

(1995) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 1062 of 1993

Sarla Sangwan and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-01-1995

Acts Referred:

Haryana and Punjab Agricultural Universities Act, 1970 — Section 13(6)

Citation : (1995) 111 PLR 104

Hon'ble Judges : Harphul Singh Brar, J

Bench : Single Bench

Advocate : U.D. Gaur and Sunil Gour, for the Appellant; H.L. Sibal, A.G. and G.S. Nihalsinghwal, A.A.G., for the Respondent

Judgement

Harphul Singh Brar, J.—In this petition under Articles 226/227 of the Constitution of India, Sarla Sangwan and Raghbir Singh Balhara, Petitioners, have sought the quashing of the proceeding of the 146th Meeting of the Board of Management of Chaudhary Charan Singh Haryana Agricultural University, Hisar, (hereinafter called the University) held on December 29, 1992 regarding Item No. B-1 and B-21.

2. Briefly, the facts stated in the petition are that the University was established under the provisions of Section 3 of the Haryana and Punjab Agricultural Universities Act, 1970 (hereinafter called the Act). The university is a statutory body having perpetual succession and common seal with powers to acquire, hold and dispose of the property and to sue and be sued in its name.

3. The State of Haryana has complete and pervasive control over the University and that the University is discharging the functions of the government as per the provisions of Section 7 of the Act.

4. The Establishment powers and duties of the Board of Management of the University are Governed by the provisions of Sections 13 and 14 of the Act, relevant portions of which are reproduced hereunder:-

"13(1). The appropriate Government shall, within a period of one year from the commencement of the Act, establish a Board for the Management of the corresponding University.

(2) The Board of the Haryana Agricultural University shall consist of

(a) the Vice-Chancellor;

(b) the Chief Secretary to the Government of the State of Haryana;

(c) the Secretaries to the Government of the State of Haryana in the Department of.

(i) Agriculture;

(ii) Finance; and

(iii) Community Development.

(d) Persons not being officials, appointed by the Government of the State of Haryana from amongst the following categories of persons, namely: -

(i) one from amongst persons who are, in the opinion of that Government, eminent agricultural scientists with a background of agricultural research or education.

(ii) two from amongst persons who are, in the opinion of that Government progressive farmers or livestock breeders having experience of and interest in, scientific farming and livestock improvement.

(iii) One from amongst persons who are in the opinion of that Government or livestock breeders, associated with agricultural development and.

(iv) one from amongst women who are, in the opinion of that Government outstanding social workers, preferably with a background of rural advancement.

(3) x x x x

(4) The Board of the Haryana Agricultural University shall associate with its meeting the following persons as technical advisers, but the persons so associated shall not be entitled to vote at any such meeting:-

(a) The Director of Agriculture, Haryana,

(b) The Director of Animal Husbandry, Haryana and

(c) two officers appointed by the Board of that University from amongst the Deans of Directors of that University.

(5) Provided that two members of the Board, not being official members shall retire at the end of each year.

(6) The members of the Board, other than the official members, shall determine by lots, the members who shall retire at the end of each year.

(7) A member of the Board may resign his office by a notice in writing, addressed to the Chancellor of the corresponding University.

(8) If, for any reason, a vacancy occurs in the office of a member of the Board, the appropriate government may, fill the vacancy by appointing another person thereto in accordance with the provisions of this section;

(9) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of such board.

(10) Four members of the Board, in the case of Haryana Agricultural University, and five members of the Board, in the case of the Punjab Agricultural University shall be a quorum for a meeting of the Board.

Provided that if a meeting of the Board is adjourned for want of quorum, no quorum shall be necessary at the next meeting for the transaction of the same business.

(11) The Chancellor shall be the Honorary Chairman of the Board and the Vice-Chancellor the Working Chairman.

(12) xxxxx

(13) On the commencement of this Act, the members of the Board of Management of the existing University shall be deemed to have vacated their offices as such;

(14) The powers and duties of the Board shall be as follow:-

(a) to approve the budget submitted by the Vice-Chancellor.

