

Dr. Vasant Rao Pawar

Vs

Pune University

Civil Appeal No. 3714 of 1998

(S. C. Agarwal, A. P. Mishra JJ)

11.08.1998

ORDER

1. Special leave granted.

2. The question that falls for consideration in this appeal is whether the appellant who was elected as a member of the Senate of Pune University (hereinafter referred to as "the University"), as a representative of the management of affiliated colleges or recognised institutions under Section 25(2)(m) of the Maharashtra Universities Act, 1994 (hereinafter referred to as "the Act") has ceased to be a member of the Senate by virtue of his having been replaced as its representative by the management of the institution represented by him on the date of the election. This question involves the interpretation of Section 43 of the Act which reads as under :

"43. Cessation of membership. - Notwithstanding anything contained in this Act or the statutes made thereunder, where a person elected, nominated, appointed or co-opted as an officer of University or a member of any of the authorities or bodies of the University by virtue of his being eligible to be so elected, nominated, appointed or co-opted as such an officer or a member under any of the categories of officers or members specified by or under the relevant provisions of this Act in relation to such office, authority or body, he shall cease to be such an officer of the University or a member of such an authority or a body as soon as he ceases to belong to such category and shall be deemed to have vacated his office as such officer or member."

3. The facts, briefly stated, are as under :

By resolution dated 28-8-1994, the appellant was nominated as its representative by the Nasik District Maratha Vidya Prasarak Samaj (hereinafter referred to as "the Vidya Prasarak Samaj"), a recognised institution. On 28-12-1994, he was elected as a member of the Senate by the electoral college consisting of the representatives of the managements of affiliated colleges and recognised institutions under Section 25(2)(m) of the Act. Subsequently, the appellant was also nominated as their representative by the managements of two other institutions, namely, Karmaveer Kakasaheb Wagh Education Society and Shri Gurudev Shikshan Prasarak Mandal and by letters dated 4-7-1997 and 17-6-1997 respectively, the said institutions informed the Registrar of the University about the appellant having been nominated as their representative. The Executive Committee of the Vidya Prasarak Samaj adopted a resolution dated 13-6-1997 whereby, instead of the appellant, Shri Prataprao Narayan Sonaware was nominated as the representative of the management of the Vidya Prasarak Samaj and a communication to that effect was sent by the Education Officer, Vidya Prasarak Samaj to the Registrar of the University on 14-7-1997. By his letter dated 23-7-1997, the

Officiating Registrar of the University informed the appellant that since he had ceased to be the representative of the Vidya Prasarak Samaj, his membership of all the bodies of the University, including the Senate, has come to a termination. Feeling aggrieved by the said termination of his membership of the Senate, the appellant filed a writ petition [Writ Petition No. 23310 (sic) of 1997 in the Bombay High Court which was dismissed by the impugned judgment. Hence this appeal.

4. A perusal of Section 43 of the Act shows that a person who has been elected, nominated, appointed or co-opted as a member of any of the authorities or bodies of the University by virtue of his being eligible to be so elected, nominated, appointed or co-opted as such member under any of the categories of the officers specified by or under the relevant provisions of the Act, shall be deemed to have vacated his office as such member as soon as he has ceased to belong to such category. The question is what is meant by the expression "category" in Section 43. Shri Ranjit Kumar, the learned counsel appearing for the appellant, has urged that the expression "category" means the class of persons from which a person is elected, nominated, appointed or co-opted under the particular provision of the Act and that insofar as the appellant is concerned, the said category would be the persons mentioned in Section 25(2)(m) of the Act, namely, the representatives of the management of affiliated colleges or recognised institutions. The submission of Shri Ranjit Kumar is that the fact that the appellant had ceased to be the representative of the management of the Vidya Prasarak Samaj which institution he was representing at the time when he was elected as a member of the Senate does not mean that he had ceased to belong to the category which had elected him as a member of the Senate because prior to his ceasing to be a representative of the management of the Vidya Prasarak Samaj, the appellant had been nominated as their representative by the managements of other two recognised institutions. Shri R. F. Nariman, the learned Senior Counsel appearing for the University, has, however, contended that in the context of Section 25(2)(m) of the Act, the expression "category" in Section 43 has to be construed as meaning the elected representatives of the management of the affiliated colleges or recognised institutions and as soon as the appellant ceased to be the representative of the Vidya Prasarak Samaj, in which capacity he was elected as a member of the Senate, he ceased to belong to the category of elected representatives of the managements of the affiliated colleges or recognised institutions and he should be deemed to have vacated his office of the Senate under Section 43 of the Act.

