

(1988) 03 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 1113 of 1988

Shivaji Ramchandra More and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 23-03-1988

Acts Referred:

Amravati University Act, 1983 — Section 13(5), 21, 21(7), 24(7), 26(3A)

Constitution of India, 1950 — Article 123, 14, 16, 213

Shivaji University Act, 1974 — Section 10, 12(4), 12(5), 20, 20(6)

Citation : AIR 1988 Bom 315 : (1988) 4 BomCR 37

Hon'ble Judges : Puranik, J; Dharmadhikari, J

Bench : Division Bench

Advocate : R.M. Agrawal and A.G. Pawar, for the Appellant; A.S. Bobade, General, M.F. Saldhana, Addl. Govt. Pleader, A.V. Sawant and R.G. Ketkar, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—The petitioners Nos. 1, 2, 3, 5, and 6 are members of the senate of Shivaji University, Kolhapur, elected from the registered graduates" constituency. The petitioner No. 4 is also a member of the senate elected from the Teachers" constituency. In this writ petition, petitioners have challenged the Maharashtra Ordinance No. 1 of 1988 issued by the Governor of Maharashtra, called the "Maharashtra Universities (Amendment) Ordinance, 1988" which came into force on 12th Feb. 1988. This ordinance aims to prohibit persons who have already served for two terms or more or for 6 years in aggregate, whichever is less, from continuing as members and contesting the elections to various bodies of the concerned University. The said provision is challenged on the ground that it is violative of the petitioners" fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India, and is also issued in colourable and mala fide exercise of powers.

2. Shri Agrawal, learned counsel appearing for the petitioners contended before

us that Section 77 of the Shivaji University Act (hereinafter referred to as the Act) in terms confers powers upon the Chancellor to annul, suspend or modify any Resolution or proceeding of any officer or authority of the University, which, in his opinion is not in conformity with the Act or Statute, or Ordinance or Regulations. The decision of the Chancellor in this behalf is final. The Chancellor of the University was never called upon to use the said power till this day. Therefore, there was no warrant for promulgating the present ordinance. It is also contended by him that the disqualification prescribed is wholly unwarranted and arbitrary and affects the autonomy of the University. It creates an absurd position by practically debarring about 90% of the elected members from seeking re-election or from continuing as members of the various authorities of the University. The word "term" used in the Ordinance is not defined nor it is uniform. Therefore restrictions of 2 terms or 6 years, whichever is less, is artificial and discriminatory. Though by clause 9 of the Ordinance a person continues to hold the office till completion of his term, he is not eligible to be elected, nominated, appointed, co-opted or in any manner become member of the Executive Council. The petitioners Nos. 2, 3, 4 and 6 were members of the senate but were never members of the Executive Council. However, the impugned Ordinance deprives them of their right to contest the election to the Executive Council. In substance therefore, it is contended by Shri Agrawal that the provisions of this Ordinance are ultra vires Article 14 of the Constitution of India being prohibitive, arbitrary and discriminatory.

3. On the other hand in the affidavit filed on behalf of the State of Maharashtra, it is contended that complaints were received by the Government that since there is no restriction on the time limit for holding the office or post in the University, the whole academic atmosphere is getting polluted. The persons in office have also developed vested interest in the functioning of the University and therefore, it was in the public interest to issue such an ordinance. To the similar effect is the affidavit filed by the Shivaji University.

4. For properly appreciating the controversy raised before us it will be worthwhile if a detailed reference is made to the relevant portion of the statement attached to the ordinance which reads as under :

"In each of the Bombay, Poona, Shivaji, Marathwada, Nagpur, Shreemati Nathibai Demodar Thackersey Women's and Amravati Universities there are various officers and authorities as provided under the provisions of respective University Act. Amongst these officers and authorities the Deans of Faculties, the Senate, the Executive Council and the Academic Council play a vital role in respect of exercise of the powers and performance of the duties conferred or imposed upon them under the relevant University Act. Instances have come to the notice of the State Government that many a Dean and member on these authorities has been holding office for two terms or more and in majority of the cases for good many a number of years, as a result of which people have been complaining that some such Deans and members have developed vested interests in the functioning of

those Universities. It is, therefore, considered expedient to limit the term of office of the members of the Senate to two terms or six years in the aggregate, whichever is less; and in the case of the Deans of Faculties, and the members of the Executive Council and Academic Council to two terms by immediately amending the various University Acts in operation in the State as elections to these offices and authorities are likely to be held soon.

2. It is also considered necessary to make provisions in each of University Acts with regard to the disqualification for, and cessation of, membership, etc."

