

MYSORE HIGH COURT

P.S. Venkataswamy Setty

Vs

University of Mysore

Writ Petn. No. 687 of 1961

(N. Sreenivasa Rau, C.J. and A. Narayana Pai, J.)

05.04.1963

JUDGMENT

Narayana Pai, J.

1. By Notification No. A.3-167-59-60 dated 25th June 1959 the first respondent-University of Mysore through its Registrar invited application from duly qualified candidates of Indian nationality for appointment in respect of six posts of Professors and twelve posts of Readers in various subjects of study. The post included one post of Professor of Physics and three posts of Readers in Physics. The Petitioner was one of the applicants for the post of a Reader in Physics. Although several candidates for the posts of Professor and Readers in Physics were interviewed by the Board of Appointments, none was selected. The posts in the Physics Department, viz., one post of Professor and three of Readers were re-advertised by a subsequent Notification No. D6-357-60-61 dated 15th November 1960. The Petitioner one again applied for appointment as one of the Readers in Physics. The second respondent was an applicant for the post of Professor of Physics and Respondents 3 to 5 were applicants for the posts of Readers in Physics. The Board of Appointments selected the second respondent for appointment as Professor of Physics and respondents 3, 4 and 5 for appointment as Readers in Physics. These selections having been approved by the Chancellor of the University they were appointed to the posts in accordance with the selection made by the Board of Appointments by Order No. D6-165-60-61 dated 16th February 1961. In this Writ Petition filed on 23rd June 1961, the petitioner challenges the validity of the said appointments. Although in the prayers made by him the petitioner describes the order or orders he seeks, as writ of Mandamus or Writ of quo warranto. the substance of the prayers is that the aforesaid order of appointment dated 16th February 1961 should be quashed and that respondents 2 to 5 should be restrained from functioning as Professor or Readers in Physics, as the case may be, by virtue of the appointments made by or under the said order.

2. It appears that the fifth respondent never took up the appointment and that the fourth respondent who did take up the appointment has since left the same and taken up employment elsewhere. At present, therefore the principal contesting respondents are respondents 2 and 3 represented by a common counsel Mr. R.M. Seshadri. The University which appears by separate Counsel Mr. Mahendra, of course supports the case of these confessing respondents and claims

that the said appointments are perfectly proper and valid and not open to question.

3. The case of the petitioner as set out in the affidavit in support of the petition and as subsequently elaborated or elucidated by his learned counsel Mr. G.L. Bangalore is two-fold. The first challenge is that the appointments are invalid or unauthorized because the qualifications therefore as set out in the second of the Notifications are not shown to have been prescribed by the Syndicate of the University nor do they conform to the qualifications actually prescribed by the Syndicate. It is pointed out that by virtue of Section 20 read with clause (e) of Section 41 of the Mysore University Act, 1956, qualifications of teachers of the University could be prescribed only by the Syndicate promulgating an ordinance prescribing or enumerating such qualifications. The second challenge is that the appointments are vitiated by bias or mala fides. The facts stated in support of the same are that the two specialists on the Board of Appointments for Physics were Dr. C.V. Raman and his erstwhile student of Dr. C.N. Ramachandran, that among the persons selected for appointment by them, respondents 2 and 3 were Dr. C.V. Raman's nephews and that both the said respondents as well as respondents 4 and 5 had been, working at Dr. C.V. Raman's Research Institute at Bangalore, It is contended that the selections have been solely motivated by the said relationship which existed between Dr. C. V. Raman and respondents 2 to 5, that the qualifications set out in the second Notification were specially designed or devised at the express request or suggestion of Dr. Raman so as to facilitate the selection of the said respondents for appointment. It is further pointed out that the bias in favor of the respondents operated to such an extent as to lead to the Board of Appointments dispensing with even the formality of an interview in the case of the second respondent and actually ignoring the fact that the fifth respondent did not even possess the minimum qualification of a Master's Degree in Physics, his basic degree being only an Honours degree in Mathematics.

4. Mr. Seshadri, learned counsel for respondents 2 and 3, has divided his arguments under two heads, those that are in the nature of preliminary objections to the maintainability of the Writ Petition and those bearing on the merits of the case. It will be convenient first to deal with the arguments in the nature of preliminary objections.