(b) to hold and control the property and funds of the University and issue any general directive on behalf of the University.

(c) to accept or transfer any property on behalf of the University.

(d) to administer funds placed at the disposal of the University for specific purposes;

(e) to invest money belonging to the University.

(f) to appoint the officers, teachers and other employees of the University in the prescribed manner.

(g) to direct the form and use of common seal of the University.

(h) to appoint such committees as it may deem necessary for its proper functioning;

(i) to borrow money for capital improvements and make suitable arrangements for its repayment.

(j) to appoint the Vice-Chancellor subject to the provisions of Section 15.p-

(k) to meet at such times and as often as the Board may deem necessary.

Provided that regular meetings of the Board shall be held at least once in every two months,

(1) to regulate and determine all matters concerning the University in accordance with this Act and the Statutes, and to exercise such powers and to discharge such duties as may be conferred on or imposed upon the Board by this Act or the Statutes."

5. The State of Haryana appointed Sarla Sangwan petitioner No. 1 and Raghbir Singh Balhara petitioner No. 2 as non-official members of the Board of Management (hereinafter called the Board) of the University, with effect from February 21, 1991 and January 23, 1992, respectively u/s 13 of the Act.

6. It is alleged in the petition that the Vice-Chancellor, respondent No. 6 has been committing a number of irregularities, illegalities and manipulations in the affairs of the University and as Members of the Board, the petitioners had been writing to him as well as the University in this behalf. Some of these letters, dated May 21, 1992, August 29, 1992, September 4, 1992, September 28, 1992 and October 30, 1992, are attached as Annexure P-5 to P-10 respectively with the petition. The above said letters had been sought to be produced in the 146th Meeting, dated December 29, 1992, a part of which has been sought to be quashed in this petition, by R.S. Balhara, petitioner No. 2.

7. It is further stated in the petition that the Vice-Chancellor, i.e. respondent No. 6 should not have attended much less presided over the Meeting of the Board held on December 29, 1992, when allegations against him were to be discussed and decisions arrived at.

8. It is then alleged in the petition that petitioner No. 2, R.S. Balhara in his letter, dated September 4, 1991 annexed as Annexure P-7 with the petition had pointed out that three Members whom the Vice-Chancellor had shown as being present and showed their signatures in token of their having attended the Meeting on May 7, 1992 had, in fact not attended the meeting. On the insistence of petitioner No. 2 Shri Balhara the Secretary, Agriculture Department, Shri M.K. Miglani was appointed Enquiry Officer. In the same letter, adverse remarks shown against Dr. R.S. Hooda had also been disputed. Both the matters were entrusted to Shri Miglani, Enquiry Officer who after conducting the enquiry, reported that both charges were proved, i.e. presence of three persons recorded was wrong and the adverse remarks shown had earlier been expunged and an entry had been incorporated in his Character Roll.

9. It is further alleged in the petition that in the Agenda for the 146th Meeting held on December 29, 1992, the matter regarding the letters aforesaid sent by the petitioners was at Serial Hem B-1, whereas the matter relating to retirement of non-official members was at item B-21 but the Vice-Chancellor stated that the matter at Item B-2 relating to page 29 to 105 was lengthy and would be taken

up later because the Chief Secretary was in a hurry to go. So, item B-21 was taken up first.

10. At that stage, petitioner No. 2, R.S. Balhara produced a unanimous resolution, dated December 29, 1992 copy of which is attached as Annexure P-4 with the petition, signed by the five non-official members which reads as under :

"Resolved that no retirement can take place in view of the fact that none of the non-official members has yet completed three years tenure as provided u/s 13(5) of the Act which is the leading provision and which prevails over any other inconsistent subordinate provision as per law laid down by Supreme Court in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., and Smt. Laxmi Devi Vs. Sethani Mukand Kanwar and Others,

When the Vice-Chancellor observed that this had been the practice, petitioner No. 2 R.S. Balhara stated that according to the opinion of the Legal Remembrancer, a non-official member, who had not completed one year, could not be retired and, thus, Sarvshri Hukam Singh and Tekram had not been included in lots on this account.

