

CIVIL MISCELLANEOUS.

Before Bal Raj Tuli and Rajendra Nath Mittal, JJ.

DR. K. L. Jaura,—Petitioner.

versus

PANJAB UNIVERSITY, ETC.,—Respondents.

Civil Writ No. 3658 of 1972

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May 25, 1973.

Panjab University Act (VII of 1947)—Sections 13(2), 31(2)(a) and 38—Panjab University Calendar (1972)—Volume I, Chapter II-B, Regulations 17.2, 17.3 and 23—Regulations 17.2 and 17.3—Whether ultra vires sections 31 and 38 of the Act—Section 13(2) authorising the Chancellor to withhold approval of the election of a Senator—Whether ultra vires for want of guide-lines.

Held, that a reading of section 38 of Panjab University Act, 1947 and Regulations 17.2 and 17.3 of Panjab University Calendar, 1972, Volume I, Chapter II-B, shows that two parallel machineries have been provided, one by the Act and the other by the regulations to adjudicate on the disputes in connection with the election of the members of the Senate. Clause (a) of sub-section (2) of Section 31 of the Panjab University Act, 1947 authorizes the Senate, with the sanction of the Government, to frame regulations regarding the procedure to be followed in holding an election of Ordinary Fellows. Under this clause, the Senate can frame the regulations for conducting elections and not for setting aside the same, but Regulations 17.2 and 17.3 empower the Committee to set aside the election of a member of a Senate which are clearly in excess of the powers conferred on the regulation-making authority. Disputes regarding elections have to be referred under section 38 of the Act to the Chancellor, who is the only authority to adjudicate upon such disputes. No regulation can be framed for creating another forum for hearing the election petitions raising a dispute with regard to the election of a Fellow. These Regulations are, therefore, clearly in excess of the powers conferred on the regulation-making authority and are hence *ultra vires* sections 31 and 38 of the Act.

Held, that no criteria is given in the Act whereby the Chancellor withholds his approval of the election of an Ordinary Fellow, but Regulation 20 provides that after the votes have been duly counted, the Returning Officer shall declare the names of candidates who have been elected, subject to Chancellor's approval under Regulation 23. Under Regulation 23, the Chancellor, while

Dr. K. L. Jaura v. Panjab University, etc. (Mittal, J.)

deciding whether approval should be withheld, takes into consideration the fact that the person elected is not likely to draw pecuniary advantage from the University. Thus guidance has been provided by Regulation 23 of the Calendar for withholding approval of an elected Senator by the Chancellor and hence section 13(2) of the Act is not *ultra vires*.

Petition under Article 226/227 of the Constitution of India, for the issuance of an appropriate writ, order or direction quashing the order of the Chancellor regarding keeping the approval of the election of the petitioner in abeyance and also communication regarding the order of the Chancellor (Annexure 'A') and also quashing the proceedings before the Election Committee and directing the Election Committee not to proceed with the trial of the election petition and further directing the respondents Nos. 1 to 3 to allow the petitioner to sit in the meeting of the syndicate being held on 25th November, 1972 and allowing the petitioner to participate in the first meeting of the new Senate to be held in December, 1972 and further directing the Chancellor to approve the election of the petitioner.

B. S. Bindra, Mrs. Surjit Bindra and J. C. Verma, Advocates and Kuldip Singh Advocate, for Respondents 1—3 and 5.

R. S. Mongia, Advocate, for respondent 4. (Sarup Singh, Advocate with him).

JUDGMENT

Judgment of the Court was delivered by:—

MITTAL, J.—The petitioner is a Reader in the Chemistry Department of the Punjab University, Chandigarh (hereinafter referred to as 'the University'), while respondent No. 4 is a Lecturer in the Department of Botany of the University. The University is a body corporate under the Punjab University Act, 1947. (hereinafter referred to as 'the Act'). Under section 8 of the Act, Senate is the supreme authority of the University which consists of, besides others, the Ordinary Fellows to be elected under section 13 of the Act and in accordance with the regulations framed by the University under section 31 of the Act. Two ordinary Fellows are elected by the Readers and Lecturers on the staff