5. Analysing the prayers made in the petition. Mr. Seshadri points out that the writs sought are those in the nature of quo warranto, mandamus or certiorari and that in the circumstances of the case, none of these writs would lie or could issue at the instance of the petitioner. It is contended that quo warranto cannot lie because the post of Professor or Reader in a University is not a public office in respect of which alone a writ of quo warranto could issue, that a writ of mandamus, cannot lie because neither the University nor the Board of Appointments can be said to be performing or required to perform a mandatory duty in relation to the petitioner or in relation to any right claimable by the petitioner to insist upon the performance of any such duty, and that a writ of certiorari cannot lie because in selecting persons for appointment or appointing persons a University Professors or Readers, neither the University nor the Board of appointments nor any other University authority can be said to perform a judicial or a quasi-judicial function. Apparently to ensure that the preliminary objection is rendered complete and effective, Mr. Seshadri made two further propositions. He contended firstly that even the power or jurisdiction of the High Court under Article 226 of the Constitution must be read as limited to the issue of writs of the type enumerated in the Article, viz., writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari in the same way and subject to the same limitations as govern the issue of similar writs by Courts in England. Secondly or alternatively he contended that even if a

High Court could issue a writ of a nature different from any one of the enumerated writs or any other type of order or direction, under Article 226, the power or jurisdiction to issue any such writ, order or direction could be invoked only by a petitioner who is aggrieved by the order or action challenged in the Writ Petition and who seeks protection by the High Court of a legal right vested in him.

6. We might at once say that it is now too late in the day to contend that the power or jurisdiction of the High Court under Article 226 is restricted or limited in the manner suggested by Mr. Seshadri, viz., that the only power thereunder is the power to issue writs of the type enumerated therein, and that the nature and ambit of that power is exactly the same as the nature and ambit of the power of English Courts to issue those writs. It is no doubt true that in some of the decisions rendered shortly after the promulgation of the Constitution there are some dicta or observations which, at first sight appear to lend some support to this contention. It should, however, be remembered that before the promulgation of the Constitution, the power to issue writs was exercisable only by the original sides of the Chartered High Courts who succeeded to the old Supreme Courts of Calcutta, Bombay and Madras, and that instances of the exercise of such power were few and far between. It was for the first time on the promulgation of the Constitution that the power to issue writs was conferred on all High Courts by Article 226 of the Constitution. There were very few precedents available in India. Recourse was therefore naturally had to English precedents. To a certain extent therefore both the arguments of lawyers and decisions of Courts in India were influenced by English precedents. But the extreme proposition that the power of Indian High Courts under Article 226 of the Constitution was the same as and was in no manner different from the power of English Courts to issue writs has never been accepted as correct. The very language of the Article makes it impossible to advance any such argument. The Article in clear terms states that every High Court shall have the power to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto or certiorari, or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. There is nothing in the language of the Article to suggest that directions or orders which, could be issued thereunder should necessarily be writs or that the writs which could be issued could only be those enumerated therein. Indeed, at a later stage of his arguments, Mr. Seshadri had to concede that it was not possible to plead in the language of the Article any such restriction as his argument purported to do. He, however, argued that the restrictions indicated by him are based not so much on the language of the Article as on the circumstances that the power being undoubtedly discretionary. Courts in India while formulating principles on which judicial discretion under the Article should be exercised have voluntarily imposed upon themselves such restrictions taking guidance from English precedents. The argument is not entirely without force. But, it does not, in our opinion, state the position either fully or accurately. Once it is conceded that what appear to be restrictions are really what the Courts consider to be sound principle guiding the exercise of their judicial discretion, a suggestion that every restriction that obtains in England in the matter of issue of writs is necessarily available in India also would in fact amount to a negation of the exercise of discretion by obliging the Courts to invariably net in a particular manner in the exercise of their jurisdiction. Further, in the matter of the exercise of judicial discretion, the undoubted principle is that such discretion in the matter of exercising a particular power or a particular jurisdiction should be so exercised as to subserve the purposes of that power or jurisdiction and not so as to stultify or render it ineffective. It is now well established that the essential purpose of Article 226 as well as Article 227 is to protect fundamental rights guaranteed by the Constitution, to correct legislative

or executive excesses or abuse of power and generally to see that all persons exercising authority and all tribunals and authorities including in appropriate cases a Government are kept within the bounds of their jurisdiction or sphere of authority or power, all of which ideas are compendiously expressed in the term 'judicial review'. That power of judicial review is therefore conferred upon Courts with a view to strike down the purported exercise of power which does not exist or to correct excessive exercise or abuse of power that actually exists and is not intended to enable or empower the Courts themselves to exercise that power. In other words, judicial review in respect of legislative executive or administrative functions does not mean that the Court can itself function as a legislator, executive or an administrator. Likewise, while exercising judicial review in respect of quasi-judicial functions by authorities or tribunals, the Court does not take upon itself the exercise of the jurisdiction which should properly be exercised by such other authorities or tribunals. That is why it is stated that a High Court does not sit as a court of appeal in an application for the issue of a writ of certiorari or itself exercise a statutory function or duty imposed on an authority or body while dealing with an application for the issue of a writ of mandamus to that authority or body or does not itself make an order or appointment while dealing with an application for the issue of a writ of quo warranto.