11. The next allegation in the petition is that immediately thereafter, the Vice-Chancellor took out some slips from his pockets and official member Shri Lamba picked two slips out of them and gave to the Vice-Chancellor, who declared that R.S. Balhara and Smt. Sarla Sangwan, be considered as retired.

12. The drawing of lots on December 29, 1992, in the 146th Meeting has been thus, stated to be motivated, mala fide, pre-planned, in order that the complaints by members of the Board, i.e. the petitioners against the Vice-Chancellor were not taken up, discussed and decided. Even the draw of lots had not been done according to sound procedure.

13. The decision on the report of the proceedings on Item B-1 itself shows the non-application of mind regarding the serious allegation made against the Vice-Chancellor. The decision reads as under :-

"The role of Member of Board of Management already stands well defined vide item No. B-1 of 15th meeting of Board of Management held on 24.6.1972. Also the observations of the Hon. Chief Secretary of the Board of Management held on 28.10.1992 further clarified the position. Thus, the issue already stands decided."

It is mentioned in the petition that the said complaints came up before the Board for the first time, whereas the decision indicates that these had already been decided.

14. It is then alleged that it was only the non-official members who were competent to decide the retirement of the non-official members. The official Members of the Board had no say in this matter at all. The action of retiring the petitioners, thus, is non-est on this ground alone.

15. It is further alleged in the petition that the proceedings of the meeting had not been recorded correctly. Thus, petitioners 1 and 2 had sent their objections annexed as Annexures P-2 and P-3 respectively, to the Registrar of the University.

16. Reply has been filed by Shri S.C. Chaudhary, Joint Secretary to Government Haryana Agriculture Department, Chandigarh, and respondent No. 5, Shri S.N. Roy, Registrar, Chaudhary Charan Singh, Haryana Agricultural University, Hisar. No other respondent including respondent No. 6, Dr. A.L. Chaudhary, who was the Vice-Chancellor at the relevant time and had presided over the Meeting of the Board and against whom specific allegations have been made in this petition, has preferred to file the reply to the Amended petition. Amended Petition was filed by the petitioners after getting permission from the Court.

17. The learned counsel for respondent No. 6, was specifically asked as to whether respondent No. 6 has filed any written statement to the Amended Petition or any statement has been furnished by him saying that he endorsed the written statement filed to the un-amended petition. His learned counsel says that neither any reply has been filed by respondent No. 6 nor is there any statement saying that respondent No. 6 adopts the written statement filed by him, earlier in reply to the un-amended Petition. Thus, respondent No. 6 has consciously preferred not to file the reply to the averments made by the petitioners in the Amended Writ Petition. Though Annexures are said to have been attached with the reply filed by Shri Roy respondent No. 5, yet the same does not contain Annexures so mentioned therein.

18. The answer to most of the allegations given in the reply by Shri S.C. Chaudhary, Joint Secretary to Government, Haryana, Agriculture Department, Chandigarh, is a mere denial for want of knowledge or for the averments not being related to him.

19. Respondent No. 5 - The Registrar of the University has generally denied the assertions and allegations made in the petition and he has denied the allegations made by the petitioners against the Vice-Chancellor also, though according to the learned counsel for the petitioners. Shri S.N. Roy, who has filed the reply, was neither the Registrar nor was present at the relevant Meeting, i.e. 146th Meeting held on December 29, 1992.

20. Replication was filed by the petitioners in which the assertions made by them in the petition have been generally asserted and the reply given by both the Joint Secretary to Government, Haryana, as well as respondent No. 5 have been denied.

