

THE CHANCELLOR AND ANR. ETC. ETC.

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v.

DR. BIJAYANANDA KAR AND ORS. ETC. ETC.

NOVEMBER 4, 1993

[KULDIP SINGH AND P.B. SAWANT, JJ.]

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Orissa Universities Act, 1989 : Section 21(2).

University—Professor—Appointment of—Selection Committee—Unanimous recommendation by—Subsequent to selections letters by members of Selection Committee reneging their recommendation—University Syndicate not taking notice of letters—Accepting the recommendation of Selection Committee—Appointment of Professor—Validity of—Held sanctity of selection process should be maintained—Members of Selection Committee should not renege their own recommendation.

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Service Law—Academic bodies—Selection Committee—Decision of—Power of Court to interfere with.

Constitution of India, 1950 : Article 226—Writ Petition challenging appointment of University Professor—Full facts not pleaded in writ petition—Neither Vice Chancellor nor University Syndicate impleaded as party—Inference drawn against Vice- Chancellor held not proper.

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Utkal University invited applications for the post of Professor of Philosophy, the requisite qualifications for which was specialisation in the 'Philosophical Analysis of Values'. The Selection Committee, constituted in terms of Section 21(2) of the Orissa Universities Act, 1989, unanimously recommended that M and K should be placed at Nos. 1 and 2 respectively on the Merit List. A day after the selection three members of the Selection Committee addressed two letters - one of which was personally delivered by K - to the Vice-Chancellor stating therein that the candidate placed first in the Merit List did not possess the required qualification. However, the University Syndicate accepted the recommendations of the Selection Committee and decided not to take notice of the letters. Accordingly, M was appointed as Professor. K submitted a representation to the Chancellor against the aforesaid appointment, without mentioning about the two

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A letters, which was dismissed. Thereafter, K filed a petition, without impleading the Vice-Chancellor and Syndicate as parties, in the High Court Challenging M's appointment wherein also he pleaded no facts pertaining to the two letters. However, on K's application the letters were produced before the High Court during the hearing of the petition and by its judgment dated June 23, 1993 the High Court set aside the selection and appointment of M holding that there was a serious lapse on the part of the Vice-Chancellor in non placing the two letters written by the three members before the Syndicate. Against the decision of the High Court, appeals were filed in this Court.

C Allowing the appeals and setting aside the judgment of the High Court, this Court

HELD : 1. The High Court grossly erred in setting aside the selection and appointment of M on the basis of the two letters. [606-B]

D 1.1 The function of the Selection Committee comes to an end when the process of selection is completed and the proceedings are drawn. Every member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before the Committee. Normally, it would not be considered a *bona fide* act on the part of a member of the Selection Committee to say, after the selection is over and he has signed and proceedings, that he "overlooked" certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained. It would be travesty of the selection process if the candidates are encouraged to meet members of the Selection Committee after the selection is over and to obtain letters from them attempting to renege the selection made. [606-B-D]

G 2. The decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfills the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In his representation before the Chancellor, K specifically raised the issue that M did not possess the specialisation in the "Philosophical Analysis of values" as one of the qualification. There is no doubt that the Chancellor must have got the same examined from the experts before rejecting the representation. [606-E-F]

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3. The High Court was wholly unjustified in reaching the conclusion that non placing of the two letters before the Syndicate was a very serious lapse on the part of the Vice-Chancellor. There was no material whatsoever before the High Court to show that the two letters were not placed before the Syndicate. However, before reaching the conclusion, it should have given an opportunity to the Vice-Chancellor to give his side of the story regarding the two letters. [605-C, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4880 of 1993 etc.

From the Judgment and order dated 23.6.92 of the Orissa High Court in O.J. No. 3907 of 1990.

G.L. Sanghi, Ranjit Kumar and Vinoo Bhagat for the Appellants.

H.L. Agrawal, S.K. Patri, A.Sharan and A.K. Panda for the Respondents.

G.L. Sanghi, and Vinoo Bhagat for the Respondent No. 2.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted in both the petitions. Dr. Prafulla Kumar Mohapatra was selected for the substantive post of professor of Philosophy by the Selection Committee constituted by the Utkal University, Bhubaneswar, Orissa. A day after the selection Committee addressed two letters to the Vice-Chancellor stating therein that the selected candidate did not possess the requisite qualifications. The letters were ignored and Dr. Mohapatra was appointed to the post he was selected. Dr. Bijayananda Kar, respondent 1, challenged the selection and appointment of Dr. Mohapatra by way of writ petition under Article 226 of the Constitution of India before the Orissa High Court. A Division Bench of the High Court allowed the writ petition, set aside the selection and appointment of Dr. Mohapatra and directed that Dr. Kar be appointed to the substantive post of Professor of Philosophy in the Utkal University. These two appeals, by way of special leave, against the judgment of the High Court, are by the Utkal University and by Dr. Mohapatra.

