a mere proposal to the Governing Body proposing reconstitution of the Governing Body on the line indicated in the resolution of the Executive Council. Such a proposal does not constitute any infringement of any personal or individual right of the petitioner. Assuming that it does amount to an infringement of a legal right of the petitioner we are not satisfied that it is not possible for the petitioner to obtain adequate and prompt relief by suit.

32. This petition, therefore, must fail and is dismissed.

Thedani, C.J.

33. I agree, but would add a few words. In my opinion, the words "and for any other purpose" in Article 226 of the Constitution, are not to be read as meaning for any other purpose whatsoever. In a case where a petitioner fails to show that

an infringement of any of the fundamental rights given to a citizen by the Constitution of India, has occurred, I would ordinarily decline to grant relief by an appropriate writ under Article 226 of the Constitution of India to enforce a legal right or compel performance of a legal duty unconnected with any of the fundamental rights--the more so, when the enforcement of such a legal right or compelling performance of a legal duty depends upon the determination of the question whether the act from which the legal right or duty is said to arise, is an act done in excess of jurisdiction and powers conferred upon a statutory body by an enactment.

34. In the present case, the resolution in question passed by the Executive Council of the Gauhati University is assailed on the ground that it is in excess of the powers conferred on the Gauhati University by the Gauhati University Act. It seems to me, however, that the passing of a resolution by the Executive Council of the Gauhati University, by itself, cannot give rise to a right to move the High Court by a petition under Article 226 of the Constitution of India. The petitioner in this case has not set out in the petition, apart from what he has described as fundamental rights what legal right he wishes to endorse or what legal duty he wishes the Court to compel the performance of. It was only in the course of arguments that Mr. Ghose contended that the petitioner had an existing and continuing right to be a member of the Governing Body of the Bholanath College at Dhubri. I am content to say that where the existence of a legal right, as distinct from a fundamental right, rests upon facts which have to be proved, remedy by way of a Writ under Article 226 of the Constitution of India is highly inappropriate. Facts giving rise to such a right or duty must ordinarily be proved by the person alleging the right in the ordinary civil Courts of first instance having jurisdiction.