
(1970) 01 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1614 of 1969

Satish Chander Sharma

APPELLANT

Vs

The University of Rajasthan and Others

RESPONDENT

Date of Decision : 12-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Rajputana University Act, 1946 — Section 21, 29
Rajputana University Ordinance — Ordinance 384B

Citation : AIR 1970 Raj 184 : (1970) RLW 403 : (1970) 3 WLN 124

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : N.M. Kasliwal, for the Appellant; S.M. Mehta, for Respondent Nos. 1 and 2 and M.B.L. Bhargava, for Respondent Nos. 1 and 7 (Surendra Prasad Vyas), for the Respondent

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—Petitioner Satish Chander Sharma has filed this writ application under Article 226 of the Constitution against the University of Rajasthan and 8 others to challenge the election of respondents Nos. 6 and 7 Shri L. L. Joshi and Shri Surendra Prasad Vyas to the Syndicate of the said University and has prayed that by issuing a writ of certiorari or any other appropriate writ, order or direction the declaration of the result of the election of two non-teacher members to the Syndicate, that is, the election of respondents Nos. 6 and 7 be quashed and that a writ of quo warranto or any other suitable writ, order or direction be issued declaring respondents Nos. 6 and 7 as not entitled to hold the office of the membership of the Syndicate.

2. The case of the petitioner in a nutshell is as follows :--

Petitioner is a registered graduate of the University of Rajasthan and that his name has been entered in the electoral roll of registered graduates of the University at item No. 763. On 6th of August, 1969, the Registrar of the

University sent a notice to the members of the Syndicate announcing that the term of the two non-teacher members of the Syndicate viz., (1) Shri Dinesh Chandra Swami and (2) Shri Kailash Chandra Bakliwal elected from amongst the members of the Senate shall expire on 8th October, 1969, and, therefore, he called upon the Senate to elect the two non-teacher members to the Syndicate, and for that purpose he asked the members of the Senate to send their proposals to him by 25th of August, 1969. Consequent to the said notice (Annexure 1), the names of the six candidates, namely, of respondents Nos. 3 to 8 were proposed and their nomination forms were submitted to the Registrar by 25th of August, 1969. The scrutiny of the nomination papers was held on 26th of August, 1969 and it is said that all the nomination papers were found to be valid, It is alleged that the nomination paper of Shri N. N. Gidwani respondent No. 3, who happened to be the Librarian of the University, was referred to the Vice-Chancellor and the Vice-Chancellor held that the respondent No. 3 was not entitled to contest the election to the Syndicate as he was an employee of the University. Thereafter, the voting papers were prepared wherein the names of respondents Nos. 4 to 8 were entered as the contesting candidates. These voting papers were sent to the members of the Senate along with a circular letter wherein directions were issued that the voting papers may be returned to the Registrar in accordance with the instructions which were enclosed along with the voting papers.

It is further alleged that the voting papers were duly submitted by the voters in the office of the Registrar of the University and the same were opened by Shri J. N. Mathur, the Deputy Registrar on 8th of October, 1969, and after counting the same he declared the result that respondents Nos. 6 and 7 were returned to the Syndicate. This election has been challenged by the petitioner, inter alia, on the grounds that the nomination paper of Shri N. N. Gidwani was wrongly rejected by the Vice-Chancellor and the non-inclusion of the name of Shri N. N. Gidwani in the voting paper vitiated the result of the election; that the voting paper of Shri G. C. Chatterji which was not duly attested by the attesting authority was wrongly counted; that the counting was done by the Deputy Registrar who was not authorised under the ordinance to count the voting papers; and that the counting was not properly done. It was also alleged that after the nomination paper of Shri N. N. Gidwani was rejected by the Vice-Chancellor, the Syndicate of the University held a meeting on 27th of September, 1969 and enacted a new Ordinance 384-B laying down that a non-teacher employee of the University or its affiliated colleges/approved institutions shall not seek elections to the Senate or any other authority or body of the University. It is contended that the Syndicate was not authorised to make such an ordinance laying down qualifications for the candidates to seek election as non-teacher members to the Syndicate because it runs contra to the provisions of Section 21 (vi) of the University of Rajputana Act, 1946, as amended from time to time (hereinafter called the Act), It is, therefore, prayed that Ordinance 384-B which was beyond the competence of the Syndicate be declared void and it may also be quashed.