The facts of the case, briefly stated, are that Utkal University, by an

- A advertisement dated November 10, 1989, invited applications for two posts of Professor of Philosophy, one substantive and the other temporary in a leave vacancy. One of the requisite qualifications for the permanent post was specialisation in the "Philosophical Analysis of Values". A Committee, consisting of the Vice-Chancellor, a nominee of the Director of higher education and four experts in the subject (one nominated by the Chancellor and the other three by the Vice-Chancellor) was constituted in terms of Section 21(2) of the Orissa Universities Act, 1989. The Committee met on March 27, 1990 and placed Dr. Mohapatra at No. 1 in the merit for both the posts. Dr. Kar was selected and placed at No. 2 for both the posts. The unanimous recommendation of the Selection Committee was as under :

"Taking into consideration the academic record, teaching experience, research activities of the candidates and their performance at the interview, the Committee recommends in order of preference :—

1. Dr. Prafulla Kumar Mohapatra.

2. Dr. Bijayananda Kar.

for appointment as professor of Philosophy (D.S.A.)"

On March 28, 1990 Dr. Kar personally delivered a letter bearing the same date in the office of the Vice-Chancellor. The letter was signed by two of the expert members of the Selection Committee wherein they stated that "it was somehow overlooked that the post was specifically for "Philosophical Analysis of Values". According to best of our information candidate who has been placed first in the recommendation does not possess the required qualification". Subsequently another letter dated March 27, 1990 addressed to the Vice-Chancellor was received from the third expert member of the Selection Committee. The contents of the letter were substantially the same as those of the one mentioned above.

The Syndicate of the Utkal University met on April 19, 1990 and accepted the recommendations of the Selection Committee. It has been mentioned in para 14 of the special leave petition - supported by the affidavit filed by the Administrative Officer of the University - that the two letters mentioned above were informally discussed at the meeting of the

Syndicate, but it was decided not to take notice of same. Dr. Mohapatra was appointed Professor in both the posts as recommended by the Selection Committee. He, however, elected to retain the appointment to the substantive post.

Dr. Kar made a representation dated June 13, 1990 to the Chancellor against the aforesaid appointment. In the said representation Dr. Kar did not mention about the two letters written by the three experts of the Selection Committee to the Vice-Chancellor of the University. The Chancellor rejected the representation by order dated August 23, 1990. Dr. Kar challenged the selection and appointment of Dr. Mohapatra by way of the writ petition before the High Court on October 29, 1990. In the writ petition no mention was made regarding the two letters addressed by the three experts to the Vice-Chancellor. Dr. Kar filed an application on July 29, 1991 stating that ".....he has been reliably informed by some members of the Selection Committee that two letters were sent to the Vice-Chancellor complaining to him that full details about the candidates..... were not placed before them.....". The application sought a direction to the University to produce the said two letter at the hearing of the writ petition. The letters were produced before the High Court at the hearing. By judgment dated June 23, 1992, impugned in these appeals, the High Court allowed the writ petition. The High Court set aside the selection and appointment of Dr. Mohapatra on the following reasoning :—

"As already stated that post required specialisation in "Philosophical Analysis of Values". Nothing more is required to satisfy our mind in this regard than the view expressed by three out of the four experts in their communications addressed to the Vice-Chancellor, one of which is dated 27.3.90 and another 28.3.90. These Communications in original have been produced for our perusal by Shri P.K. Mohanty, appearing for the University. A perusal of the same shows that so far as the communication dated 27.3.90 is concerned, it seems that it has come directly to the Vice-Chancellor, though the other communication had been received by the Vice-Chancellor through the petitioner We specifically asked Shri Mohanty whether the Vice-Chancellor would go to the extent of saying that these documents are forged, concocted, or obtained by force by the petitioner. Shri Mohanty has clearly stated the he has no instruction to say so. This being so and three out of

A the four experts having informed the Vice-Chancellor as early as 27.3.90 and 28.3.90 that while sitting in the selection somehow they overlooked that the post was specifically for "Philosophical Analysis of Values". The candidate who had been placed first in the recommendation did not possess the required qualification to the best of their information; but the second candidate had the required qualification. It was, therefore, requested by the experts that the matter may be considered when final decision is taken by the University. Having received these communications we are of the firm view that the Vice-Chancellor was under an obligation to place the same before the Syndicate when it met on 19.4.90 to consider the recommendation of the Selection Committee. Non-placing of these communications before the Syndicate was a very serious lapse, according to us, on the part of the Vice-Chancellor because the Syndicate approved the proceeding of the Selection Committee basing on the recommendation made by the committee in which the experts must have played a dominant role. But as the three out of the four experts informed the Vice-Chancellor even before the ink of the recommendation was dried up that they had missed a very important aspect of the matter, we have no explanation at all before us as to why the Vice-Chancellor did not think it fit and necessary to apprise the Syndicate about these communications. As the Vice-Chancellor has not been impleaded as an opposite party in the case, refrain from making any comment on this conduct of the Vice-Chancellor."

