

(1969) 05 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 390 of 1969

Shri Kailash Chandra Lenka

APPELLANT

Vs

Vice-chancellor Utkal University and Others

RESPONDENT

Date of Decision : 16-05-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Utkal University Act, 1966 — Section 14, 5(4), 9, 9(1), 9(2)

Citation : (1969) 35 CLT 715

Hon'ble Judges : G.K. Misra, C.J.; Patra, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—The Petitioner, who is a member of the Senate of the Utkal University, having been elected from the registered Graduates Constituency, has filed this application under Article 226 of the Constitution praying for the issue of a writ of Mandamus or any other appropriate writ quashing the notification No. A/ST/662/69 dated 10th April 1969 issued by the Assistant Registrar under orders of the University. Section 9 of the Utkal University Act 1966 (hereinafter referred to as the Act) deals with the constitution of the Senate, which besides consisting of certain ex-officio and nominated members and members for life should also consist of eight categories of elected members referred to in Clauses (1) to (s) of Sub-section (1) of Section 9. These categories included 20 persons to be elected from amongst themselves by the registered Graduates who are not teachers of any College (cl. p) and 3 persons to be elected by the members of the Orissa Legislative Assembly from amongst themselves (cl. q). Excluding the 3 members elected by the Orissa Legislative Assembly, the total number of elected members is 56 as enumerated in the enclosure to Annexure D of the petition.

Sub-section (3) of Section 9 provides that of nearly as may be, one-fifth of the

elected members, other than those elected by the members of the Orissa Legislative Assembly, shall retire in rotation at the end of each year in accordance with the Statutes and an equal number shall be ejected to fill the vacancies so caused. The relevant Statute 131 which so far as is material runs thus:

131. (I) The members of the Senate constituted for the first time after the election under the Act as are to retire in accordance with Sub-section (3) of Section 9, shall be determined by ballot.

(2) After each annual meeting of the Senate, the Vice-chancellor shall, on such date and hour as may be fixed by him, hold a ballot for the purpose of retiring the members in rotation under the said Sub-section. The date of ballot so fixed shall be announced in the Gazette at least fourteen days before such date.

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(4) A member who fills a vacancy caused by a member balloted out shall hold office for a term of five years and shall not be subject to ballot.

The election to the Senate from the various constituencies referred to in Section 9 was held in April 1968 and the members so elected functioned as such for about six months. Thereafter, on 12-1-1969, the Chancellor in exercise of his power under Sub-section (4) of Section 5 of the Act set aside the election of the twenty members elected from the registered Graduates constituency and ordered fresh election to be held from that constituency. Accordingly, fresh elections were held from the registered Graduates constituency in March, 1969 and 20 members including the Petitioner were elected on 17-3-1969. The annual meeting of the Senate was held from 26th to 28th of March, 1969, and thereafter, on 10-4-1969 was issued the impugned notification in pursuance of Section 9(3) of the Act read with Statute 131 fixing the 26th April 1969 for taking up the process of balloting out the one fifth of the elected members of the Senate. It is not disputed that the balloting out is to be from amongst the 56 elected members referred to above including all the 20 members ejected from the registered Graduates constituency in March, 1969. The Petitioner, who is one of these 20 members, contends that under the Act and the Statutes, none of the elected members who if subject to the process of balloting out can be so balloted out before he has functioned as a member for at least one year and that in as much as the Petitioner and the other 19 members representing the registered Graduates constituency were elected only in March 1969, they should not be subject to any process of balloting before they complete at least one year in the office, and that consequently, the impugned notification in so far as it relates to this category of elected members is bad in law. It is submitted on his behalf, that the proposed balloting should be held only in respect of the other 36 ejected members.

2. Mr. G. Rath appearing for the University relying on Section 14 of the Act submits that the 20 members representing the registered Graduates constituency, who were elected in 1968, would have been subject to ballot in

April 1969-a position not disputed by the opposite parties-and that as the 20 members elected in 1969 filled up only the casual vacancies which resulted in the election of the 20 members (elected in 1968) having been declared void, these new members are to hold office only for the unexpired portion of the terms of their predecessors-in-office and as such cannot claim rights and privileges higher than those to which their predecessors were entitled. Section 14 of the Act runs thus:

Filling of

cause

vacancies" "14. All vacancies arising by reason of death, resignation or otherwise among the members of any of the authorities of the University, who were elected or nominated shall be filled as soon as conveniently may be, by election or nomination, as the case may be, and the person so elected or nominated shall hold office for the unexpired portion of the term of his predecessor in office.

The position is quite clear and it is also not disputed that if the election of the 20 members from the registered Graduates constituency held in March 1969 was in pursuance of Section 14 of the Act, the petition must fail. The short question therefore for consideration is whether these elections were held in pursuance of Section 14.