7. In the light of these considerations, it appears to us that the correct view to take in the matter of the exercise by High Courts of their power or jurisdiction under Article 226 is that the restrictions that they voluntarily impose upon themselves in exercising that power or jurisdiction are not derived from the technicalities of English law which govern the issue of writs of a particular description but are those intended to maintain the character of that power as the power of judicial review. While guidance can be taken from the principles of English [aw in the matter of issue of writs, recognition of any restriction which may conceivably render the Court Helpless to interfere in a case which clearly calls for interference either for the protection of fundamental rights or for upholding the Constitution or to correct a clear or manifest injustice would, in our opinion, be an abdication of power which it is not open to a High Court to do. In the last analysis, the discretion whether or not to interfere and if so, what the manner and extent of such interference should be must depend upon the facts and circumstances of each case, subject no doubt to principles and considerations appropriate to the idea of judicial review.

8. We also do not think that Mr. Seshadri's analysis of the prayers in the writ petition is quite accurate. Shortly stated, the prayers are :

- (1) to call for the records connected with the order of appointment dated 16th February 1961 and to quash that order,
- (2) to issue a writ of quo warranto calling upon the second respondent to show by what authority he is functioning as Professor of Physics in the University of Mysore and upon respondents 3 and 4 to show by what authority they are functioning as Readers in Physics in the same University, and
- (3) to restrain the first respondent University from acting upon or giving effect to the order of appointment dated 16th February 1961 and to restrain respondents 2 to 4 from functioning as Professor or Readers, as the case may be, pursuant to the said order.

Merely because there is a prayer to call for the records and to quash the order of appointment, we do not think that the said prayer can be construed as a prayer for the issue of a writ of certiorari

strictly so called. It must be read in the light of other prayers also. Those other prayers are clearly prayers for the issue of a writ in the nature of quo warranto or other appropriate writ having the ultimate result of rendering the order of appointment ineffective and removing the appointees from the posts to which they have been appointed. Quo warranto in English law, as we shall presently point out, was originally in the nature of a writ of right at the instance of the Crown to prevent usurpation of a power of prerogative of the Crown, and later came to acquire the character of a mere information laid by the Attorney-General of the Crown, first in the name of the King and later at the instance of even a private relator, to call upon a specified person to prove or produce the authority under which he is functioning in a particular office if he fails to make good his authority. Hence prayers appropriate to quo warranto generally include one to call upon an alleged usurper of a public office to show or prove his authority to hold the same and another to restrain him from functioning in that office if he fails to prove his authority so to function.

9. Correctly understood therefore, this Writ Petition is essentially one for the issue of a writ in the nature of quo warranto or other appropriate writ to remove the contesting respondents from the posts they are holding on the allegation that they have no due authority of law to hold the same. No question therefore in relation to either certiorari or mandamus can or does arise in this case. The only questions therefore whether by way of preliminary objections or on the merits of the case which need be considered are those that are relevant to the prayer for the issue of a writ of quo warranto or other appropriate writ, direction or order having the ultimate result of removing the contesting respondents from the posts they are holding by virtue of the University's order of appointment dated 16th February, 1961. Those questions are :-

- (1) Whether the nature of the posts held by the contesting respondents is such that a writ of quo warranto can be asked for to remove them from those posts, and
- (2) Whether the petitioner is competent to move this Court for the issue of such a writ.

10. Although we have stated the questions as two different ones, they are essentially interrelated, because to a large extent the competence of the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution depends upon the question whether the relief that he is entitled to is a writ of quo warranto strictly so called or some other type of writ, direction or order. The question of locus standi of persons seeking the issue of a writ has been the subject of many decisions, both in England and in India. In England the question has been considered from the point of view whether the writ asked for is what is called a writ of right or merely a discretionary writ. In the former category the view taken is that the petitioner will be entitled to a writ ex debito justitiae as soon as he establishes conditions or circumstances entitling him to such a writ. In India it may be difficult to assert that there is anything like a writ of right because, as already observed, the issue of any type of writ, order or direction under Article 226 is clearly a matter of discretion with the Court. The question therefore whether the petitioner has or has no locus standi to make the petition to seek the issue of a writ appropriate to the facts of his case is necessarily related to the nature of the relief he seeks. Thus, for example, if he seeks the issue of a writ of mandamus to a statutory body, functionary of other authority to do or to forbear from doing a particular act, he has necessarily to make out that he has a certain right by virtue of which he is entitled to a particular act being done by that body, functionary or authority or to require that the said body, functionary or authority shall not do a thing which may prejudicially