We have given our thoughtful consideration to the reasoning and the conclusion reached by the High Court. We are unable to agree with the same. It is clear from the tenor of the High Court judgment, that the "two letters" were produced by the learned counsel for the University before the Learned Judges of the Division Bench at the time of the hearing of the writ petition. The judgment was dictated in the court the same day. As mentioned above Dr. Kar had not even mentioned about the "two letters" in the writ petition filed before the High Court. He pleaded no facts pertaining to the "two letters". Neither the Vice-Chancellor nor the Syndicate was a party before the High Court. The Vice-Chancellor, under the circumstance, was deprived of an opportunity of giving an explanation before the High Court as to whether he placed the "two letters" before the Syndicate or not. The Utkal University was impleaded before the High

Court through the Registrar. Mr. Mohanty, learned counsel appearing for the University was fully justified in stating that he had no instructions to say as to whether the Vice-Chancellor "would go to the extent of saying that these documents are forged, concocted, or obtained by force by the petitioner". We are of the view that before reaching the conclusion, which the High Court did, it should have give an opportunity to the Vice-Chancellor to give his side of the story regarding the "two letters". There was no material whatsoever before the High Court to show that the "two letters" were not placed before the Syndicate. The High Court was wholly unjustified in reaching the conclusion that "nor placing of these communications before the Syndicate was a very serious lapse, according to us, on the part of the Vice- Chancellor". As mentioned above it has been specifically averred in the special leave petition that the "two letters" were informally discussed at the meeting of the Syndicate dated April 19, 1990 but it was decided to have no notice of them as it could harm the reputation and prospects of respondent No. 1 Dr. Kar. The averments are supported by the affidavit filed by the Administrative Officer of the University. We have no reason to disbelieve the factual statement made before us on behalf of the Chancellor of the University.

It is not disputed that Dr. Kar knew about the "two letters" from the day they were written. He personally delivered one of the letters in the office of the Vice-Chancellor. He submitted a representation dated June 13, 1990 to the Chancellor of the University. Chancellor, apart from being the Governor of the State, is the highest authority in the hierarchy of the University. It is surprising that Dr. Kar did not mention about the "two letters" in the said representation. In the Selection Committee, there was an expert nominated by the Chancellor. Had these facts been brought to the notice of the Chancellor, we have no doubt, he would have examined the "two letters" in consultation with the fourth expert who was his nominee. For reason best known to Dr. Kar he did not choose to open his mind before the Chancellor. Even in the writ petition filed by Dr. Kar before the High Court he did not make any mention about the "two letters". It was only on July 29, 1991 in the application for summoning the records, that he mentioned about the "two letters". Despite having full personal knowledge Dr. Kar chose to state in the said application that he "..... has been reliably informed by some members of the Selection Committee that two letters were sent to the Vice-Chancellor". We fail to appreciate as to why Dr. Kar has been playing hide and seek in respect of

- A the "two letters". In the facts and circumstances of this case the least we can say is that Dr. Kar did not approach the High Court with clean hands.

- B Even on the merit of the controversy we are of the view that the High Court fell into patent error in setting aside the selection on the basis of the "two letters". The function of the Selection Committee comes to an end when the process of selection is completed and the proceedings are drawn. Every member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before the Committee. Normally, it would not be considered a *bona fide* act on the part of a member of the Selection Committee to say, after the selection is over and he has signed the proceedings, that he "overlooked: certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained. It would be travesty of the selection-process if the candidates are encouraged to meet members of the Selection Committee after the selection is over and to obtain letters from them attempting to range the selection made. The High Court, in the facts of the present case, grossly erred in setting aside the selection and appointment of Dr. Mohapatra.

- E This Court has repeatedly held that the decisions of the academic authorities should not ordinarily, be interfered with by the courts. Whether a candidate fulfills the requisite qualifications or not is a matter which should be entirely left decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In the present case Dr. Kar in his representation before the Chancellor specifically raised the issue that Dr. Mohapatra did not possess the specialisation in the "Philosophical Analysis of Values" as one of the qualifications. The representation was rejected by the Chancellor. We have no doubt that the Chancellor must have looked into the question of eligibility of Dr. Mohapatra and got the same examined from the experts before rejecting the representation of Dr. Kar.

- G We allow the appeals, set aside the impugned judgment of the High Court and dismiss the writ petition filed by Dr. Kar before the High Court. Keeping in view that fact that Dr. Kar is a part of the teaching fraternity we refrain from burdening him with costs.

T.N.A.

Appeal allowed.