3. A reply has been filed on behalf of the University of Rajasthan and the Registrar of the University. The other respondents who were impleaded by the petitioner as respondents, however, did not choose to file any reply to the writ petition.

4. The facts, as alleged by the petitioner in the writ petition, are not much in dispute. It is averred by the University that the nomination papers of the candidates were scrutinised by a committee of two persons duly nominated by the Vice-Chancellor for that purpose on 26th of August, 1969, and the committee found all the nomination papers to be in order, but thereafter it was brought to the notice of the Vice-Chancellor that the nomination paper of Shri N. N. Gidwani violated the resolution passed by the Syndicate in its meeting held on 13th of January, 1969 whereby the University employees were debarred from contesting any such election and, therefore, the matter was referred to the Vice-Chancellor who found the nomination paper of N. N. Gidwani contravening the resolution of the Syndicate and, therefore, his nomination paper was rejected by the Vice-Chancellor and his name consequently was not included in the voting paper. It is averred that the removal of the name of respondent No. 3 from the array of the contestants was perfectly legal and in accordance with the provisions of the Act. It was also averred that the Syndicate passed an Ordinance No. 384-B on 27th of September, 1969, in conformity with the resolution dated 13th of January, 1969 and the same was not motivated by any ulterior or extraneous consideration or to justify the rejection of the nomination paper of respondent No. 3.

5. As regards the allegation that the voting papers were counted by Shri J. N. Mathur, the Deputy Registrar of the University, it is averred that the Registrar was on leave on the day when the voting papers were to be counted in accordance with the schedule of the election and, therefore, Shri Mathur who was officiating and exercising all the powers of the Registrar in this particular sphere was entitled under the ordinance to perform the duty of the Registrar to count the voting papers.

6. As regards the infirmity pointed out in respect of the voting paper of Shri G. C. Chatterji, it was averred that the envelope was duly attested by Shri K. S. Mathur, the Head of the University Department of Accountancy and Business Statistics who was entitled to attest the same in terms of Ordinance 12 (a) (ii). The University, however, could not state whether Shri Chatterji ever came to Jaipur to sign or admit his signatures in the presence of Shri Mathur. According to the reply of the answering respondents, the voting papers were duly attested and the official seal of Shri Mathur as required by Ordinance 12 (b) was affixed under his attesting signatures.

7. Regarding the allegations about the counting of votes, the answering respondents submitted that the petitioner has not properly appreciated the system of single transferrable vote and, therefore, the objection has been raised by him erroneously.

8. In their additional pleas, the answering respondents pleaded that the electoral college for the elections to the membership of the Syndicate consists of the members of the Senate. Thus, the only persons who could be called aggrieved by the elections to the Syndicate are the members of the Senate. The legal rights of the registered graduates in the election for the membership of the Syndicate are not violated in any manner and the petitioner, therefore, has no locus standi to maintain the present petition. It was also averred that the decision was taken by the Vice-Chancellor about the ineligibility of respondent No. 3 to contest the election on 1st of September, 1969 and thereafter Shri Gidwani's name was not included in the voting papers but the petitioner or the other contesting candidates did not take any objection to the removal of the name of Shri Gidwani respondent No. 3 from the array of the contesting candidates and when the election was over a challenge has been thrown by the petitioner to declare the election as void. According to the respondent, this objection should not be allowed to be raised at this stage by resorting to a remedy of invoking the extraordinary jurisdiction of this Court.

9. Learned counsel for the respondent has vehemently pressed his preliminary objection that the petitioner has no locus standi to file the present writ application as he was neither a voter for the election nor was he a candidate and, therefore he could not file a writ application. I take up this objection for consideration before deciding petitioner's objections touching the merits of the election.