affect his right. In the case of a writ of certiorari, he should ordinarily be a person who is adversely affected by the order sought to be quashed. Whether the distinction made in England to the effect that a writ of certiorari will issue *ex debito justiae* in the case of persons directly affected by the impugned order or proceedings but only as a matter of discretion in the case of strangers to those proceedings of orders is also available in India is a matter which it is now unnecessary for us to examine. In the case of a writ of habeas corpus there may be circumstances which may make the question of locus standi of the petitioner wholly immaterial. In the case of a writ of quo warranto, the petitioner is hardly even an aggrieved person but is really in the nature of an informer. In fact, in England the petitioner in such circumstances is not called a petitioner at all but only a relator, i.e., one who relates facts on the basis of which the Court itself takes action in the name of the King. The only general proposition therefore which can be stated on the question of locus standi of petitioners in writ petitions or petitions under Article 226 of the Constitution is that ordinarily a petitioner will have to make out some personal interest which the law recognises as sufficient, unless having regard to the nature of the relief and particular facts and circumstances of the case the petitioner is merely in the position of an informer or a relator and the situation is such that it becomes the duty of the Court to act in public interest or to uphold the Constitution.

11. The peculiar characteristics of the of quo warranto and the history of its development in England are found discussed in the leading case of *The King v. Speyer*¹, Lord Reading, C.J., points out that originally a writ of quo warranto was available only for use by the King against encroachment of royal prerogative or of rights, franchise or liberties of the Crown but that later it gave place to the practice of filing information's by the Attorney General on the strength of which the Court enquired into the authority whereby the respondent held any public position. Later still, the King's coroner commenced the practice of exhibiting the information of quo warranto at the instance of even private persons. To prevent the abuse of this practice statutes were subsequently passed during the reign of the King William and Queen

¹(1916) 1 KB 595

Mary, after which the practice of coroner filing information was stopped. Another statute was passed during the reign of Queen Anne making the issue of a writ of quo warranto subject to the discretion of the Court to grant or refuse the same upon the informations exhibited by private persons. In a sense, the proceedings were criminal in nature because the party who laid information before the Court was merely in the position of an informer or a relator. The long history of the proceedings in quo warranto led to considerable conflict of decisions. The matter was fully examined by the House of Lords in the case of *Darley v. R.*², in which Tindal, C.J. expressed his conclusion in the following off-quoted words :-

"After the consideration of all the cases and dicta on this subject, the result appears to be, that this proceeding by information in nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of there."

After that decision, the position was firmly established in England that a writ of quo warranto will lie only in respect of what may be briefly described as public offices, that is to say, offices the holders of which exercise some governmental function or power or are conferred with the

power or charged with the duty of acting in execution or application of the law. It is necessarily so because in its origin the writ of quo warranto was action taken by the Crown itself in England against persons who usurped or purported to usurp any of the privileges, prerogatives, rights or liberties of the Crown, and in England the Crown was the fountain source of law. The same position is found summarised in paragraphs 274 to 277 of Halsbury's Laws of England, Third Edition, Volume II. The same view has been accepted and acted upon in India by a Bench of the Madhya Bharat High Court, see Anand Bihari Ram Sahay, AIR 1952 Madh-Bha 31 at p. 37. Their Lordships were dealing with the office of the Speaker of the Legislative Assembly and expressed themselves as follows :

"The learned Advocate-General opposes the petition on the ground that the office of the speaker is not an office under the Crown i.e., the Executive, hence no information in the nature of quo warranto would lie. An information in the nature of quo warranto will lie in respect of any particular office when that office satisfies the following conditions : (1) the office must have been created by charter from the Crown or by Statute. (2) The duties of the office must be of a public nature. (3) The office must be one the tenure of which is permanent in the sense of not being terminable at pleasure. (4) The person proceeded against has been in actual possession and user of the particular office in question (Vide Halsbury's Laws of England, Vol. X 1909 Edn. pages 129 and 130 : and 131). The office of the speaker has been created by statute Article 178 of the Constitution and Section 6 of the Interim Legislative Assembly Act of Madhya Bharat provide for it. That the duties of the office of a speaker are of a public nature is not disputed by the Advocate-General. The third and the fourth requisite conditions are also fulfilled in the present case. In these circumstances the objection of the Advocate-General cannot be sustained."

²(1846) 12 Cl. and F. 520 at p. 537 : 8 ER 1513

In India we have a republican Constitution. Hence in India the nature of office in respect of which quo warranto will lie must be taken to be an office created by the Constitution itself or by any statute and invested with the power or charged with the duty of acting in execution or in enforcement of the law. We might add that the office may be either an elective office or one in respect of which a nomination or appointment is made by a specified authority and that in the case of elective office, we generally have the procedure of election petitions which makes it unnecessary for any one to proceed by way of a writ of quo warranto.

