
(1982) 07 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No's. 578 and 580 of 1982

Shantaram B. Mujumdar

APPELLANT

Vs

University of Poona and Others

RESPONDENT

Date of Decision : 08-07-1982

Acts Referred:

Poona University Act, 1974 — Section 20(1), 85

Citation : (1983) 1 BomCR 181 : (1982) 84 BOMLR 335

Hon'ble Judges : D.B. Deshpande, C.J.;V.S. Kotwal, J

Bench : Division Bench

Advocate : C.R. Dalvi, for Writ Petition Nos. 578 and 580 of 1982 and K.Y. Mandlik, for Writ Petition No. 580 of 1982, for the Appellant; Vijay Thorat Advocate for respondent No. 1, for Writ Petition No. 578 of 1982 and N.H. Gursahani, R.S. More and B.R. Patil for respondent Nos. 2, 4, 6 and 11 for Writ Petition No. 578 and 580 of 1982, V.R. Bhonsale, for Writ Petition No. 580 of 1982, Sujata Mogre for respondent No. 1, for Writ Petition Nos. 578 and 580 of 1982, S.S. Maharaja and Vijay Sawant for respondents Nos. 8 to 10 and 12, for Writ Petition No. 580 of 1982, for the Respondent

Judgement

D.B. Deshpande, C.J.—These two writ petitions under Article 226 of the Constitution can be disposed of by this common judgment. On 27th February, 1982, elections, to the office of the Dean for Faculty of Science in the University of Poona, were held. The petitioner and respondent No. 2 in Writ Petition No. 578 of 1982 were the only contestants to the said office. Respondent No. 2 secured 40, while the petitioner 23 votes. Respondent No. 2 was declared to have been elected. Validity of this election is challenged in this petition filed on 2nd March, 1982.

2. The Poona University Teachers' Association, a society registered under the Societies Registration Act, is the petitioner in the second writ-petition. Elections to the Senate of the Poona University were held on 18th October, 1981. u/s 20(1) (B)(iii) of the Poona University Act, 1974 (hereinafter referred to as "the Act") 25 teachers are entitled to be elected to the Senate from amongst the teachers of

the University and the Colleges, affiliated to the said University. In a writ petition filed by this very Association, challenging the election programme, on the basis of certain irregularities, this Court stayed the elections of 25 teachers from this constituency of the teachers. Notwithstanding the vacancies of these 25 seats in the Senate, proceedings in regard to the Constitution of the Board of Studies, Academic Council and Faculties were carried on by the University. Elections to the office of the Dean, in all these Faculties excepting the Dean of Faculty of Ayurved, also were held soon after the constitution of the Faculties. The petitioner challenges the elections of the Deans to all the Faculties in Writ Petition No. 580 of 1982 filed on 3rd March, 1982.

3. Mr. Dalvi, the learned Advocate appearing for the petitioners, relied on the two infirmities to invalidate respondent No. 2's election. Firstly, that the electoral rolls were not published before 45 clear days of the date of election as required under Statute 363. Secondly, that 2 vacancies in the Senate of 25 teachers deprived the petitioners of their votes. His sole contention in the second petition is that absence of 25 representatives of the teachers in the Senate vitally affected in prospects of the candidates in the elections of the Deans of all the Faculties.

4. The Dean of each Faculty is elected as provided in section 12, from amongst its members. Such members are thus his voters. Section 27 indicates how such members are elected or nominated. The list of such members is described as "Electoral Roll" in at least two letters of the Register. Admittedly, such an electoral roll of the Faculty of Science was published on 8th February, 1982, and finalised on 24th February, 1982 while the elections were held on 27th February, 1982 i.e. long before the expiry of 45 clear days from the date of publication of the Rolls. Section 9 requires (1) the election of Dean to be held "at a meeting". Both, section 12, and Statutes 9 and 10, require it to follow such procedure for this election as is prescribed by Statutes 353 to 373. Statute 361 casts an obligation on the Registrar to prepare the electoral rolls, while Statute 363 in terms requires publication of the electoral rolls at least 45 clear days before the date of election.