5. While construing the expression "category" in Section 43, we have to keep in view the provisions contained in Section 25(2)(m) of the Act which reads as under :

"25. (2)(m) five representatives of the managements of affiliated colleges or recognised institutions elected by the electoral college consisting of Chairman or President or the representative of the managements as the management may recommend. Where a management conducts one or more colleges or institutions, only one Chairman or President or representative of such management as the case may be, shall be the member of the electoral college;"

6. The said provision postulates that five persons have to be elected from amongst the representatives of the managements of affiliated colleges or recognised institutions. The said representatives constitute the electoral college for electing those five members. The representatives of the managements of affiliated colleges or recognised institutions would, therefore, constitute the category of members from which five members of the Senate are elected and a person who is a representative of the management of an affiliated college or recognised institution and is eligible to be elected as a member of the Senate by virtue of his being such a representative would continue to belong to the category of members from amongst which the members of the Senate are elected so

long as he continues to be the representative of the management of an affiliated college or a recognised institution and he would not cease to belong to that category of members merely because he is no longer the representative of the management of the affiliated college or recognised institution which he was representing at the time when he was elected to the Senate but is now the representing of the management of another affiliated college or recognised institution. After being elected as a member of the Senate, the elected member is entitled to continue as such member for his entire term of five years as fixed under Section 42 of the Act so long as he continues to belong to the category from which he was elected as a member of the Senate. The language used in Section 43 does not support a restricted interpretation of the expression "category" to mean only the representatives of the managements of affiliated colleges or recognised institutions who have been elected as officers of the University or members of any of the authorities or bodies of the University. Section 43 talks of a person being elected by virtue of his being eligible to be so elected under any of the categories of officers or members specified by or under the relevant provisions of this act in relation to such office, authority or body. This indicates that "category" under Section 43 means the group of members from amongst whom a person is elected as a member of any of the authorities or bodies of the University by virtue of his being eligible to be so elected. As regards a person elected as a member of the Senate by the representatives of the management of affiliated colleges or recognised institutions under Section 25(2)(m) of the Act, the category for the purpose of Section 43 is the group of representatives of the management of affiliated colleges or recognised institutions from amongst five persons who are elected as members of the Senate.

7. On that view of the matter, the appellant could not be treated as having ceased to be a member of the Senate of the University on his being replaced as the representative of the management of the Vidya Prasarak Samaj by Shri Prataprao Narayan Sonaware under resolution dated 13-7-1997 of the Executive Committee of the Vidya Prasarak Samaj because prior to the said resolution, the appellant had already been nominated as their representative by two other recognised institutions and continued as the representative of the management of a recognised institution even after he had ceased to be the representative of the management of the Vidya Prasarak Samaj. It cannot, therefore, be said that after the passing of the resolution of the Executive Committee of the Vidya Prasarak Samaj dated 13-7-1997, the appellant had ceased to belong to the category of members from amongst whom five members of the Senate are elected under Section 25(2)(m) of the Act and by virtue of Section 43 of the Act, he has ceased to be a member of the Senate of the University.

8. We may, at this stage, indicate that the question whether the appellant could be the representative of the managements of two recognised institutions at the same time has not been raised before us and we do not propose to express any opinion on this question.

9. For the reasons aforementioned, the appeal is allowed, the impugned judgment of the High Court is set aside and, allowing the writ petition filed by the appellant, the order dated 23-7-1997 passed by the Officiating Registrar of the University is set aside. No costs.