10. The argument of Mr. Bhargava appearing on behalf of the University and respondent No. 7. is that the petitioner can invoke the extraordinary jurisdiction of this Court only when his legal right has been violated. According to learned counsel, petitioner who seeks to file an application under Article 226 of the Constitution should ordinarily be one who has a personal or individual right in the subject-matter of the petition and who has been prejudicially affected by an act or omission of an authority against whom the right has been sought. In support of this plea, reliance has been placed by him on *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, .

11. It may be mentioned that in this writ application the petitioner has prayed that along with a writ of certiorari quashing the result of the election, a writ of quo warranto may also be issued against respondents Nos. 6 and 7 declaring that they are not entitled to hold the membership of the Syndicate. The Supreme Court in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , has very clearly observed that ordinarily the right that can be enforced under Article 226 of the Constitution shall be the personal or individual right of the petitioner himself but this rule cannot be extended for issuing writs like habeas corpus or quo warranto where this rule may have to be relaxed or modified.

12. In *Bindra Ban and Others Vs. Sham Sunder and Others*, , the learned Judges have discussed elaborately the question whether a private relator can apply for

the issue of a writ of quo warranto and their Lordships after considering various authorities of different High Courts have laid down :

"The normal rule is that a petition under Article 226 can only be made by a person who has some right and whose right has been infringed. This rule, however, is not an inflexible or an absolute one. There are some well-known exceptions to the rule. For instance, an application for a writ of habeas corpus may, in certain circumstances, be made by a near relation or friend of the person under illegal detention. Similarly, it is not necessary in the case of an application for quo warranto that the applicant should have suffered personal injury or should seek redress of a personal grievance.

In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of any duty towards him. What is in question is the right of the non-applicant to hold the office; the order that is passed is an order ousting him from that office. Since the basic authority *Rex v. Speyer* (1916) 1 KB 595, the rule is well settled that any private person may apply for a quo warranto in the matter of a public office, for every person must necessarily have an interest in matters which concern the public Government."

13. In *Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others*, , a challenge was thrown to the order of appointment of the Vice-Chancellor of the Jabalpur University and the petitioners, who were the members of the Executive Council and the Academic Council, sought for the issue of a writ of mandamus to the Chancellor to appoint the Vice-Chancellor in accordance with Section 11 of the Jabalpur University Act. It was in this connection that Dixit C. J. speaking on behalf of the Court observed as follows :

"It is well settled that a person having a real and specific interest in the subject-matter of the petition is entitled to initiate mandamus proceedings. The person applying for a writ of mandamus must have some interest in property, franchise or personal right, an injury to which alone can entitle him to ask for the issue of the writ. No particular quantum" of right is necessary in order to entitle him to relief. It is not necessary that the person applying should have a special interest in the subject-matter. One of the petitioners here is a member of the Executive Council and the other of the Academic Council. The University is a corporate body constituted under the University Act and clearly all the members of the Court, the Executive Council, the Academic Council and even the Registered Graduates are all equally interested in the University functioning according to the provisions of the Act. If, therefore, the appointment of the Vice-Chancellor of the University has been made illegally or contrary to the provisions of the Act, then every such member has the right to question the validity of the appointment and ask for the issue of a writ of mandamus commanding the filling of the office in accordance with Section 11."

14. It cannot be denied that the petitioner was a registered graduate of the

University of Rajasthan. Section 21 of the Act deals with the composition of the Syndicate and Clause (vi) of Section 21 lays down that two members of the Senate, being non-teachers, elected by the Senate, one of whom shall be a registered graduate, shall be the members of the Syndicate. The constitution of Senate is given in Section 18 of the Act and under the provisions of this section, four persons not being teachers elected by the registered graduates of the University from amongst themselves shall be the members of the Senate. The composition of these two bodies of the University, namely, the Senate and the Syndicate as given in Sections 18 and 21 of the Act clearly gives representation in these bodies to the registered graduates. Under Clause (vi) of Section 21 of the Act, one of the members to be elected out of the two from the Senate to Syndicate must be a registered graduate. It is true that the petitioner in this particular case is neither a voter nor was he a candidate in this election, but it cannot be said that after electing four members to the Senate, no interest was left with the registered graduates in the functioning of the University. As observed by Dixit C. J. in *Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others*, , the University is a corporate body constituted under the University Act and clearly all the members of the Court, the Executive Council, the Academic Council and even the registered graduates are all equally interested in the University functioning according to the provisions of the Act. I am in agreement with the observations of the learned Chief Justice and am of the view that the registered graduates cannot be said to be non-interesting party to the functioning of the University of which Syndicate is a very important body.

