

Gujarat University

Vs

N. U. Rajguru and Others

Civil Appeal No. 2321 of 1984

(E S. Venkataramiah, K. N. Singh JJ)

10.11.1987

JUDGMENT

K. N. SINGH, J. –

1. This appeal is directed against the judgment of the High Court of Gujarat dated February 7, 1984 setting aside the election of 28 teachers to the Court of the Gujarat University and the consequential order directing the University to hold fresh election for the 42 members constituency to the Court.

2. Briefly the facts giving rise to this appeal are these. The Gujarat University is constituted under the provisions of the Gujarat University Act, 1949. Section 15 of the Act designates the "Court" as an authority of the University. Section 16 provides for the constitution of the "Court", it consists of two classes of members, ex officio, and elected members. Section 16(1) provides for election to the category of 'ordinary members of Court'. Clause (A)(VIII) of Section 16(1) lays down that 42 members shall be elected by teachers of affiliated colleges (excluding Deans of faculties and Principals of colleges) from amongst themselves in the manner specified in the statutes. Sections 28 and 29 confer power on the Court to frame statutes in respect of matters which by the Act are required to be prescribed by the statutes. Statute 10(3) of the University of Gujarat provides for election of 42 members to the Court by teachers excluding Deans of faculties and Principals of colleges in the manner specified therein. It further provides that 14 members shall be elected to the Court by the teachers of faculty of Arts and Education, out of which 10 members shall be elected by teachers having teaching experience of 10 years or more, while the remaining 4 shall be elected by the teachers having experience of less than 10 years. Statute 10(3) further provides for election of 28 members to be elected by the teachers working in various other faculties of the affiliated colleges of the University. The term of the office of the elected members of the Court is five years. The Registrar of the University by a notification dated August 25, 1983 notifies programme for holding the election of 42 members by the teachers of affiliated colleges from various faculties. According to the notification election was scheduled to be held on October 9, 1983.

3. Three teachers, two of whom belonged to the faculty of Education and the third belonging to the faculty of Arts, challenged the holding of the election by means of a writ petition before the High Court (Writ Petition No. SCA No. 4682 of 1983) on the ground that in view of the separation of the faculty of Education from the faculty of Arts as a result of the amendment of Section 23 by the Amending Gujarat Act 10 of 1982, the allotment of 14 seats for the faculty of Arts, and Education was illegal. They contended that in view of the separation of the two faculties separate seats should be allotted to the two faculties for the election of teachers to the Court. Petitioners of that writ petition claimed interim relief for the stay of the election of 42 representatives of teachers to the Court. The High Court, however, granted a limited interim relief, staying the process of election

with regard to the fourteen seats of Arts and Education faculties only; no stay was issued with regard to holding of election of the remaining 28 seats. In order to implement the interim order the University issued notification on September 27, 1983 notifying the stay of election to the 14 seats but it stated that the election with regard to remaining 28 seats in the teachers' constituency shall be held as scheduled. Election to the 28 seats from the teachers' constituency of other faculties was held on October 9, 1983. The respondent teachers of the University participated in the election, but before the declaration of the result of the election the respondents filed writ petition under Article 226 of the Constitution (SCA No. 5085 of 1983) seeking the relief of setting aside the election of 28 members and for the issue of a writ of mandamus directing the University to hold fresh election for all the faculties in accordance with the system of proportional representation and single transferable vote. Before the High Court respondents' main grievance was that since the election to 14 seats from the teachers' constituency of faculty of Arts and Education was stayed by the High Court, elections to the remaining 28 seats could not validly be held on account of the system of proportional representation by single transferable vote. The High Court accepted the contention raised on behalf of the respondents, set aside the election to 28 seats and directed the University to hold fresh election to the Court for 42 seats from amongst the teachers of various faculties. Aggrieved, the Gujarat University has preferred this appeal.

4. After hearing learned counsel for the parties at some length we are of the opinion that the High Court committed an error in entertaining the writ petition and interfering with the election. Election to the membership of the Court is regulated by the statutory provisions contained in the Act, and it also provides for the determination of election disputes. Section 58 as substituted by the Gujarat Act 9 of 1983 which came into force on January 25, 1983 provides for the determination of disputes as to constitution of any University authority. It reads as under :

58. Disputes as to constitution of University authority or body. - Where any question arises as to -

(1) the interpretation of any provision of this Act, or of any statute, Ordinance, Regulation or Rules, or

(2) whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or other body of the University,

(a) it may be referred to the State Government if it relates to a matter specified in clause (1), and

(b) it shall be referred to the State Government if -

(i) it relates to a matter specified in clause (2), or

(ii) if twenty members of the Court so require, irrespective of whether it relates to a matter specified in clause (1) or clause (2), and the State Government shall after making such inquiry as it deems fit (including giving opportunity of being heard where necessary) decide the question and its decision shall be final.