of the teaching Departments of the University from amongst themselves under clause (c) of sub-section (1) of section 13 of the Act. The elections to the Senate were held on September 12, 1972, and the petitioner and Shri Vishwa Nath Tewari were declared elected under Regulation 20 of Chapter II(B) of the Punjab University Calendar, 1972, Volume I (hereinafter referred to as 'the Calendar'). Shri S. P. Choda, respondent No. 4, who had contested against the petitioner and had lost, filed an election petition under Regulation 17 of the Regulations contained in Chapter II(B) of the Calendar before the Committee consisting of the Vice Chancellor, Mr. Narinder Singh and Mr. G. L. Chopra. In that petition, objection had been taken only to the mode of counting of the votes and no other allegation of corrupt practices or any illegality had been made against the petitioner. He received a letter on October 31, 1972 (copy Annexure 'A') from the Registrar of the University whereby he was informed that the approval of his election as an Ordinary Fellow had been kept in abeyance under the orders of the Chancellor till the Committee had decided the election petition. The petitioner wrote a letter to the Registrar of the University on November 11, 1972, for the supply of the copy of the order of the Chancellor to enable him to approach this Court but he (the Registrar),—*vide* his letter dated November 14, 1972, informed him that he had nothing more to add to what had already been stated in the letter dated October 31, 1972. The object of the letter (Annexure 'A') was to prevent the petitioner from being assigned to any of the Faculties and thereafter to prevent him from being elected to the Syndicate. The proceedings before the Election Committee and the order of the Chancellor have been challenged by the writ-petitioner on the ground that they are illegal, void, without jurisdiction and *mala fide*.

(2) The respondents have contested the petition and denied the allegations of the petitioner.

(3) The first contention of the learned counsel for the petitioner is that it is provided in section 38 of the Act that all disputes regarding the constitution of the University are to be referred to the Chancellor for decision. Therefore, the Chancellor is the only authority to settle disputes regarding election of the members of the Senate and no Sub Committee can be constituted by the Regulations framed under clause (a) of sub-section (2) of Section 31 of the Act. The provisions of Regulations 17.1, 17.2 and 17.3 of Chapter 11(B)

Dr. K. L. Jaura v. Panjab University, etc. (Mittal, J.)

of the Calendar are *ultra-vires* the provisions of the Act so far as they authorize the Syndicate to appoint a Committee to decide the election petitions.

(4) In order to appreciate the argument, it is necessary to reproduce the relevant provisions of the Act and the Regulations, which are as follows :—

“Section 31(1) & (2) (a) of the Act.

- (1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University,
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—
 - (a) the procedure to be followed in holding any election of Ordinary Fellows.

Section 35 of the Act.

All appointments of the Vice-Chancellor, Fellows or the Registrar of the University, or cancellation thereof, all degrees, diplomas, titles, licences conferred by it and any regulations made by it shall be notified in the official Gazette.

Section 38 of the Act.

If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter will be referred to the Chancellor, whose decision thereon will be final.

Regulations:

- 17.1. A petition in respect of matters brought to the notice of the Returning Officer or the Presiding Officer as mentioned in Regulations 16.1, and 16.2 and a petition on any

of the following points in connection with the election must reach the Registrar within 10 days of the declaration of the result, with a security deposit of Rs. 50 which amount shall be forfeited if the election petition is dismissed :—

- (a) alleged failure of the Presiding Officer/Returning Officer to discharge his duties as laid down in the Regulations ;
- (b) allegations regarding the secrecy of vote having been infringed by the Presiding Officer/the Returning Officer ;
- (c) allegations regarding any corrupt practice having been indulged in by any party to the election either itself or by its agents, with or without the knowledge of the party concerned.

17.2. A petition under Regulation 17.1 shall be heard by a Committee consisting of Vice-Chancellor and two other members appointed by Syndicate every year. The Committee may summon *suo moto* and examine any person whose evidence appears to it to be material. At the conclusion of its proceedings, the Committee shall make an order :—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void.

17.3. The Vice-Chancellor shall be the *ex-officio* Chairman of the Committee. If there is difference of opinion, the decision of the majority shall prevail. Two members shall form the quorum. If only two members are present and there is a difference of opinion between them, the decision of the Vice-Chancellor shall prevail or, in his absence, the matter shall be referred to the Vice-Chancellor and his decision shall prevail. The decision of the Committee or the Vice-Chancellor, as the case may be, shall be final and binding.”

Dr. K. L. Jaura v. Panjab University, etc. (Mittal, J.)