15. It is next urged by Mr. Bhargava that the membership of a Syndicate is neither an office and even if it is held to be an office, it cannot be called to be a public office and, therefore, a private rela-tor has no locus standi to challenge the election on the basis of the principle laid down in (1916) 1 KB 595.

16. Section 21 of the Act has been amended and the legislature has now added Sub-section (2) to this section which provides that the term of the office of the elected and nominated members of the Syndicate shall be three years. This Sub-section (2) shows that the legislature has also considered the membership of the Syndicate as an office. In view of this express provision of Section 21 (2) of the Act, it is now not open for Mr. Bhargava to argue that the membership of a Syndicate is not an office.

17. The nest question that arises for my determination is whether this office is a public office or not. In order to decide this question we shall have to see the functions of the Syndicate. Section 22 of the Act lays down the functions of this body and it provides that subject to such conditions as may be prescribed by or under the provisions of this Act, the Syndicate shall exercise the following powers and perform the following functions, namely :--

(a) to make, amend and cancel Ordinances;

(b) to hold, control and administer property and funds of the University.

18. It is not disputed by learned counsel for the parties that this function of making, amending or cancelling of Ordinances is the legislative function of the Syndicate and the Ordinances made by the Syndicate acquire the statutory force after they have been made in accordance with the provisions of the Act.

19. Mr. Bhargava in support of his argument that membership of a Syndicate is not a public office placed reliance on a Calcutta case reported in *Shashi Bhusan Ray v. Pramatha Nath Bandopadhyay* \\70 CWN 892. In that case, the appointment of the Principal of the Law College was challenged by a registered graduate of the Calcutta University and an objection was raised on behalf of the respondents that the petitioner had no interest in the affairs of the administration of the University because of his being a University graduate and if he were permitted to pursue the remedy sought by him then it would extend the right to any and every person to interfere with the affairs of the University. It was also urged by the respondents that the office of a Principal is not a public office and therefore an application for a writ of quo warranto could not lie against the Principal. The counsel for the respondent in support of his argument relied on the statement of law in *Ferris on Extraordinary Legal Remedies*, and it was contended that according to the learned author (Ferris),

"public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by Law. In other words, it implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose embracing the ideas of tenure, duration, emolument and duties."

20. During the pendency of that writ petition, the respondent who was appointed as a Principal had resigned the post. The learned Judges, after considering the position of a Principal of a Law College, came to the conclusion that the office of a Principal was not a public office as he did not discharge either an executive or a legislative or a judicial function. In my opinion, the Calcutta case is of little avail to the respondents because of the functions assigned to the Syndicate by the legislature itself. As observed above, the most important function of the Syndicate as laid down in Section 22 (a) is to make amend and cancel Ordinances which is undoubtedly a legislative function.

21. A similar question had arisen before the Madras High Court in *In re G. A. Natesan* AIR 1918 Mad 763, where it was argued that no relief could be granted u/s 45 of the Specific Relief Act as neither the Syndicate nor its membership fulfilled the character of persons holding a public office. Relying on *Henley v. Mayor of Lyme* (1828) 5 Bing 91, their Lordships of the Madras High. Court held that--

"the Syndicate is a creature of statute with certain duties imposed upon it by statute and those duties are to be carried out for the benefit of the public at

large (see the very wide words in the preamble to the Act of Incorporation), and especially for that portion of the public which desires to utilise the educational advantages of the University. It seems to me too plain for argument that where a statute appoints a body of persons to carry out purposes of public benefit, the persons constituting such a body ipso facto become holders of a public office within the meaning of the section, It is not disputed that to hold otherwise would be to go contrary to a vast number of English decisions with regard to the writ of mandamus and that it would also give the go-by to the principle which, if not expressly enunciated, is underlying numerous decisions of the High Courts both of Bombay and Calcutta. I am, therefore, of opinion that the Syndicate is a body amenable to the jurisdiction of Section 45, Specific Relief Act, if the other conditions for that relief are present."