5. Under the aforesaid provision if a dispute arises with regard to the constitution of any of the authorities of the University, it should be referred to the State Government for determining the same. It firstly provides that where any question arises as to the interpretation of any provision of the Act, or of any statute, Ordinance, Regulation or Rules, it may be referred to the State

Government. Secondly, it lays down that if a question arises whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or other body of the University, it shall be referred to the State Government. Section 58(2)(a) provides that the dispute relating to interpretation of any provision of the Act or statute, Ordinance, Regulation or Rules may be referred to the government while clause (b) of sub-section (2) of Section 58 contains a mandatory provision that if the dispute relates to the question whether a person has been duly elected or appointed to any authority of the University such a dispute shall be referred to the State Government. There is no option or discretion. If such a dispute arises, it has to be referred to the State Government for determining the same. If 20 members of the Court raise a dispute relating to a matter specified in clause (1) or clause (2) of Section 58 it shall be referred to the State Government and thereupon the State Government shall after making such enquiry as it may deem fit, decide the question. The legislative intent is manifestly clear that any dispute relating to the matters covered by Section 58 should be referred to the State Government for its decision and such decision shall be final. By enacting Section 58, the legislature has constituted a forum for the determination of disputes in respect of matters specified therein. Since the "Court" is an authority of the University as declared by Section 15 of the Act, Section 58 provides an effective remedy for challenging the election of a member to the Court of the University. Any person aggrieved by the election of any manner to the Court has right to challenge the same before the State Government by raising a dispute in accordance with Section 58. In the instant case, the respondents could have availed the alternative remedy available to them before the State Government under Section 58 of the Act. Instead they challenged the validity of the election before the High Court under Article 226 of the Constitution. The respondents had challenged the validity of Statute 10(3) in their writ petition but they did not press that question before the High Court as stated in the judgment under appeal.

6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determining of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental nor a common law right, instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution bypassing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify bypassing the alternative remedies. In the instant case, there existed no circumstance justifying departure from the normal rule as even the challenge to the validity of Statute 10 was not pressed by the respondents before the High Court.

7. We do not consider it necessary to burden the judgment by referring to decisions of this Court laying down the principle that where a statute provides a complete machinery for obtaining relief against the orders passed by the authorities a petitioner cannot be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution. We would however refer to a decision of this Court in *K. K. Shrivastava v. Bhupendra Kumar Jain* [AIR 1977 SC 1703 : (1977) 2 SCC 494] where a defeated candidate at the election to the membership of the Bar Council of Madhya Pradesh moved the High Court under Article 226 of the Constitution challenging the validity of the election. The High Court was conscious that equally efficacious remedy was available to the petitioner under the rules but even thereafter the High Court interfered on the ground that since the entire election was challenged an election petition could not be an appropriate remedy and the same could not be considered as an equally efficacious remedy. This Court set aside the High Court's order. Krishna Iyer, J. speaking for the court observed : (SCC

p. 496, para 3)

It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument.

8. We have already referred to Section 58 which provides for the determining of dispute relating to election to the membership of any authority of the University. Since the Court is an authority of the University, the dispute relating to the validity of the election of 28 members from the teachers' constituency of various faculties of the affiliated colleges of the University could have been raised before the State Government. The High Court committed error in entertaining the petition and setting aside the election of 28 members of the Court.

9. Learned counsel for the respondent urged that Section 58 does not confer any right on an aggrieved person to have a dispute relating to election referred to the State Government. He placed reliance on the decision of a Division Bench of the High Court in *Ramjibhai Ukabhai Parmar v. Manilal Purshottam Solanki* [AIR 1960 Guj 19]. In that case the High Court interpreted Section 58 of the Gujarat University Act as it existed prior to its amendment in 1983. The High Court held that since a dispute could not be referred to the State Government unless it was raised by 20 members of the Court, alternative remedy could not be available to an aggrieved person. Section 58 was substituted by the Gujarat Act 9 of 1983 which came into force with effect from January 25, 1983. Under the amended section a dispute raised by an aggrieved person relating to election of a member to an authority of the University shall be referred to the government for adjudication. Now it is not necessary that the dispute should be referred to the State Government only when 20 members of the Court so require. On the other hand, reference shall be made to the State Government even if a dispute is raised by a single individual provided such dispute relates to a matter specified in Section 58(2) of the Act. The decision in *Ramjibhai Ukabhai Parmar* case [AIR 1960 Guj 19] does not apply in view of the amendment of Section 58.

10. In the result we allow the appeal set aside the order of the High Court and dismiss the writ petition filed by the respondents. There will be no order as to costs.

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