Provided the office is of the character or nature described above, it is well established in England that the petitioner who is only a relator need not have any personal interest in the matter. All that is necessary is that he should act bona fide. In public interest and should not be a mere man of straw acting at the instance of others or on ulterior motives. The writ, as already stated, is purely discretionary with the Court and will not issue unless the Court is satisfied that it is necessary to issue the writ in public interest.

12. The principles stated in the case of 1916-1 KB 595 have been applied in India also. The only case where it was held that even in the case of quo warranto the petitioner must have a personal interest before he could move the Court is the decision of a Single Judge Chandra Reddi, J., as he then was, of the Madras High Court reported in Re, Chakkarai Chettiar, AIR 1953 Madras 96.

His Lordship purported to follow the decision of a Bench of that High Court reported at page 94 of the same Volume. That Bench decision, however, related to a case of certiorari. The opinion of Chandra Reddi, J., was dissented from by a subsequent Bench ruling of the Madras High Court in *Sivarama Krishnan v. Arumugha Mudliar*³. It is pointed out in that case that no other High Court in India has accepted Justice Chandra Reddi's view. Among the rulings of other High Courts expressing such dissent are *Biman Chandra v. Governor, West Bengal*⁴, and *V.D. Deshpande v. State of Hyderabad*⁵. In the latter decision other cases, both English and Indian, are found discussed and the principles formulated.

13. We can therefore take it as well established proposition that if the writ asked for is strictly a writ of quo warranto in respect of a public office, the petitioner need have no personal interest. If, however, the position or the office held by the respondents cannot be described as a public office in the sense explained above, the case will not be one for quo warranto in the strict sense but will be one only for some other type of appropriate writ order or direction under Article 226 of the Constitution, before getting which the petitioner will have to establish that he has some personal interest in the matter which the law recognises as sufficient.

14. Now, in the case before us, the posts held by the contesting respondents are of a professor or of a Reader in Physics at the University of Mysore. They are certainly not posts or offices created by the Constitution. Section 13 of the Mysore University Act gives a list of statutory authorities of the University, viz. –

³ AIR 1957 Mad 17

⁵ AIR 1955 Hyd36

⁴ AIR 1952 Cal 799

- (a) the Senate,
- (b) the Syndicate,
- (c) the Academic Council,
- (d) the Faculties,
- (e) the Boards of Studies,
- (f) the Board of Appointments,
- (g) the Committee of Finance, and
- (h) such other bodies as may be declared by statutes to be the authorities of the University."

No declaration under clause (h) assimilating the position of professors and Readers to a statutory authority of the University has been brought to our notice. Nor is there any provision of the Act which enumerates or designates Professors, Readers or teachers as statutory functionaries in the same way as functionaries like the Chancellor, Vice-Chancellor, Registrar, to have been. Professors and Readers of the University clearly do not exercise any Governmental functions nor are they invested with the power or charged with the duty of acting in execution or enforcement of the law. They are merely employees under a statutory body. They cannot therefore in any sense be described as holders of public offices in respect of which quo warranto will lie.

15. This finding is sufficient to dismiss the Writ Petition so far as the post of Professor held by

the second respondent is concerned. Admittedly the petitioner was not a candidate for appointment as Professor of Physics. He had applied only for appointment as one of the Readers in Physics.

16. The next question is whether in regard to the post of a Reader the petitioner can be said to have an interest sufficient to entitle him to make the petition. Mr. Seshadri has argued that the existence of a legal right in the petitioner is the very foundation of our jurisdiction. He relies particularly upon a decision of the Supreme Court reported in *Dr. Rai Shivendra Bahadur v. Nalanda College Bihar Sharif*⁶, In that case, the petitioner was first appointed Principal of the College but was later removed by the appointment of another person as the Principal. Claiming that he must be held to have continued to hold the position of Principal and that the appointment of the other person was invalid, he had asked for several writs including a mandamus to continue him as the Principal or reinstate him as the Principal on the ground that he was a better candidate than the other person later appointed and entitled to promotion. The High Court of Patna had held that the petitioner's appointment was not valid and the appointment of the other person was perfectly valid. Upon appeal, their Lordships of the Supreme Court held that –

"According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement."

⁶ AIR 1962 SC 1210

and declined to go into other questions raised by the petitioner. The position in the present case is in our opinion, quite different. The petitioner before us does not ask for any mandamus that he be selected or appointed. His contention is that the appointment of respondents 3 to 5 (among whom we are at present concerned only with the third respondent for the reasons already stated by us) as Readers was invalid and unauthorized and also mala fide. He was himself an applicant for appointment as a Reader. He is therefore entitled to say that the appointment should be made in accordance with the Rules and Ordinances and that the Board of Appointments and other authorities of the University should act in accordance with the said ordinances and Rules. That, in our opinion, is sufficient interest which entitles the petitioner to come to this Court questioning the validity of the appointments made and seeking the issue of appropriate writs. The position in our opinion is similar to that if the petitioner in the case reported in *Guruswarni v. State of Mysore*⁷, That was a case in which the auctioning of an excise contract was impugned as invalid. Their Lordships in that case observed as follows : -

"The grant of the contract to Thimmappa was therefore wrong. The next question is whether the appellant can complain of this by way of writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. Here we have Thimmappa, who was present at the auction and who did not bid not that it would make any difference if he had, for the fact remains that he made no attempt to outbid the appellant. If he had done so it is evident that the appellant would have raised his own bid."