22. These observations, when read in the light of the duties assigned to the Syndicate by the Act itself, make it absolutely clear that the membership of a syndicate in the University is not only an office but it is also a public office and as such the petitioner who is a registered graduate of the University has a right to seek for a writ of quo warranto against the respondents who, according to him, have been declared elected in clear violation of the Ordinances made by the Syndicate for conducting the election of its members. The preliminary objection raised by the respondent is, therefore, rejected.

23. The first ground raised by the petitioner to challenge the validity of the election of the respondents Nos. 6 and 7 is that the Vice-Chancellor illegally removed the name of Shri N. N. Gidwani who was a candidate for the election and whose nomination paper was found to be valid by the committee that scrutinised the nomination papers of the contestants. It is not disputed by the University that Shri N. N. Gidwani was one of the candidates for this election and that his nomination paper which was duly filed was found to be in order. According to the stand taken by the University, the Vice-Chancellor removed his name from the array of the contesting candidates because he found that being an employee of the University, he was not eligible to coo-test the election. Reliance has been placed to support this contention on a resolution passed by the Syndicate on the 13th of January, 1969, which reads as follows:

"Resolved that a non-teacher employee in the University or its affiliated colleges be not allowed to contest elections to the Senate or any other authority/body of the University."

24. The nomination paper of Shri Gidwani was scrutinised and found to be valid on 26th August, 1969, and the same was ordered by the Vice-Chancellor to be rejected on the 1st of September, 1969. It is said that the Syndicate made an Ordinance No. 334-B on 27th September, 1969, which is in the following terms:

"Order 384-B. A non-teacher employee of the University or its affiliated colleges/ approved institutions shall not seek elections to the Senate or any other authority, body of the University."

25. The petitioner has raised two objections with regard to this ordinance, viz., (1) that the Syndicate had no authority to enact an ordinance which offends Section 21 (vi) of the Act; and (2) that on the date when the nomination paper of Shri Gidwani was rejected, no such ordinance was in force and that the ordinance not being retrospective in nature could not be pressed into service to justify the rejection of Shri Gidwani's nomination paper.

26. Section 21 of the Act deals with the composition of the Syndicate and lays down that the syndicate shall be the executive body of the University and shall consist of the following persons, namely:--

(i) the Vice-Chancellor,

(ii) three Deans nominated by the Vice-Chancellor in rotation:

Provided that no Dean shall be nominated for two successive terms,

(iii) the Director of College Education,

(iv) three educationists to be nominated by the Chancellor,

(v) two University Professors nominated by the Vice-Chancellor :

Provided that no University Professor shall be nominated for two successive terms,

(vi) two members of the Senate, being non-teachers, elected by the Senate, one of whom shall be a registered graduate,

(vii) three principals of Colleges to be elected by them from amongst themselves.

27. Clause (vi) of this section empowers the Senate to elect two members of the Senate who are non-teacher members and further requires that one of them should be a registered graduate. This Clause (vi) of Section 21 of the Act, therefore, lays down qualifications of the non-teacher members of the Syndicate that they must be the members of the Senate. Thus, from this provision it becomes clear that every non-teacher member of a Senate has a right to contest the election for the membership of the Syndicate under this clause. This is a qualification prescribed by the Act itself.

28. The Syndicate by making Ordinance No. 384-B has put a rider on the qualification prescribed by the Act that a non-teacher employee of the University or its affiliated colleges/approved institutions shall not seek elections to the Senate or any other authority or body of the University. This question has been posed by the petitioner whether such a rider can be put on the qualification of a member of Senate to seek election to the Syndicate by making such an ordinance.