(5) Section 13 of the Act relates to Ordinary Fellows. Section 14 is regarding Ordinary Fellows, elected by the registered graduates and section 15 provides that once in every year on such dates as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy amongst the Ordinary Fellows elected by the categories mentioned under clauses (b), (c), (d), (e), (f) and (h) of sub-section (I) of Section 13. Regulations I to 16.2 of Chapter II(B) of the Calendar relate to holding of elections and filing of objections before the Returning Officer and the Presiding Officer. A petition for setting aside the election is filed under Regulation 17.1 and the same is heard by the Committee consisting of the Vice-Chancellor and two other members appointed by the Syndicate every year. Powers have been given to the Committee to examine any person whose evidence appears to it to be material. At the conclusion of the proceedings, it can dismiss the election petition or declare the election of all or any of the returned candidates to be void. By virtue of Regulation 17.3, the Vice-Chancellor is the *ex-officio* Chairman of the Committee. It is also provided therein that if there is difference of opinion, the decision of the majority shall prevail. It is further provided that two members shall form the quorum and in case only two members are present and there is difference of opinion between them, the decision of the Vice-Chancellor shall prevail, or in his absence, the matter shall be referred to the Vice-Chancellor and his decision shall prevail. It is also stated that the decision of the Committee or the Vice-Chancellor, as the case may be, shall be final and binding. Regulation 20 says that after the votes have been duly counted, the Returning Officer shall declare the names of the candidates who have been elected, subject to Chancellor's approval under Regulation 23. According to section 38 of the Act, in case any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter will be referred to the Chancellor, whose decision thereon will be final. Under section 38 of the Act, the Chancellor has been given the power to decide disputes regarding due election or appointment of a member of any authority or other body of the University. A reading of section 38 and Regulations 17.2 and 17.3 shows that two parallel machineries have been provided one by the Act and the other by the regulations to adjudicate on the disputes in connection with the election of the members of the Senate. Clause (a) of sub-section (2) of section 31 of the Act authorizes the Senate, with the sanction of the Government, to frame regulations regarding the

procedure to be followed in holding an election of Ordinary Fellows. The aforesaid clause shows that the Senate can frame the regulations for conducting elections of Ordinary Fellows and not for setting aside the elections. Regulations 17.2 and 17.3 empower the Committee to set aside the election of a member of a Senate which are clearly in excess of the powers conferred on the regulation-making authority. Regulations can be framed to conduct elections under section 31 and not to set aside the election. The Act has given powers for deciding such disputes to the Chancellor and no other authority can do so under the regulations. I am supported in the aforesaid observations by a judgment of their Lordships of the Supreme Court in *Ganpati Singhji v. State of Ajmer and another* (1). In that case *vires* of sub-rules (1) to (4) framed under the Ajmer Laws Regulations was challenged. Under Section 40 of the Regulations, the Chief Commissioner was empowered, among other things, to make rules about the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies. The Chief Commissioner framed the rules under the aforesaid provisions. The first three sub-rules of Rule 1 dealt with permits and prohibited the holding of a fair except under a permit issued by the District Magistrate who was enjoined to satisfy himself, before issuing any permit, that the applicant was in a position to establish a proper system of conservancy, sanitation and watch and ward at the fair. The powers of the District Magistrate were challenged on the ground that the Regulation empowered the Chief Commissioner to make rules for establishment of a system of conservancy and sanitation and he could not make a rule authorizing him to satisfy himself regarding conservancy and sanitation and watch and ward at the fair. Bose, J., while speaking for the Court, observed as follows:—

“The Regulation empowers the Chief Commissioner to make rules for the establishment of a system of conservancy and sanitation. He can only do this by bringing a system into existence and incorporating it in his rules so that all concerned can know what the system is and make arrangements to comply with it. What he has done is to leave it to the District Magistrate to see that persons desiring to hold a fair are in a position to establish a proper system of conservancy, etc.,. But who, according to

(1) A.I.R. 1955 S.C. 188.

Dr. K. L. Jaura v. Panjab University, etc. (Mittal, J.)

this, is to determine what a proper system is: obviously the District Magistrate. Therefore, in effect, the rules empower the District Magistrate to make his own system and see that it is observed. But the Regulation confers this power on the Chief Commissioner and not on the District Magistrate, therefore the action of the Chief Commissioner in delegating this authority to the District Magistrate is *ultra vires*."