The relevant clauses of the ordinance with which we are concerned in this writ petition i.e. Clauses 3 and 9, read as under : --

"3. Amendment of Section 20 of Mah. XXII to XXVII of 1974 and Section 21 of Mah. XXXVII of 1983 : In Section 20 of each of the University Acts of 1974, and in Section 21 of the Amaravati University Act, 1983 -

(a) in Sub-section (6), for the word "nominated" the words "elected, nominated or appointed" shall be substituted;

(b) after Sub-section (6), the following sub-section and the Explanation shall be inserted namely : --

"(7) No person who has held office as a member of the senate for two terms or more or for a period of six years in the aggregate, whichever is less, shall be eligible for being elected, nominated, or appointed, or continued, as such member.

Explanation :-- For the purposes of this sub-section,--

(a) in calculating the aggregate period of six years, any period comprised in one or more terms for which the person concerned may have been such member before the commencement of the Maharashtra Universities (Amendment) Ordinance, 1988 shall be taken into consideration,

(b) any elected or nominated or appointed member who, --

(i) has, any time before the commencement of the Maharashtra Universities (Amendment) Ordinance, 1988, resigned his office as such member or ceased to be such member for any reason whatsoever; or

(ii) is elected or nominated or appointed as such member in any vacancy occurring during the period of a term or

(iii) after the commencement of the Maharashtra Universities (Amendment) Ordinance, 1988, resigns his office as such member or ceases to be such member, for any reason whatsoever, before the completion of his term of office as such member, he shall be deemed to have held office as such member for the whole of that term."

9. Saving-- Nothing in Sub-section(5)of Section 12 or Sub-section (7) of Section

20 or Sub-section (7) of Section 23 or Sub-section (3A) of Section 25 of each of the University Acts of 1974 or in Sub-section (5) of Section 13 or Sub-section (7) of Section 21 or Sub-section (7) of Section 24 or Sub- Section (3A) of Section 26 of the Amravati University Act, 1983, as amended by the Maharashtra Universities (Amendment) Ordinance, 1988, shall affect any Dean of a faculty or a member of the Senate, Executive Council or, as the case may be, Academic Council, holding office as such Dean or member on the date of commencement of the Maharashtra Universities (Amendment) Ordinance, 1988 and he shall not be deemed to have incurred disqualification, thereunder, and shall continue to hold office till the completion of his term, unless he resigns or vacates the office of such Dean or member for any reason whatsoever before the expiry of his term of office as such Dean or member, but he shall not be eligible to be elected, nominated, appointed, co-opted or by or in any other manner become a member on -

(a) the senate, if he is a Dean or a member of the Executive Council or the Academic Council,

(b) the Executive Council, if he is a Dean or a member of the Senate or the Academic Council, or

(c) the Academic Council, if he is a Dean or a member of the Senate or the Executive Council.

Therefore from the Statement attached to the Ordinance and the affidavits filed in reply, it is clear that instances had come to the notice of the State Government that the persons holding office for several years have developed vested interests in the functioning of the University. There was concentration of power in the hands of few. Therefore, with an object of preventing the University Authorities from becoming preserve of few individuals, present Ordinance came to be promulgated, It was also noticed that in the Universities a group of persons or individuals have been holding key positions for long periods, with the result that academic institutions had become, or tending to become a close preserve of few individuals. The statement attached to the Ordinance clearly discloses the mischief, which was sought to be prevented or remedied by enacting these provisions,

5. In N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the Supreme Court restated the principle that a right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subjected to limitation imposed upon it. It was again observed by the Supreme Court in Jagan Nath Vs. Jaswant Singh and Others, that an election contest is not an action in law or a suit in equity but purely a statutory proceeding unknown to the common law : see also M. Karunanidhi Vs. Dr. H.V. Hande and Others, . There is no fundamental right in any person to stand as a candidate for election to senate or Executive Council. A right to contest an election is a statutory right and not a common law right. It is a special

right created by the statute and can only be exercised on the conditions laid down by the statute itself. Therefore the challenge raised before us will have to be tested on the basis of these well established principles.

6. The Ordinance does not preclude petitioners including petitioner No. 4 who is an elected member from the Teachers' Constituency to carry on their business or profession. It does not affect their right to employment. It only deals with their right to continue as a member of the senate or to contest the election, which is not a fundamental right, but a right created by the statute itself. From the statement attached to the Ordinance and the affidavit filed by the Government, it is further clear that the persons holding the offices for a number of years have developed vested interests in the functioning of the University. There was a tendency to use their posts to perpetuate their power and continue in the office. The academic institutions like Universities were converted into an arena of power politics. It cannot be forgotten that the academic atmosphere of the University cannot be permitted to be polluted or choked by internal or individual strife nor can it be permitted to be spoiled by group politics. Universities are meant for the students and the teachers and for fostering their academic interests. It cannot be allowed to be converted into an arena or akhada of power or group politics so as to destroy its very academic structure.