21. The learned counsel for the petitioners has urged the following main grounds to quash item No. B-1 and B-21 of the proceedings of the 146th Meeting held on December 29, 1992, annexed as Annexure P-1 with the petition.

(i) Official Members of the Board were not competent to retire the petitioners who were the non-official members of the Board, as it is so specifically provided

under Sub-section (6) of Section 13 of the Act. Thus, the proceeding/decision of the Board in 146th Meeting of the Board of Management of the University held at 2.30 P.M. on December 29, 1992 is illegal, unconstitutional and against the specific provisions of the Act.

(ii) the proceedings/decision of the Board of Management of Item No. B-1 in its 146th Meeting held on December 29, 1992, is illegal, arbitrary, mala fide and without an application of mind regarding, the serious allegations made against the Vice-Chancellor who was the Chairman of the Board in that meeting as the said complaints came up before the Board for the first time, whereas the decision indicates that these had already been decided. Thus, the decision on Item No. B-1 is also liable to be set aside.

(iii) that proviso to Sub-section (5) of Section 13 of the Act is ultra vires the Act and the Constitution if it conveys the meaning that the non-official members appointed for three years under Sub-section (5) of Section 13 can be retired earlier, that is, before the expiry of the period of three years.

22. It may be stated that while issuing Notice of Motion, a Division Bench of this Court ordered that the offices of petitioners Smt. Sarla Sangwan and Shri R.S. Balhara shall not be filled. While admitting the petition, the interim direction given at the time of Motion hearing was ordered to continue.

23. I have heard the learned counsel for the petitioners as well as the respondents at length.

24. Regarding Ground No. (i) it will be relevant to reproduce hereunder Sub-sections (5) and (6) of Section 13 of the Act.

(5) the term of office of the members of the Board, other than the official members, shall be three years.

Provided that the two members of the Board shall retire at the end of each year.

(6) the members of the Board, other than the official members, shall determine by lots, the members who shall retire at the end of each year.

25. The decision alleged to have been taken on Item No. B-21 by the Board in its 146th meeting held on December 29, 1992, copy of which is annexed as Annexure P-1 with the petition would be relevant to reproduce hereunder :-

"Item No. B-21: Drawal of lots for retirement of two non-official members.

As per Sub-sections 5 and 6 of Section 13 of Haryana and Punjab Agricultural Universities Act, 1970, and the practice of the University, lots for retirement of the two non-official members were drawn. As per the draw of the lots, Smt. Sarla Sangwan and Sh. R.S. Balhara retire from the membership of the Board w.e.f. 31.12.1992.

Immediately, after the draw of the lots, Sh. R.S. Balhara and Smt. Sarla Sangwan voluntarily withdrew from the meeting of the Board and did not

participate in the subsequent deliberations".

26. In my considered opinion, the proceedings/decision taken by the Board of Management of the University in its 146th Meeting held on December 29, 1992, which is annexed as Annexure P-1 or any action taken thereunder, is clearly violative of Sub-section (6) of Section 13 of the Act.

27. I have gone through the proceedings of the 146th meeting of the Board of Management which are annexed as Annexure P-1 with the petition as well as the original proceedings of that meeting produced before me by the learned counsel for the University. Neither the proceedings of the meeting indicate nor any other record has been produced before me which discloses that the non-official members of the Board determined by lots that the petitioners Smt. Sarla Sangwan and Shri R.S. Balhara stood retired on December 29, 1992. It has neither been brought to my notice by the learned counsel for the respondents nor has been shown to me from any record that the mandatory provisions of Sub-section (6) of Section 13 of the Act had been complied with while retiring the petitioners when admittedly Smt. Sarla Sangwan and Shri R.S. Balhara, petitioner Nos. 1 and 2 were appointed as non-official members of the Board with effect from February 21, 1991 and January 23, 1992, respectively. On the other hand, it has been specifically alleged by the petition that when item No. B-21 was taken up, Shri R.S. Balhara, petitioner No. 2, produced a unanimous Resolution, dated December 29, 1992 (copy attached as Annexure P-4) signed by the five non-official members, which reads as under :-

