

V.K. Malik Vs. University of Jodhpur and ors.

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Court : Rajasthan

Decided On : Dec-14-1981

Reported in : 1981WLN(UC)388

Judge : M.B. Sharma, J.

Appeal No. : S.B. Civil Writ Petition No. 1788/1981

Appellant : V.K. Malik

Respondent : University of Jodhpur and ors.

Disposition : Petition dismissed

Judgement :

M.B. Sharma, J.

1. In this writ petition, the petitioner prays for a writ in the nature of mandamus, or certiorari, or prohibition, or any other writ be issued prohibiting the University from holding the elections of the teachers as members or the syndicate in accordance with Section 16(1)(vii) of the Jodhpur University Act, 1962 (for short, 'the Act' hereafter). It is also prayed that the electoral rolls prepared as well as the notification Ex. 1 of the Deputy Registrar (respondent No. 3) be quashed.

2. The petitioner is employed as a Lecturer. In Structural Engineering in M.B.M. Engineering College, Jodhpur. Syndicate is one of the authorities of the University and the manner of its constitution is provided in Section 16 of the Act. We are concerned with Section 16 of the Act, as it was substituted by Section 2 of the Jodhpur University (Amendment) Ordinance, 1981, which received the assent of the Governor on 18th day of May, 1981. Section 16(1)(vii), which is relevant for the present purpose, is to the following effect,--

16. SYNDICATE--(1) The Syndicate shall be the Executive body of the University and shall consist of the following persons, namely:..(vii) Two teachers, who have put in not less than seven years teaching experience in the institutions of higher education in Rajasthan on 1st January immediately preceding the year in which elections are held, other than University Professors, Deans, Principal/ Heads of recognised/constituent colleges, to be elected by the teachers of recognised/constituent colleges from amongst teachers.... ..

A similar provision was contained in the Act as amended by the Jodhpur University (Amendment) Act, 1977 (for short, the Act of 1977') and the members of the Syndicate were to hold office for a period of three years from the date of their

nomination of election, as the case may be. The term of the members of the Syndicate came to an end and, therefore, respondent No. 3, as returning officer, issued a notice dated 31-8-1981 (Ex. 1), notifying the programme of election for the election of two teachers to the Syndicate of the respondent University as per provisions of Section 16(1)(vii) of the Act. The electoral rolls for the said elections were published and it includes the names of all the teachers in the faculties of arts, social sciences, education (which includes the Departments of English, Economics etc), which also includes the names of the teachers of other faculties of the Jodhpur University as well as of all the recognised/constituent colleges, namely, Mahesh Teachers' Training College, Onkarmal Somani College of Commerce, Jodhpur and Lachoo Memorial College of Science, Jodhpur. The case of the petitioner is that under Section 16(1)(vii) of the Act, the electoral roll of teachers' constituency should only contain the names of the teachers of the recognised/ constituent colleges and not of the teachers in the faculties of arts, social sciences and education as well as the names of teachers of other faculties of the Jodhpur University. According to the petitioner, the electoral rolls prepared are absolutely in contravention of the aforesaid provisions and cannot be a valid basis for laying a foundation of valid election. It is further his case that the Vice Chancellor, who, under his powers under Section 12(5) of the Act, notified rules for election vide notification dated 6-8-1981. had no powers and is not competent to frame rules. Earlier also, a writ petition, raising identical questions, was filed by one Mansha Ram Purohit, which was registered as S.B. Civil Writ Petition No. 959 of 1979, and another writ petition was also filed by R.C. Saxena, challenging the electoral rolls on the basis of which, the election is sought to be held. The earlier writ petition was dismissed by this Court on 2-12-1981 as having become infructuous as a result of coming to an end of term of the teachers representatives in the Syndicate, whose election was challenged in the aforesaid writ petition. The writ petition of Shri Saxena was not pressed by him and was dismissed as such.

3. On the application of one Shri Mohan Swaroop Maheshwari, Lecturer in Physics, University of Jodhpur, to be impleaded as a party he being a candidate in the election for teachers' constituency, this Court, by order dated October 13, 1981, implead said Shri Maheshwari as respondent No. 4. The University has not filed any reply to the writ petition but Shri Maheshwari, respondent No. 4, has filed one. Preliminary objections have been raised to the maintainability of the writ petition to the effect that under Section 30 of the Act, the petitioner has an alternative remedy to challenge the election before the Chancellor and that he did not file any objections to the preparation of electoral rolls and as such, the petitioner by his conduct, is now estopped from challenging them. It is said that the electoral roll is correct and there is no irregularity and if the petitioner's interpretation is accepted, then the total number of persons to be qualified for being elected as teachers' representatives will be 630 and the number of electoral college will be only 62 and this could never have been the intention of the legislature. The contesting respondent has further taken a plea in the reply that there is neither any recognised college nor constituent college of the University and as such, in case the interpretation of the petitioner is accepted, then the electoral college for teachers' constituency will be zero.