29. Section 29 of the Act lays down the matters for which the Syndicate can make Ordinances. In the opening portion of Section 29, the Legislature has clearly given a mandate that while making ordinances, the Syndicate shall keep

in view that the ordinances are not made inconsistent with the provisions of the Act. Section 21 (vi) provides for electing two persons to the Syndicate and they should be two non-teacher members of the Senate. The only qualification that a candidate should possess for being elected u/s 21 (vi) of the Act is that he should be a member of the Senate and should not be a teacher. The Legislature, however, did not prescribe any other qualification for electing the members under this clause. Ordinance S84-B, however, prescribes that an employee of the University cannot seek election u/s 21 (vi). This restriction takes away the right of a member of the Senate who otherwise fulfils all the qualifications mentioned in Clause (vi) of Section 21 of the Act. This provision embodied in Ordinance S84-B is, therefore, inconsistent with the specific provision of Section 21 (vi) and, therefore, such an ordinance cannot be made u/s 29 of the Act. The Ordinance 384-B is ultra vires the power of the University and hence it is void.

30. It may also be mentioned that even if we assume that the Syndicate had such power to prescribe qualifications of the candidates to be elected under Clause (vi) of Section 21, the Ordinance 384-B was not on the statute book on the day when the Vice-Chancellor rejected the nomination paper of Shri Gidwani. The language of the Ordinance 384-B does not also suggest that it was given retrospective effect so as to be operative on 1st September, 1969 when the Vice-Chancellor passed the order rejecting Shri Gidwani's nomination paper. In these circumstances, the order of the Vice-Chancellor rejecting the nomination paper of Shri Gidwani was unlawful.

31. It is contended by learned counsel for the respondent that even if Ordinance No. 384-B was not in force on the day the nomination paper of Shri Gidwani was rejected by the Vice-Chancellor he could not seek election because of the resolution of the Syndicate dated 13th of January, 1969 which restricted all the employees of the University to seek election to any office or authority of the University. It is clear that Resolution No. 10 of 13th January, 1969 cannot be placed at the level of the statutory rule or ordinance. The Syndicate, in order to administer the affairs of the University, had, however, put a condition of service for its employees that they would not be elected to any post or office of the University. If any employee took to his head to violate the mandate of the resolution, then he would at the most expose himself to any disciplinary action if the University authority chooses to take against such employee for not obeying the command of the Syndicate issued by it in its administrative capacity. The resolution cannot have the effect of taking away the rights of a member of the Senate to contest the election for the membership of the Syndicate u/s 21 (vi) of the Act. In my opinion, the resolution cannot be meant to have laid down any qualifications for seeking election under Clause (vi) of Section 21 of the Act. The Vice-Chancellor had no authority to reject the nomination paper of Shri Gidwani on that ground when Shri Gidwani, in spite of the administrative direction issued by the Syndicate by adopting Resolution No. 10 on 13th of January, 1969 had filed his nomination paper.

32. Shri Gidwani was nominated for the election of the membership of the Syndicate and his nomination paper was accepted by the committee duly appointed by the Vice-Chancellor for scrutinising the nomination papers. The nomination paper was rejected wrongly by the Vice-Chancellor and thus Shri Gidwani was taken out of the field of election. If Shri Gidwani had been in the field and if his name had found place in the voting papers, nobody knows how the voters would have exercised their right of vote. In these circumstances, the result of the election shall be taken to have been materially affected by the rejection of the nomination paper of Shri Gidwani. This ground alone is sufficient to set aside the election of respondents Nos. 6 and 7 and therefore, I need not go into the merits of other objections raised by the petitioner.

33. For the reasons mentioned above, the writ petition is allowed, the result of the election of the members of the Syndicate of the University of Rajasthan declared on 8th of October, 1969, is set aside. Respondents Nos. 6 and 7 are hereby directed to quit the office which they are holding by virtue of the aforesaid result of the election. The University authorities shall be at liberty to hold fresh elections u/s 21 (vi) of the Act. No order as to costs.