Dated the 13th July, 1982 :

The electoral rolls of the Faculty admittedly not having been so published 45 days before the date of election, procedure as prescribed by the statutes cannot be said to have been complied with. This is what makes the contention of Mr. Dalvi to be attractively plausible.

5. Mr. Raje Bhonsale and Mr. Thorat, the learned Advocates appearing for the University, contend that close examination of the statutes would show how statute 363 cannot have any application to the election of Dean. We find much substance in their contention.

6. Now, the relevant Statutes, as their heading of sub-chapter from Statute 353 onwards indicates, are intended to govern "Elections to Authorities or Bodies".

The authorities are enumerated in section 19 of the Act. While Clause (x) of section 19, refers to the other such "bodies" section 8 indicates who the officers of the University are. The Deans of Faculties are shown to be such officers under Clause (iii) thereof. The Deans are thus neither "authorities" nor "bodies" to directly attract the relevant Statutes 353 to 373. In view, however, of the mandate of Statute 10, procedure prescribed for elections in these statutes still shall have to be applied to the elections of the Deans, to the extent, these admit of application in their peculiar contexts. The working of these statutes unfortunately is far from being happy and requires careful scrutiny.

7. To start with, it will be convenient to refer to Statutes 11 and 363. Statute 11 deals with the election procedure in the event of any vacancy occurring in the office of the Dean before the expiry of his term. Statute 11 requires such a vacancy to be filled in "not later than 45 days" by election. In other words, it requires election to be held within 45 days of the occurrence of the vacancy. It cannot be held after the expiry of 45 days after publication of rolls. This election thus does not admit of application of Statute 363 which requires publication of the electoral rolls before 45 clear days of the election. It requires making allowance for at least one more day. Mr. Dalvi did not suggest that the preparation of rolls or its publication is unnecessary to fill in such a mid-term vacancy. Statute 11 thus as contended by Mr. Thorat, clearly demonstrates how Statute 363 is incapable of application to the election of a Dean.

8. In fact, the very wording of Statute 363 itself furnishes some intrinsic evidence of its in application to the election of the Dean. It is expressly made applicable to the election of the Senate. This Statute along with Statutes 353 to 373 provides for the election procedure of all "authorities or bodies". The Senate is one of the many authorities specified u/s 19 of the Act. Requiring publication of electoral rolls before 45 clear days of election date of Senate alone clearly implies its in application to the election of other authorities. There is no positive indication how and why the requirement of this Statute 363 should be held to have been intended to be applicable to the election of a Dean, when the very scheme of the Statute does not contemplate its being made applicable to the election of other authorities and bodies. The wording of Statute 10 is too broad and vague to admit of any precise answer to this question.

9. Restricting the application of Statute 363 only to the Senate election is not without some reason and purpose. Section 20(1)(b) of the Act itself would show how widespread the constituencies of the Senate are. The length of the gap of the period of 45 days between the date of publication of the rolls and the election is obviously determined by the number of voters, width of the constituencies and possible time required for communications and range of possible objections. The statute-framers appear to have thought it safe to exclude the elections of other authorities from the requirement of such publication under Statute 363 due presumably to the irrelevancy of these considerations.

10. The scheme of Statute 362 also is revealing in this context. It makes a

distinction between the election held at a "meeting" and the election held, otherwise. No person is entitled to exercise his vote in an election held otherwise than at a meeting unless the name of the voter is entered on the rolls. This would be so even if any name is wrongly omitted. This is expressly made inapplicable to the election held at "a meeting" as indicated in its opening words. In other words a voter wrongly omitted can still exercise his vote, provided of course the Presiding Officer is satisfied of his being such voter. This is demonstrative of relative insignificance of the "electoral rolls" for the elections liable to be held at a "meeting:"