4. I have heard learned Counsel for the parties and have gone through the relevant provisions of the Act as amended from time to time.

5. I do not find any force in the preliminary objections. There is no provision in the Act or Statutes on which ground an election to the Syndicate can be challenged. There is no provision to challenge the electoral roll if it is prepared in contravention

of law. Thus, remedy under Section 30 of the Act in such circumstances cannot be an efficacious alternative remedy.

6. The contention of Mr. Chopra, learned advocate for the petitioner is that 'constituent college' and 'recognised college' have been defined in Section 2 of the Act and as per the defining section in the Act and the Statutes, those words are to be read as defined in the defining section, unless the subject or context otherwise requires. He submits that a reading of Section 16(1)(vii) of the Act will show that the Legislature has used unambiguous language and the context does not require that any other meaning, than the one as given in the defining section, should be assigned to those words. According to him, though all the teachers, who have put in not less than seven years' teaching experience in an institution of higher education in Rajasthan on first of January immediately preceding the year in which the elections are held, are entitled to be candidates in the election, but so far as electoral college is concerned, only teachers of recognised/constituent colleges shall form it. Mr. Parakh, learned advocate for respondents Nos. 1 to 3, contends that so far as the University is concerned, it would like to give representation to all the teachers and the names of all the teachers should be included in the electoral rolls for teachers' constituency, but, according to him, under Section 16(1)(vii) of the Act, as it stands,, it is not possible to include names of all the teachers in the electoral list and only two representatives from amongst the teachers have to be elected by the teachers of recognised/constituent colleges. He informed me that the University has referred the matter to the Government and has requested the Government to make necessary amendment so as to make all the teachers, eligible to vote. Mr. Bhool, learned advocate for respondent No. 4 has contended that there is no recognised or constituent college as defined in Explanation 1 and 2 of Section 2(a) of the Act and if the interpretation, as per the petitioner is given to, the words 'to be elected by teachers of recognised/constituent colleges' as, used in Section 16(1)(vii) of the Act, then there will be no electoral college and that could not have been the intention of the legislature. He submits that looking to the legislative history of Section 16 of the Act and the Statement of Objects and Reasons of the Act of 1977 and of the ordinance, 'recognised' means, admitted to the privileges of the University and 'constituent colleges' means, those colleges,, which go to form the University. According to him. Section 16(1)(vii) of the Act should be so construed and interpreted, as to give to all the teachers, a right to elect two representatives for the Syndicate. In support of his submission that the court can take aid of the legislative history and the Statement of Objects and Reasons in interpreting particular provisions, of the Act, the learned Advocate has placed reliance on *Vishesh Kumar v. Shanti Prasad* : [1980]3SCR32 and *Shyamcharan Sharma v. Dharamdas* : [1980]2SCR334 .

7. A look at Section 2(a) of the Act will show that it defines 'college' and it means a college maintained by and admitted to the privileges of the University and includes a constituent college and a recognised college. Explanation 1 and Explanation 2 to the aforesaid Section deal with 'constituent college' and 'recognised college' respectively. Like all other defining sections, Section 2 provides what the words defined therein shall mean, for the purpose of the Act and the Statutes, unless the subject or context otherwise requires. In Section 2(a) of the Act, the word 'includes' has been used. The word 'include' is used in order to extend the meaning of the words or phrases occurring in the body of a statute. When it is so used, these words or phrases must be construed as comprehending, not only such things as, they signify according to their natural import, but also those things which the interpretation declares that they shall