17. We hold therefore that so far as the petition is directed against the appointment of Readers, the contesting respondents cannot claim that the petition be dismissed on the preliminary ground that the petitioner has no locus standi.

18. We therefore proceed to examine the petitioners' case on merits so far as the appointment of Readers is concerned.

19. We have already summarized his case on merits, according to which the points for consideration will be –

(i) Whether the enumeration of qualifications in the second Notification dated 15th November, 1960, is unauthorized or without authority, and (2) whether the selections or appointments are vitiated by bias and mala fides.

20. Section 20 of the Mysore University Act vests in the Syndicate the administration of the University including general superintendence and control over its institutions, and empowers it to make Ordinances. Section 41, which describes the scope of Ordinances, states, among other things, that Ordinances may deal with the matters enumerated therein which include the qualifications of teachers of University. Section 42 which prescribes the procedure for making Ordinances provides that Ordinances made by the Syndicate shall be placed before the Senate and that they shall thereafter

⁷ AIR 1954 SC 592

be submitted to the Chancellor for his assent. Sub-Section (5) states that every Ordinance assented to by the Chancellor will be given effect to from such date as the Chancellor may direct.

21. According to Section 26, appointments to the staff of the University have to be made in accordance with the Rules made by the Chancellor in consultation with the Syndicate. The same section provides that there shall be a Board of Appointments for the purpose of making appointments to the posts of professors Readers and Lecturers. The Board is to consist in the case of appointments of Professors and Readers of the Vice-Chancellor who shall be the Ex-Officio Chairman and two specialists in the subject concerned selected from outside the University by the Chancellor. While making appointments the Board is required to consult the Head of the Department for the subject concerned, the Dean of the faculty concerned, etc. Sub-Section (4) provides that the decisions of the Board shall not have effect unless approved by the Chancellor.

22. The case of the petitioner is, as already stated, that the qualifications set out in the Notification of 15th November 1960, are not those prescribed by any Ordinance issued by the Syndicate. The petitioner himself was not in a position to produce a copy of the relevant Ordinances, if any, promulgated by the Syndicate. The learned counsel on behalf of the University has placed before us a cyclostyled copy of Ordinances prescribing the qualifications said to have been assented to by the Chancellor which assent is said to have been communicated by a letter dated 22nd January, 1960, a copy of which is annexed to the copy of the Ordinance. It is not clear whether the Chancellor has fixed any date on which the said Ordinance could come into force as required by Sub-Section (5) of Section 42. Both sides however have argued the case on the basis of the Ordinances so produced. The Counsel for the University has also placed

before us a set of Rules made in exercise of the powers conferred by Section 26(1) of the Act. Sub-rule 2 of Rule 1 thereof states that the said Rules will come into force on the date of their publication in the Mysore Gazette. After enquiry the learned counsel for the University told us that the Rules had not so far been published in the Mysore Gazette but that the University has been acting upon those Rules as if they had come into force. This situation regarding the Rules may not make much difference to the case because the only argument in relation to the Rules on behalf of the petitioner was that the Second respondent had not been interviewed by the Board of appointments as required by Rule 5. Because the case against the second respondent fails on the preliminary ground, this argument has become irrelevant. It is not the case of the petitioner that the third respondent was not interviewed. In this case, the only question is whether the enumeration of the qualifications in the second Notification is not in accordance with the Ordinances promulgated by the Syndicate.

23. The qualifications for Readers as prescribed in the relevant Ordinance are the following :-

"A first or High Second Class Master's Degree or a First Class Honours Degree, and ii. A Research Degree of a Doctorate standard or published work of a high standard or at least five years experience of teaching degree classes."

The enumeration of qualifications in the Notification is as follows :

"Candidates for the Professorship should have had a distinguished academic record, obtained a doctor's degree by research, and published independent original work of high standard and of acknowledged merit. They should have had at least ten years experience of working in a reputed centre or centres of advanced study and research in Physics after taking their Master's Degree. Candidates for the Readerships should have similar qualifications as those stated above, except that five years experience instead of ten years would be acceptable. The Professor should be generally acquainted with the whole field of modern Physics on the experimental side and possess special knowledge of at least one branch of experimental Physics which he would be expected to teach and investigate in the University Laboratories. The Readers appointed should be qualified to teach and carry on research in one or another of the following branches :

- (a) Theoretical Physics, including Quantum Theory and Statistical Mechanics :
- (b) Crystallography and Solid State Physics,
- (c) Spectroscopy of all wave lengths and
- (d) Electronics and Radio.