11. The fact that Statute 9 requires elections of the Deans to be held "at a meeting" is very significant in this context. One implicating of it is that the strength of voters is assumed to be comparatively small. Another implication is that identify of the voters is assumed to be admitting of no complications. The third implication is that the scope of objection to the entries in the electoral rolls concerned is also assumed to be very narrow. All these implications are fortified by the nature of the constitution of the Faculty itself u/s 27, of which he is elected Dean. Almost all the Faculty members happen to have been elected in some form or the other. The so called Roll is just a list of such elected members. The Registrar not being an election Tribunal, the scope of objection to such a list of elected members cannot but be extremely limited. The petitioner's affidavit referring to the addition or omission of certain names in the concerned Roll, and the Registrar's explanation furnished in the affidavit in reply goes to confirm how the nature of the objection to the inclusion of the Faculty members in the rolls cannot but be of a clerical nature. All these not only militate against the Statute-framers having felt the need of requiring publication of the list of Faculty members 45 days before election but go to explain exclusion of authorities other than the Senate from the purview of Statute 363.

12. Mr. Dalvi placed strong reliance on Clause (c) of Statute 373. It expressly makes the procedure prescribed by Statutes 353 to 373 applicable to the election by any of the authorities of the University to any other of its authorities. The extent of the width of this clause in the face of the restrictive words of Statute 363 would necessitate closer examination. It is enough here to note that a Dean is an "officer", u/s 8 and not "any authority" of the University u/s 19 to attract this Clause (c). The result is that Statute 363 must be held to be inapplicable to election of Dean.

13. Mr. Dalvi then contended that in either case, proceeding with the constitution of authorities and Faculties and election of the Deans thereto before filling in of all the seats to the Senate cannot be legal and valid. The possibility of Senate members, filling in the unfilled vacancies. Voting in favour of the petitioner could not have been ruled out. This indeed is the sole contention in the second petition and is also raised in the first petition. In the first place, the contention is too far-fetched to require any serious consideration. As seen earlier, the Dean is elected by the members of the Faculty. The Faculty, on the other hand, consists of the

members assigned to it by the Senate and other authorities. This contention assumes that the supporters of the petitioner would necessarily have been elected to the Senate and Board of Studies and Council would necessarily have nominated them to the Faculties. It is difficult to base any finding in such remote possibilities. It is not suggested that there was still any vacancy in the constitution of the Faculty. Absence of adequate strength of the Senate may at least affect the constitution of the Faculty and not the election of the Dean directly. Secondly, section 85 of the Act, to our mind, is a complete answer to Mr. Dalvi" contention. Section 85 reads thus :

"No act or proceeding of the Senateor any other authority.....shall be deemed to be invalid at any time merely on the ground that---

(a) any of the members of any such authority.....are not elected, appointed or nominated or for any other reason are not available to take office at the time of the Constitution.....or there is any other defect in the Constitution thereof or there are one or more vacancies in the offices of members thereof;

XX XX XX."

The action of the Senate in Constitution of the Faculty cannot be deemed to be invalid under the mandate of the section merely on the ground that a few members of the Senate were not elected before the Faculty was constituted. The section will have the same curative effect in regard to the Constitution of the Board of Studies or other authorities from which the Faculty is constituted. The question of there being any defect in the election of the Dean on this count obviously cannot arise. The contention of Mr. Dalvi raised in this behalf is liable to be rejected.

14. Mr. Thorat had raised a preliminary point. He contended that these petitions are not maintainable under Article 226 of the Constitution, because of the existence of other remedy available u/s 86 of the Act. Section 86 permits reference of any of question of interpretation, of any of the provisions of the Act or Statute, to the Chancellor of the University for decision. The power of the Chancellor can be invoked only by reference which can be made only by the Vice-Chancellor on his own, or on the petition of the affected party in his discretion. The proviso, however, casts an obligation on the Vice-Chancellor to make such reference in the event of a requisition by not less than 25 members of the Senate. The Vice-Chancellor might have made a reference to the Chancellor had the petitioner approached him. He could also have refused to do so in his discretion. We will not be justified at this late stage in rejecting the petitions on the ground of such a remedy. We were informed at the bar that some such petition was actually made by someone to the Vice-Chancellor. The fact that the Vice-Chancellor did not make any reference only suggests inadvisability on our part at this late stage to reject these petitions.

15. In the result, both the petitions fail. The rules are accordingly discharged

without any order as to costs.