include. In other words, the words in respect of which 'includes' is used bears both its extended statutory meaning and its ordinary, popular, and natural sense whenever that would be properly applicable. Maxwell on Interpretation of Statutes, twelfth Edition, P. 270. An explanation is a part & parcel of the enactment. Thus, explanations 1 and 2 to Section 2(a) also explain 'constituent college, recognised college, and provide what they do mean. If the words, 'recognised college' and constituent college, are assigned the meaning as contained in Section 2(a) of the Act, then it will be clear that there will be no electoral college for teachers' constituency. 'Constituent college' and 'recognised college' as per definition clause, mean a college recognised as such in accordance with the provisions of the Act and the Statutes and Ordinances. The three colleges, namely, Mahesh Teachers' Training College, Onkarmal Somani College of Commerce and Lachoo Memorial College of Science, Jodhpur, are neither constituent colleges nor recognised colleges within the meaning of the Act and the Statutes and the Ordinances. Under Section 2(a) of the Act, a 'college' also means a college admitted to the privileges of the University. Statute 22 of the Statutes of the University of Jodhpur framed under Section 22 of the Act illustrates, conditions governing admission of colleges/ institutions to the privileges of the University. There is no provision in the Statutes or the Ordinances giving out as to what are the constituent colleges, recognised, colleges, as such. Thus, if the interpretation which is sought to be placed by the petitioner on the words to be elected by the teachers of the recognised/constituent colleges' used in Section 16(1)(vii) of the Act is placed, then the electoral college for teachers' constituency shall be zero. That could not have been the intention of the legislature. Similarly, as it is not disputed that the total number of teachers of the University as well as of the colleges admitted to the privileges is 630 and of all the three colleges admitted to the privileges of the University is 62, it will mean that for being elected as teachers representative the total number of persons will be 630 and the number of electoral college will be only 62.

8. In Vishesh Kumar's case (supra), in para 8 while interpreting Section 115 of the Code of Civil Procedure and in knowing the, intention of the legislature, aid from legislative history was sought. Similarly in Shyamcharan's case (supra), while interpreting certain provisions of the M.P. Accommodation Control Act, 1961, external aid from Statement of Objects and Reasons was sought. In the instant case, to my mind, it will be relevant to see, the legislative history of Section 16(1)(vii) of the Act. Under original Section 16 of the Act, the constitution and terms of office of the members of the Syndicate were not contained and it was only provided that the Syndicate shall be the executive body of the University and its constitution and the terms of office of the members, other than ex officio members, shall be prescribed by the Statutes. Statute 4 of the Statutes of the University provided for the constitution of the Syndicate. There was no representation of the teachers in the Syndicate then. Apart from two members from amongst the non-teachers to be elected to the Syndicate the complexion of the Syndicate was mostly, nominated. Section, 16 of the original Act was amended by the Jodhpur University (Amendment) Act, 1972 (Act No. XII of 1972) and it was, for the first time, provided in Section 16(1)(vii) under the aforesaid amendment that there should be two members elected to the Syndicate from amongst persons who are elected as other members of the Senate under Clause (XXIV) of Sub-clause (iii) of Sub-section (1) of Section 15. Under that provision, eight persons elected, by the teachers, other than the, heads of University Departments and Principals/head of constituent/recognised colleges/institutions,, from amongst themselves were to be the members of the Senate and it was from amongst these eight members that two members were to be elected by the Senate. Thus there were

to be two representatives of all the teachers in the Syndicate, though to be elected from the eight of their representatives from the Senate. By the Jodhpur University (Amendment) Act, 1975, the constitution of the Syndicate was again changed and it became purely a nominated body and there was no representation of the teachers as a whole, duly ejected by them. Under the Act of 1977, again Section 16 of the Act was substituted and its Section 16(1)(vii) was the same as is of the Ordinance of 1981 which has been already reproduced earlier. Thus, the legislative history of Section 16(1)(vii) of the Act goes to show that it was to give representation to the teachers' community as a whole that a double member teachers' constituency in the Syndicate was provided. I have already referred to the Ordinance earlier and it is worthwhile to mention here that along with the Ordinance of 1981 for the Jodhpur University, two more Ordinances Nos. 2 and 3 of 1981 for the Udaipur and Rajasthan Universities were also promulgated and their purpose also was to give representation to the teachers and provide for election amongst teachers for membership to the Syndicate. In the Syndicate of each of the aforesaid two Universities, though two teachers were to be elected from amongst the teachers, but one was to be elected from amongst themselves by the teachers of the University teaching department and constituent colleges, and the other one from amongst themselves by the teachers of the affiliated colleges. Initially, four colleges namely, (1) M.B.M. Engineering College, (2) Kamla were treated as constituent colleges of the University when the University was established by the Act. Thereafter on 23-3-1963, by resolution No. 3(2) of the Syndicate, the pattern changed and the colleges, with their then existing administrative and academic set up, except K.N. Girls College, were abolished by the University and were reorganised into units of faculties: K.N. Girls College was named as K.N. University Hall of Women'. But it appears that there was no corresponding change in the definition part of the Act.