The knowledge of regional language Kannada is considered as a desirable qualification. Preference will be given to candidates who have had experience in teaching and organization of research and have also done advanced research work."

It will be noticed that the qualifications prescribed in the Notification are superior to those prescribed in the Ordinance. Whatever be the motive or purpose of prescribing such superior qualifications, which question we shall consider at a later stage, there can be no doubt that none of the qualifications prescribed in the Ordinance has been either dispensed with or totally ignored. The case made against the third respondent in paragraph 16 of the petitioner's affidavit

in support of the petition 13 that he has no teaching experience of Graduate Classes at all for any period and that he has no knowledge of Kannada. The knowledge of Kannada is not prescribed in the Ordinance, and according to the notification, it was only a desirable qualification and not a compulsory one. The five years' experience of teaching Degree Classes according to the Ordinance is not compulsory but alternative to the qualifications of Research Degree of Doctorate standard or published works of a high standard. According to the ordinance therefore, any one of these three is sufficient, of course in addition to the basic qualification of a First or High Second Class Master's Degree or First Class Honours Degree. The experience required by the Notification is of working in a reputed centre or centres of advanced study and research in Physics after taking the Master's Degree. The third respondent has, according to his affidavit which is not controverted, all the qualifications required either by the Ordinances or by the Notification. He took his B.Sc. (Honours) Degree in Physics securing the first rank in First Class and two gold Medals. He was awarded the titular M.Sc. Degree a year after securing the Honours Degree. He was granted a Research Scholarship by the Government of India and acted as a Research Assistant and then as an Assistant Professor attached to the National Research Professor. He also states that he has conducted independent researches in the field of optical crystallography and optics and published some twenty independent publications involving both theoretical and experimental investigation. On the basis of his research work, he was awarded the D.Sc. Degree by the Nagpur University in 1960. He was elected Fellow of the Indian Academy of Science in 1958. These facts³ apart altogether from further facts stated by the third respondent, make out that he was fully qualified to be selected for appointment as a Reader in Physics, whether the qualifications are tested according to the provisions of the Ordinance or according to the requirements of the Notification.

24. The only question of law is whether the Board of Appointments in prescribing the qualifications in the notification have contravened any Ordinance of the Syndicate. In our opinion, they can be said to have so contravened an Ordinance only if they dispensed with any of the qualifications prescribed by the Ordinance. If without dispensing with any of them they insisted upon higher or superior qualifications necessary, in their opinion, for the purpose of holding a particular post requiring superior qualifications or competence, we do not think that it can be said that they have in any manner contravened the Ordinances. The proper view to take in this matter is that the Ordinances prescribed the minimum qualifications without which no person can be considered for an appointment but that where the particular post in respect of which a selection is required to be made by the Board of Appointments is of such a character as to require further or higher qualifications than those prescribed by the Ordinance, it cannot be said that the Board of Appointments has no authority to insist upon a candidate possessing those superior qualifications before they can recommend him for appointment to the post in question. In deed, no purpose will be served by the provision of Section 26(2) for selecting two specialists to act as members of the Board of Appointments if all that has to be done in the matter of selection is to self whether the candidates have the minimum qualifications prescribed by the relevant Ordinance of the Syndicate. Another way of looking at the matter would be that before selecting persons who have the basic qualifications prescribed by the relevant Ordinance for appointment to a post of a particular description, the Board of appointments may set certain standards for selection with a view to see that the person ultimately selected is competent to perform the duties expected of him while working in the post in question. If the post is one in which the incumbent is required to guide or conduct research, the Board of Appointments may take the view that the person to be appointed should have a certain minimum experience of either guiding or

conducting research and further give advance notice to intending applicants of the fact that they would apply the said standard while making the selection. Hence what appears to be prescribing of qualifications in the Notification may well be considered as advance intimation by the Board of Appointments of the standards they propose to apply while making the selection. In that view they cannot be said to have arrogated to themselves the power of the Syndicate to make an ordinance prescribing the qualifications for teachers.

25. We are therefore clearly of the opinion that there is no substance in the argument that the notification of 15th November, 1960, is vitiated by any lack of authority or other invalidating circumstance.