"Resolved that no retirement can take place in view of the fact that none of the non-official members has yet completed three years tenures as provided u/s 13(5) of the Act which is the leading provision and which prevails over any other inconsistent subordinate provision as per law laid down by Supreme Court in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., and Smt. Laxmi Devi Vs. Sethani Mukand Kanwar and Others,

It is then specifically alleged in Para 15 of the petition that the Vice-Chancellor took out some slips from his pockets and official member Shri Lamba picked two slips out of them and gave to the Vice-Chancellor, who declared that Shri R.S. Balhara and Smt. Sarla Sangwan be considered as retired.

28. It is then again specifically alleged in Para No. 17 of the petition that the drawing of lots on December 29, 1992 was motivated, mala fide pre-planned, in order that complaints by members of the Board i.e. the petitioners against the Vice-Chancellor were not taken up, discussed and decided, as the Vice-Chancellor took up item No. B-21 earlier than Item No. B-1 which had to be taken up first. So, specific allegations have been made in the petition that the decision of the Board was not in accordance with law and was mala fide and motivated. The allegations made in the petition have not been denied by respondent No. 6, i.e. Vice-Chancellor/Chairman of the Board who presided over the 146th Meeting on December 29, 1992 in which the relevant decision of

retiring the petitioners was taken vide Item No. B-21. It is not discernible from the Minutes of the meeting that lots for retirement of the two non-official members were drawn by the non-official members present in the meeting as provided under Sub-section (6) of Section 13 of the Act. The non-compliance, of the abovesaid provision is further fortified from the reply of respondent No. 5 furnished in Para 15 thereof saying that Dr. Lamba, an official member of the Board in the relevant meeting picked up the slips and not the non-official members.

29. Shri S.N. Roy who has filed written statement on behalf of respondent No. 5 was admittedly neither the Registrar of the University at the relevant time nor was he present at the relevant meeting, i.e. the 146th meeting held on December 29, 1992. Shri S.N. Roy has verified the facts stated in the written statement on the basis of his knowledge and information derived from the official record. A reading of the written statement filed by him does not, however, indicate that the mandatory provisions of Sub-section (6) of Section 13 of the Act were complied with while deciding Item No. B-21 ordering the retiring of the petitioners in the 146th meeting of the Board. Shri Roy furnished such facts in his reply in order to justify the decision for retiring the petitioners as in accordance with law which are not borne out from the official record, obviously because neither he is expected to have personal knowledge as he was not present in that meeting nor has he perhaps seen the recorded proceedings or any other official record indicating the compliance of the statute while retiring the non-official members i.e. the petitioners in this case. Paras 15 and 17 wherein allegations of mala fide arbitrariness and specific allegations against the Vice-Chancellor, respondent No. 5 of taking out some slips from his pocket and an official member. Shri Lamba picking up two slips out of them and giving those to the Vice Chancellor who ultimately declared that Shri R.S. Balhara and Smt. Sarla Sangwan petitioners be considered as retired, and non-compliance of Sub-section (6) of Section 13 of the Act in retiring the petitioners are levelled, have been replied to by Shri S.N. Roy, in his written statement the relevant portion of which is reproduced as under :-

"15. That the contents of this para are altogether false and imaginary and are thus denied. The facts of the matter are as follows:- Five slips containing one each name of the non-official members were prepared by the Secretary of the Board of Management in the meeting itself in the presence of all the members and shown to them with the name of each such members before these were folded, shuffled and placed on the table before the non-official members to enable them to pick-up two out of them to determine about the members who had to retire under the provisions of the Act. First of all Shri S.S. Hara, a non-official member of the Board, was requested to pick up the two slips. He declined to do so. Thereafter, other non-official members were asked to do so. They too refused to do so and at that time to ensure timely observance of the mandatory provisions of Haryana and Punjab Agricultural Universities Act, Sh. H.S. Hara, a non-official member requested Dr. P.S. Lamba who is a nominee of the ICAR and