7. We do not feel that provisions of Ordinance will in any way affect the autonomy of the University, University's right of self-government or its right to govern its own affairs, and particularly, its right to carry on its legitimate activities of teaching, research, or holding examinations etc. are not affected by the impugned provisions. The academic autonomy is not even touched by the impugned ordinance.

8. From the affidavit filed by the Government it appears that it came to the notice of the Authorities that since there was no restriction on the time limit for holding a post, certain problems of serious nature have arisen and today non-academic persons dominate the Executive Council and other authorities. Decisions are taken not so much on the academic merits or considerations but to serve their own partisan interests. They are more interested in continuing in the office just to strengthen their strangle hold on the affairs of the University to the detriment of its academic interests. It was also noticed that where persons came to be elected to responsible positions such as to the post of Dean of a faculty in a University, which is effectively an administrative head of the department or to the post of a member on an Executive Committee, or of the senate or of the academic council for an abnormally long term it gave rise to the creation of a power centre and misuse of position and power. This adversely affected the academic interests of the University and particularly of the teachers, professors and students. Number of cases of misuse of official position and power were also noticed. Therefore, in public interest and in the academic interest of University, Government thought it fit to limit the term of office to a reasonable period. This was also thought necessary for giving chances to new talents and avoid vested

interests. According to the Government limiting of the term was necessary to eliminate unhealthy practice which was resulting from abnormal long continuance of a person in the office. Therefore, in our view the restrictions, if any, imposed by the Ordinance are not only reasonable but are also in the interest of general public and morality.

9. In this context it is worthwhile to note that by Section 10 it is laid down that even the Vice Chancellor can hold office only for two terms. Section 12(4) lays down that no person shall hold the office of a Dean for two consecutive terms. Section 20(6) provides that no person shall be nominated as a member of the senate for more than two consecutive terms. Similar is the provision qua Executive Council. Section 23(6) lays down that no person shall be nominated as member of Executive Council or continue to be such member, for more than two consecutive terms. Similar provision is made for academic council also. By the impugned Ordinance it is laid down that no person who holds office as a member of the senate for two terms or more or for a period of 6 years in aggregate whichever is less, shall be eligible for being elected, nominated, or appointed or continued as such member. In a sense it is a logical extension of the same principle. The said clause lays down eligibility or qualification for continuing or being elected as a member of the senate or other academic authorities. It cannot be termed as a penal clause. Competency of the legislature or the Governor to promulgate such Ordinance is not disputed.

10. The motives of the legislature to passing a statute, is beyond the scrutiny of Courts. In this context the observations of the Supreme Court in *T. Venkata Reddy and Others Vs. State of Andhra Pradesh*, are pertinent. This is what the Supreme Court has observed in para 14 of the said judgment.

"14. It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the legislature concerned. Dependent upon the subject matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts. An ordinance passed either under Article 123 or under Article 213 of the Constitution stands on the same footing"....."

Therefore the challenge on that ground also must fail. Even otherwise in view of the laudable object sought to be achieved by the legislation, it cannot be said that ordinance was issued in mala fide or colourable exercise of the power. How many persons will be affected by the provisions is also not relevant. Moreover,

there is no dearth of new talents, rather they are waiting in the wings.

11. The challenge based on Article 14 of the Constitution i.e. that different terms are laid down for different categories of the members and therefore, the provision is discriminatory, is also without any substance. Whatever may be the term of office the enactment uniformly lays down that no person will hold such an office and be eligible for being elected, if he is holding the office for two terms or more and to avoid any uncertainty in the matter, an outer limit is also laid down, that is, for a period of 6 years in aggregate. This is nothing but a logical extension of the terms of office laid down by the Act itself. Therefore, it cannot be said that it is discriminatory. Persons elected from the different constituencies and to different bodies belong to different classes and therefore, there is no discrimination between the persons belonging to same class nor unequals are treated equally. Therefore we do not find any substance in the said contention also.

12. Once it is held that a right to stand as a candidate is not a civil right but is a creature of a statute or a special law, and must therefore, be subjected to the limitation imposed by it, and there is no fundamental right to stand for election as a candidate, the challenges raised before us must stand negatived.

13. However, it was contended by Shri Agrawal that there is absolute prohibition to contest the election after the requisite period is over. In analogous law, such as Maharashtra Co-operative Societies Act, Section 73A(5), a person is allowed to contest the election after a gap of one term. At least such a provision should have been made in the present legislation. This is a matter of policy with which we are not concerned. In this context a reference could usefully be made to the following observations of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

"16..... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution....."

Further an academic institution like University cannot be equated with a co-operative society. Further forum where such a grievance could be raised is the Legislature and not the Court.

Hence we do not find any substance in this writ petition and it stands rejected.