26. The next and the last question for consideration is the one of bias and mala fides. The basic facts on which the argument of bias is developed are that the third respondent is the nephew of Dr. Raman and that the special or superior qualifications set out in the Notification of November, 1960, have an apparent relation to the qualifications actually possessed by the third respondent. The argument is that Dr. Ramaa with the sole purpose of appointing his nephew took steps to see that the qualifications prescribed are such as to make it possible for him to select his nephew for appointment. That the qualifications in the Notification of 1960 were formulated on the suggestion, of Dr. Raman is not denied on behalf of the University, but it is argued that because the appointees were expected to conduct as well as guide research work and because Dr. Hainan was the specialist on the Board of Appointments there was nothing improper in seeking his advice or suggestion in the matter of setting standards for selection. Mr. Bangalore, on the contrary argues that the clear inference available from the admitted facts is that Dr. Raman's purpose was not so much the prescribing of appropriate standards for selection as making it possible for him to select his nephew. His further contention is that in such a situation, Dr. Raman must be held to have been disqualified to act as a member of the Board of appointments because in effect he would be occupying the position of a judge in his own cause.

27. If the post advertised is one, the incumbent of which is expected to conduct or guide research, and we have no reason to think it was not, the fact that Dr. Raman's nephew has the qualifications necessary to fill that post cannot, in our opinion, be said to disentitle Dr. Raman from stating that an applicant for the post should possess those qualifications. This circumstance by itself therefore cannot advance the case of the petitioner nor can the suspicion, however strong, engendered in the mind of the petitioner who was also an applicant for the post be sufficient reason to infer that bias did in fact exist.

28. The principle that a man should not be a judge in his own cause is ordinarily and properly applicable only in cases where regular judicial functions are discharged by the person concerned. The proposition really stems from the principle that a person ought not to be permitted to occupy a position where his duty conflicts with his interest and from the need to ensure public confidence and avoid public suspicion which is generally expressed in the well known statement of Lord Hale that justice should not only be done but also seem to be done. It cannot also be said that the objection to a person being a judge in his own cause necessarily applies even in every case where quasi judicial functions are discharged by administrative bodies or statutory authorities. It would depend on the provisions of the relevant statutes some of which contain express provisions enabling particular authorities to function in a manner closely resembling that of a person being a judge in his own cause.

29. In the present case, there can be no doubt that the Board of Appointments was discharging purely an administrative function. We are not impressed by the argument that the Board may be paid to be discharging a quasi judicial function. The only basis stated by Mr. Bangalore for that argument is that the procedure indicated in Section 26 of the University Act which requires consultation with others and the formulation of a decision by the Board to be placed before the Chancellor for approval must be read as imposing on the Board of Appointments a duty to act judicially. That inference is strengthened, according to Mr. Bangalore, by the fact that the Board is expected to make a selection out of several candidates appearing before it. We do not think that the mere fact that a decision has to be taken necessarily imports a duty to act judicially in the same way as ordinary Courts are expected to do. In all cases where a duty to act judicially is implied, there is a his between two parties or a proposition by one and an apposition by another which a particular statutory authority or body is required to settle. The mere fact that for an appointment to a particular post a selection has to be made from among several candidates does not, in our opinion, constitute a is between one applicant and another, nor can it be looted upon as involving a proposition by one candidate and opposition by another, or a proposition by one candidate and an opposition by the selecting authority itself.

30. The question really therefore is not one of bias so called which is a relevant consideration in cases of the exercise of judicial or quasi-judicial functions, but is one of mala fides or improper motives. In other words, the point for investigation is whether the Board of Appointments has acted with improper motives and appointed a person not qualified or suitable for the post on collateral considerations. If the person selected or appointed is duly qualified and could reasonably be expected to get selected on a fair consideration of his merits by independent persons, the fact that the Board or the body which actually selected him happens to be related to him or has had opportunity to form an opinion about his abilities in other capacities cannot, in our opinion, by itself vitiate the selection.

31. It has been stated by the petitioner that the Dean of the Faculty of the Physics and the Principal, Central College had expressed themselves against what is described as illegal and improper constitution of the Board of Appointments, referring apparently to the inclusion of Dr. Raman therein when his nephews were applicants or candidates for the posts in question. It appears, however, from the affidavit of the Registrar that none questioned the validity of the constitution of the Board but that the Principal of the Central College on 8-2-1961 brought to the notice of the Vice-Chancellor the fact that respondents 2 and 3 were nephews of Dr. Raman, which fact also was placed before the Chancellor while seeking his approval of the decision of the Board. If, in spite of this said fact having been specially placed before his the Chancellor accorded his approval the said grant of approval though it may not cure an illegality if one had existed as contended for by the respondents, does strengthen their case that even on independent assessment of their merits the respondents could be said to be worthy of being selected and that their relationship with Dr. Rahman had not, in the circumstances of the case, operated as a vitiating factor.

32. Considering all the circumstances of this case, we are not satisfied that a case is made out for interference with the appointment of the third respondent on the ground of mala fides.

33. The Writ Petition is therefore dismissed but without costs.
Petition dismissed.