who was attending the meeting for the first time to pick up two slips out of 5. No objection of any kind was raised by any of the non-official members which obviously means that Dr. Lamba picked up the slips with the due authorisation and consent of the non-official members. The draw of lots was, therefore, conducted in the full view of all the members of the Board of Management, with the concurrence of the non-official members and in accordance with the provisions of the Haryana and Punjab Agricultural Universities Act, 1970. The conduct of draw of lots, whose outcome by its very nature is a matter of chance, was conducted in the most practicable and unbiased manner in full view of the members. After the lots were drawn the three remaining slips containing the names of the rest of the non-official members were duly unfolded and shown to the whole House. It is improper for any one who has retired by this process of law to raise an objection after the event.

17. That the contents of this para are baseless and hence denied. It is wrong to say that the draw of lots has not been done according to sound procedure. The procedure of draw of lots were correctly followed as per submissions made in the previous paras."

By previous paras, the answering respondent perhaps means Para 15 of the reply, as the factual position about the draw of lots is given in that para. Admittedly, the factual position which has been stated by respondent No. 5 in his reply is not borne out from the proceedings of the meeting or any other official record. The learned counsel for respondents 5 and 6 was asked to produce any record to substantiate the facts stated in paras 15 and 17 of the written statement filed by Shri S.N. Roy, but he was unable to substantiate the facts narrated in the written statement by the person concerned. This factual position thus furnished by respondent No. 5 cannot be taken into consideration, it does not show that specific provisions of Sub-section (6) of Section 13 of the Act were complied with. It thus, stands established that non-official members of the Board in the 146th meeting, dated December 29, 1992, while deciding Item No. B-21 did not determine by lots, the retirement of the petitioners (i.e. the non-official members) from the membership of the board. Resultantly, the decision of the Board on Item No. B-21 in the 146th meeting of the Board, dated December 29, 1992, is against the specific provisions of Sub-section (6) of Section 13 of the Act and is consequently quashed. Further proceedings taken thereon on the basis of the decision of Item No. B-21, if any, are also quashed, as it was made clear that at the time of issuing of notice it was ordered by a Division Bench of this Court that the offices of the petitioners, Smt. Sarla Sangwan and Shri R.S. Balhara, shall not be filled.

30. Regarding ground No. (ii) the main grievance of the learned counsel for the petitioner is that the Vice-Chancellor should not have presided over the meeting as in the Agenda regarding Item No. B-1, some complaints against the Vice-Chancellor had to be considered and discussed. The heading of the Agenda against Item No. B-1 reads as under:-

"Defining the role of a member of the Board of Management-Necessary of policy decision".

The decision on Item No. B-1 in the meeting reads as under :

"The role of Member of Board of Management already stands well defined vide item No. B-1 of 15th meeting of Board of Management held on 24.6.72. Also, the observations of the Hon. Chief Secretary to Govt. Haryana in 145th meeting of the Board of Management held on 28.10.1992 further clarified the position. Thus, the issue already stands decided.

31. The petitioners had raised a few questions of fact regarding the non-consideration of some complaints against the Vice-Chancellor which had to be considered in the meeting. In writ jurisdiction, I would not like to go into these disputed question of fact. If at all there is any grievance of any member, it can be put in a meeting before the Board of Management. These grievance can be decided by the Board in accordance with law and the procedure prescribed therefore, I do not find that the decision on Item No. B-1 by the Board has violated any specific provisions of law.

32. Now coming to ground No. (iii), in view of my decision on ground No. (i), wherein I have quashed Item No. B-21, as being contrary to Sub-section (6) of Section 13 of the Act, no decision is required on this ground to determine the constitutional validity of Sub-section (6) of Section 13 of the Act.

33. Consequently, this petition is allowed to the extent indicated above.