(6) In *Mohammad Hussain Gulam Mohammad and another v. The State of Bombay and another* (2), the constitutionality of the Bombay Agricultural Produce Markets Act, 1939, and the rules framed thereunder was challenged by the petitioners, who were the businessmen of Ahmedabad. Under section 5-A, the Market Committee, when it has been established in the state, is given the power to grant licences in accordance with the rules to traders, commission agents, brokers, weighmen, measures, surveyors, warehousemen and other persons to operate in the market. Under section 5-AA, it becomes the duty of the Market Committee to enforce the provisions of that Act and also to establish a market therein on being required to do so by the State Government. Rule 65 framed under the aforesaid Act provides that no person shall do business as a trader or a general commission agent in agricultural produce in any market area except under a licence granted by the Market Committee under that rule. The contention was that the rule goes beyond the provisions of section 5-A, which lays down that where a market is established under section 5-AA, the Market Committee may issue licences in accordance with the rules to traders and commission agents. So far as the grant of licences to traders before the establishment of a market is concerned, the provision is to be found in section 4(2) and the power to grant licences before the establishment of a market for trading in any market area is given to the Commissioner and not to the Market Committee. It was observed by their Lordships of the Supreme Court that the power of the market committee to grant licences under section 5-A arises only after the market is established and is confined to operation in the market. It was further observed that rule 65, when it authorizes the Market Committee to grant a licence for doing business in any market area, goes beyond the power conferred on the market committee by section 5-A and entrenches on the power of the Commissioner under

(2) A.I.R. 1962 S.C. 97.

the proviso to sub-section (2) of section 4. The rule was consequently struck down as *ultra vires* the provisions of section 5-A read with the proviso to section 4(2). Rule 67 gave power to the Committee to grant licences for doing business in the market area and prohibited doing of business without such licences. The aforesaid rule was also struck down and it was observed that the intention was to confine the issue of licences under rules 65 and 67 to markets which the market committee had the power to do where a market was established under section 5-A; but the two rules as drafted referred to the market area and not to the market and must, therefore, be held to be beyond the power granted to the market committee under section 5-A. For the same proposition, the learned counsel for the petitioner also placed reliance on *The Management of D.T.U v. Shri B.B.L. Hajelay and another* (3), *Daya Krishnan v. Assessing Authority-cum-Excise and Taxation Officer (Enforcement) Ferozepore and others* (4), *Shri Bishveshwar v. Board of Revenue, Rajasthan and another* (5), *Central Karnataka Motor Services Ltd. v. State of Mysore and another* (6), *Manepalli Venkatanarayanan, Proprietor, M/s. Venkateswara Electrical Rice Mills, Eluru v. The State of Andhra Pradesh and another* (7), *Union of India and others v. M/s. Navin Bharat and other* (8), *Munsha Singh and others v. The State of Punjab and others* (9), and *Atam Parkash Mohan son of Shri Vir Bhan and others v. Kurukshetra University, Kurukshetra, through its Registrar and others* (10).

(7) The learned counsel for the respondents has argued that if there is some conflict between two provisions of the Act, they should be interpreted harmoniously so that both the provisions can exist simultaneously. In support of his contention, he has placed reliance on *Bengal Immunity Co. Ltd. v. State of Bihar and others* (11), wherein it was observed that it is a cardinal rule of construction that when there are in a statute two provisions which are in such

(3) 1973 S.L.J. 19(S.C.).

(4) A.I.R. 1966 Pb. 490.

(5) A.I.R. 1956 Raj. 101.

(6) A.I.R. 1957 Mysore 7.

(7) A.I.R. 1960 A.P. 171.

(8) 1972 P.L.R. 203 (Delhi Section).

(9) 1960 P.L.R. 1 (F.B.).

(10) 1970 S.L.R. 16.

(11) A.I.R. 1955 S.C. 661.

Dr. K. L. Jaura v. Panjab University, etc. (Mittal, J.)

conflict with each other that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. He has also relied on *M. Pentiah and others v. Muddala Veeramallappa and others* (12), wherein their Lordships of the Supreme Court made similar observations. There is no dispute about the proposition laid down in the aforesaid cases. The question that arises is whether the aforesaid observations apply in the present case. The learned counsel for the respondents has then submitted that the process of election starts from the time when the nomination papers are filed and continues till the final notification is published under section 35 of the Act. He states that section 38 of the Act will come into operation only after the notification regarding the election of the senators has been published in the official Gazette. He further contends that as long as notification has been published, the election is not complete, it can be challenged under the Regulations and decision can be given under Regulations 17.2 and 17.3, by the Committee. According to the learned counsel for the respondents, the two provisions, namely, section 38 of the Act and Regulations 17.2 and 17.3, came into operation at two different stages and, therefore, Regulations 17.2 and 17.3 are not *ultra vires*. Mr. Kuldip Singh has also urged that to stand for election is not a civil right but a right created by a statute and is subject to the limitations imposed by it. According to him, it is the right of the Legislature to examine, determine and provide for all matters relating to the election of the senators. In support of his contention, he has placed reliance on *N. P. Ponnuswami v. The Returning Officer, Namakhal Constituency, Namakhal, Salem District, and others* (13). In our opinion, the contention of the learned counsel for the respondents has no substance. After the votes have been duly counted in the election of the senator, the election is complete. The publication of notification under section 35 of the Act cannot be said to be a part of the election. The disputes regarding the election can be referred under section 38 of the Act to the Chancellor who is the only authority to adjudicate upon such disputes. No regulation can be framed for creating another forum for hearing the election petitions raising dispute or disputes with regard to the election of a Fellow, in view of the provisions of section 38 of the Act. The regulation-making authority has not been