9. It will be pertinent to refer to the statement of Objects and reasons of the Act of 1977, as similar provisions contained therein for Statement of Objects and Reasons published in Rajasthan Gazette Extra-ordinary, Part III A dated 25-7-77 at pp. 3, 4:

3. It is felt necessary that the composition of the Syndicate should be changed forthwith to provide for the representation of the elected representatives of the people teachers and students and thereby restore its democratic character in keeping with the declared policy of the Government.

Thus, the object of the Act of 1977 was to give representation to the elected representatives of teachers also. 'Teacher has been defined in Section 2(f) It includes Professors, Readers, Lecturers and other persons imparting instructions and guiding and conducting research in the or in any college or institution. As already stated earlier if the electoral college for a double-member teachers' constituency is confined to the college for a recognised/constituent colleges, which as already stated is none, under the Act or the Statutes, then firstly, the electoral College will be zero & secondly, it will deprive majority of the teachers, namely 568 of a right to vote to elect their representative and the election will be confined only to 62 teachers of the three colleges which have been admitted to the privileges of the University, and it will lose its representative character.

10. One of the settled principles of interpretation of Statutes is where the words are clear, they have to be given their natural meaning but it is also equally settled rule of interpretation that where the literal meaning leads to irrational or absurd result then the case has to be avoided, for the legislature can never be presumed to intend

irrational or absurd result. To my mind, if the interpretation sought to be placed by the petitioner that the electoral college is to confine to the three recognised colleges, is placed on the words, 'to be elected by teachers of recognised/constituent colleges it will do mischief as it will deprive the majority of the teachers to elect their representatives and that does not appear to be the intention of the legislature. The object of all interpretation is to discover the intention of the legislature and though generally, such intention is to be deduced from the language used, but in case the literal construction will do more mischief and will lead to absurdity, the court will interpret a section so as to achieve the objects and to avoid the mischief. I have already referred in earlier part of this order to Section 2 of the Act which is a definition section. The words defined therein have to be read as such, in the Act and the Statutes, where-ever they occur, unless the subject or context otherwise requires. To my mind, looking to the context, that is the legislative history of Section 16(1)(vii) of the Act, Statement of Object and Reasons, the object for which the provision has been made, that is, to give representation in the Syndicate to the teachers, the words 'recognised/constituent college' have to be construed as per their natural meaning, uninfluenced by their definition given in Section 2(a) Explanations I and II. In its natural meaning, 'recognise' means to acknowledge the validity, to acknowledge the status or legality. 'Constituent' in its natural meaning means constituting or forming: essential: elemental: component. For admitting colleges to the privileges of the University, certain conditions have been laid down in Statute 22 of the Statutes and as such, it may be said that the University has recognised the three aforesaid colleges under the Statutes within the meaning of 'recognised college' as used in Section 16(1) (vii) of the Act. I am also of the view that 'constituent college', as used in the aforesaid Section, has to be given its natural meaning and means such of the colleges which initially went to constitute or form the University. This interpretation will give a right to all electors, other than those excepted by Section 16(1)(vii) of the Act, and will be in consonance with the object for which it has been framed.

11. It may also be observed here that the above was the interpretation which was placed by the University under the Act of 1977 and the elections for the double-member constituency were held from amongst the teachers, other than those excepted, of the three colleges and the teachers of other colleges which initially constituted or formed the Jodhpur University. In the year 1977 before holding the elections to the double-member teachers' constituency, clarification was sought from the Government as to whether the electoral roll should contain names of all the teachers other than Professors/Heads/Principals etc. The Government by its letter dated 23rd November, 1977, advised the University to include the names of all its teachers and of teachers of recognised colleges. I may not be misunderstood that the Government had any such powers. Under the Act, there is no such rule making power vesting in the Government and its interpretation is of no effect. It is within the domain of the court to interpret a Statute. I have only mentioned it to emphasise need for use of simple, clear language while drafting a Statute so that the intention of the framers is clear. I have further mentioned it to show that when in 1977, doubts about interpretation of similar provisions as contained in Section 16(1)(vii) of the Ordinance was expressed, in 1981 when the Ordinance was promulgated and Section 16(1)(vii) was retained, the draftsman should have used better words, more so, when the Government, in its letter of 1977 referred to earlier had taken the stand that the electoral roll under Section 16(1)(vii) should include the names of all the teachers. To me, it appears to be a case of loose drafting as a result of which the present controversy has unnecessarily arisen. Be that as it may, as already stated earlier the electoral roll should contain the names of all teachers other than excepted and as it

so contains, it is in conformity of the provisions of Section 16(1)(vii) and the election are rightly being held on its basis.

12. I do not find any force in this writ petition. It is hereby dismissed with no order as to costs.

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