3. It is contended by Mr. Rath that the expression "or otherwise" in Section 14 : of the Act is wide enough to take within its sweep the vacancies arising by reason of an election or election having been declared void. Mr. R.K. Mohapatra for the Petitioner, on the other hand, contends that the expression "or otherwise" in Section 14 has to be construed ejusdem generis and must therefore be restricted in its operation to contingencies like death, resignation or other contingencies of a like nature which should be of a casual nature and not to a situation brought about by the invalidation of the election of an entire category of elected members, as in the present case. He was however constrained to concede that if the election of one or two of the elected members of the registered Graduates constituency had been declared void, the consequential vacancy could be filled up in accordance with Section 14 of the Act. We fail to see how any legal distinction could be made between the two categories of cases, namely, the one where the election of one or two members is declared invalid and the case where the elections of all the O members are declared void. In either case vacancies arise. It is also admitted that there is no other provision in the Act or the Statutes to provide for by-election in a contingency of the nature which has arisen in this case. It is well known rule of construction of Statutes that a Court must construe a section, unless it is impossible to do so, to make it workable rather than to make it unworkable. If Mr. Mohapatra's view is accepted, and it is held that the election of these 20 members in March, 69 was not in accordance with Section 14, we would have to say that the Legislature has not made any provision to hold by-elections in a contingency of the nature which has

happened in this case. It is not, reasonable to suppose, unless circumstance compel such a conclusion, that the Legislature would have failed to provide for such a contingency, having empowered the Chancellor u/s 5(4) of the Act to decide an disputes with regard to the election of members of the various authorities of the University.

4. The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature is presumed to use the general words in a restricted sense ; that is to say, as belonging to the same genus as the particular and specific words. Such A restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the entitlement do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning. The plain meaning of the word "otherwise" in the context of Section 14 of the Act appears to be "for any other reason". So construed Section 14 would cover a vacancy which may arise by reason of death or resignation or any other cause. If this meaning is given to the word "otherwise", it does not" in our opinion, lead to any anomaly at all and serves the purpose of providing for a contingency which in the usual course is bound to arise, but for which there is no other provision in the Act. In *Lilavati Bai Vs. The State of Bombay*, , the Supreme Court had to construe the meaning of the expression "or otherwise" occurring in Explanation (II.) to Section 6 of the Bombay Land Requisition Act 194. The Explanation runs as follows:

Explanation-For the purpose of this section.

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation;

As, admittedly, in that, case there was no termination of tenancy, eviction, assignment or transfer, it was argued that the words "or otherwise" must be construed ejusdem general with the words immediately preceding them and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. Their Lordships repelled this argument in the following words:

In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the Petitioner can possibly have no application. The Legislature has been cautious and thorough-going

enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense.

Mr. Rath therefore is right in his contention that far from using the words "or otherwise" ejusdem generis with the preceding expressions "death" and "resignation", the Legislature used those words in an all inclusive sense, wide enough to cover the vacancies arising out of certain ejections having been declared void whether the declaration is in respect of an individual member or of an entire category.

5. It is next contended by Mr. Mohapatra that the Act and the Statute contemplate that no senator representing the registered Graduates constituency can be balloted out before he served as a senator for a period of at least one year and that therefore as the 20 senators were elected in March, 1969, they cannot be subject to the ballot to be held in April, 1969. In view of the observations made by us above, there is hardly any force in this contention. If their election is in accordance with Section 14, which in our opinion it is, these O members would hold office only for the unexpired portion of the term of their predecessors in office. The tenure of office of their predecessors was a precarious one. As some of them ran the risk of being balloted out with effect from the 1st May, 1969, some of the newly elected O members should therefore equally run the risk.

6. It was next contended by Mr. Mohapatra that as under Sub-section (1) of Section 9, the term of office of the members of the Senate other than the ex-officio members and members for life is to be for five years, each of the 20 newly elected senators is entitled to remain in office for five years. Although Sub-section (3) of Section 9 which relates to the balloting out of one-fifth of the elected members is not preceded by a non obstante clause like "notwithstanding anything contained in Sub-so (2)" and although sub-so (2) of Section 9 is not qualified by a restrictive phrase like "subject to the provisions of Sub-section (3)", in essence, Sub-section (3) should be construed to be in the nature of a proviso to Sub-section (2) and consequently although under Sub-section (2) the life of a Senate member is 5 years, one-fifth of the members are liable to be balloted out after one year from the date of the first constitution of the Senate. So construed, none of the elected members other than those elected by the

members of the Orissa Legislative Assembly could claim to be in office for full five years and much less can such a claim be put forward by the twenty newly elected members whose tenure, by reason of Section 14, is only for the unexpired portion of the term of their predecessors in office.

7. In the result, we find no merit in this application which is hereby dismissed, but in the circumstance of the case, without costs.

G.K. Misra, J.

8. I agree.