(12) (1961) 2 S.C.R. 295.

(13) A.I.R. 1952 S.C. 64.

conferred with any power to frame regulations for setting aside the elections, under clause (a) of sub-section (2) of section 31 of the Act. In our view, Regulations 17.2 and 17.3 are *ultra vires* section 31 and 38 of the Act.

(8) The second contention of the learned counsel for the petitioner is that the Chancellor had no power to withhold the approval of the petitioner under sub-section (2) of section 13 of the Act. He further argues that no guideline has been provided in the Act by which the Chancellor can withhold the approval and, therefore, sub-section (2) of section 13 is *ultra vires*. Sub-section (2) of section 13 of the Act is as follows :—

“13(2) The election of any Ordinary Fellow shall be subject to the approval of the Chancellor.”

(9) No criteria has been given in the Act whereby the Chancellor will withhold such an approval. Regulation 20 provides that after the votes have been duly counted, the Returning Officer shall declare the names of the candidates who have been elected, subject to Chancellor's approval under Regulation 23. Regulation 23 gives the circumstances in which the approval can be withheld. The aforesaid Regulation is as follows:—

“The election of an ordinary Fellow shall be subject to the approval of the Chancellor. Before according approval, the Chancellor shall have regard to the fact that the person elected is not likely to draw pecuniary advantage from the University through (a) publication of cheap notes, guides or help books, (b) printing, publishing or sale of books to or for the use of the University students or any of its courses, (c) a contract for supply of goods to the University or (d) execution of any works of the University.”

(10) A reading of the above Regulations shows that the Chancellor, while deciding as to whether approval should be withheld, shall take into consideration the fact that the person elected is not likely to draw pecuniary advantage from the University. The guidance has been provided by Regulation 23 for withholding approval of an elected senator by the Chancellor. In the present case, while withholding the approval, the petitioner was informed

Ram Nath v. Ramesh, etc. (Tuli, J.)

by the Registrar that the approval of his election had been kept in abeyance under orders of the Chancellor till the Committee appointed by the Syndicate under Regulation 42 (Chapter II-B) at pages 123-24 of the Punjab University Calendar Volume I, 1971, has taken a decision on the petition made by Shri S. P. Choda, Department of Botany, Panjab University, Chandigarh, Regulation 42 in the Punjab University Calendar, Volume I, 1971, is *pari materia* with Regulations 17.1, 17.2 and 17.3 of Chapter II-B of the Calendar. The Chancellor had no right to withhold the approval on the grounds stated in the letter of the Registrar, dated October 31, 1972 (Annexure 'A'). In these circumstances, in our view, the approval has been illegally withheld by the Chancellor which he could not do. We are also of the opinion that sub-section (2) of section 13 is not *ultra vires* as contended by the learned counsel for the petitioner. In case, the approval could not be withheld by the Chancellor, he had also no grounds for not notifying the name of the petitioner under section 35 of the Act which is merely a formality.

(11) For the reasons recorded above, we accept this petition with costs and hold that Regulations 17.2 and 17.3 of Chapter II-B of the Calendar are *ultra vires* the Act and quash the order of the Chancellor, respondent No. 2, conveyed to the petitioner by the Registrar,—*vide* his letter dated October 31, 1972 (Annexure 'A'). Counsel's fee Rs. 200.

B.S.G.

APPELLATE CIVIL

Before Harbans Singh, C.J., and B. R. Tuli, J.

RAM NATH,—Appellant.

versus

RAMESH, ETC.,—Respondents.

L.P.A. No. 596 of 1972.

May 28, 1973.

Punjab Municipal Act (III of 1911)—Section 12-B—Constitution of India (1950)—Article 226—Co-option of woman members to a Municipal Committee invalid—Meeting of the Municipal Committee for election of its President—Co-opted woman members taking part in the election—No objection to their participation by the candidates to the office of the President—Such candidate—Whether can