Supreme Court of India

G.N. Nayak vs Goa University and Ors on 29 January, 2002

Author: R Pal

Bench: S. Rajendra Babu, Ruma Pal

CASE NO.:

Appeal (civil) 821 of 2002

PETITIONER:

G.N. NAYAK

Vs.

RESPONDENT:

GOA UNIVERSITYAND ORS.

DATE OF JUDGMENT: 29/01/2002

BENCH:

S. Rajendra Babu & Ruma Pal

JUDGMENT:

RUMA PAL, J.

Leave granted.

The object of scrutiny, in this judgment, is the selection of the appellant as Professor of Marine Science in the University of Goa. The appellant's selection was challenged

under Article 226 of the Constitution of India by the respondent No.5 who was himself a candidate for selection to the post. The challenge was upheld by the High Court.

The events which formed the basis of the High Court's decision can be said to have commenced in 1991 when the post of Professor, Marine Science fell vacant. Advertisements were issued from time to time but no candidate could be found who fulfilled the essential qualifications for the post. On 10th August 1994, an advertisement was again issued for the post of Professor, Marine Science. The hand-out distributed to the applicants prescribed the minimum qualifications as:

"An eminent scholar with public work of high quality actively engaged in research with 10 years of experience in post graduate teaching and/or research at the University/National level Institution including experience of guiding research at doctoral level.

OR An outstanding scholar with established reputation which significant contribution to knowledge."

Additional qualifications prescribed by the University Grants Commission were also stated as: "Specialisation: M.Sc., Ph.D. in Marine Science or any related subject with outstanding accomplishments of teaching and research in branches of Marine Science, Marine Biology, Marine Biotechnology Marine Geology, Chemical Oceanography or Physical Oceanography with a proven record of publications in international journals".

Both the appellant and the respondent No. 5 applied for the post. Both of them were Readers in the Department of Marine Science, the respondent No. 5 being senior most. Both were called for interviews on 13th September 1995. Sometime before the date of the interview a note was written by the respondent No. 2 as Head of the Department to the Vice Chancellor requesting for the holding of an urgent interview for the appointment of Professor; Marine Science. The note placed on record an appointment letter received by the appellant for appointment as Professor in Geology in the University of Gulbarga. The note extolled the qualities of the appellant and concluded with the following paragraphs:

"8. HOD (Head of Department) submits that if Dr. Nayak (the appellant) is relieved from this Dept., the Dept. and the University will lose a dedicated and intelligent faculty

whose services are very essential for this newly emerged dept. and the young Goa University in general at this juncture.

9. It may be noted that Goa University had already advertised a post of Professor in Marine Sciences in January, 1995 for which Dr.Nayak is also an applicant. In the light of above, it is earnestly requested that Vice Chancellor may kindly hold the interviews as early as possible without re-advertising the same, so that Dr. Nayak is given a chance to answer the interview and if selected may be retained by the University.

This note was endorsed by the Dean of the Faculty on 6th August 1995 who forwarded the note with the endorsement that he fully agreed with the views expressed by the respondent No. 2 and suggested that interviews should be held.

The respondent No. 5 obtained a copy of this note and on 23rd August 1995 wrote a letter to the Chancellor as well as to the Vice Chancellor objecting to the participation of the respondent No. 2 and the Dean of the Faculty in the selection on the ground that he apprehended that they would be biased against him and that they had in writing disclosed their bias in favour of the appellant. There is no dispute that the Vice Chancellor received the letter but he did not reply.

The respondent No. 5 then filed a writ application (W.P. No. 264/95) in the High Court seeking to stop the participation of the respondent No. 2 as well the nominee of the Vice Chancellor in the selection process. The writ petition was withdrawn on 12th September 1995. According to the respondent No. 5, the previous writ application had been withdrawn because the Court had observed that the petition was premature and also because the respondent- University had given an oral assurance to the Court that the respondent No. 2 would not be participating in the selection process. This has been denied by the appellant and the University.

On 13th September 1995, interviews were held as scheduled. However, the respondent No. 2 did not take part in the selection process. The Selection Committee found that neither the appellant nor the respondent No. 5 were suitable for the post.

In October 1995, a fresh advertisement was issued for the post. This time, although the essential qualifications as advertised in 1994 remained the same, the additional qualifications were amended so that the specialisation read:

"Professor of Marine Science:

Specialisation: Any branch of Marine Sciences, namely physical Oceanography, Marine Chemistry, Marine Geology or Marine Geology or Marine Biology."

The requirement of 'M.Sc.-Ph.D. in Marine Science or any related subject with outstanding accomplishment of Teaching and Research and also with proven record of publications in international journals' was done away with.

A fresh Selection Committee was constituted pursuant to the 1995 advertisement. It met on 20th May 1996. This time the respondent No. 2 participated. The Committee recommended the appointment of the appellant. The appellant's appointment was accepted by the Executive Council and a formal order appointing the appellant as Professor of Marine Science was issued to him on 8th June 1996.

The respondent No. 5 filed a second writ petition challenging the selection of the appellant. The challenge was upheld by the High Court broadly on the following grounds:

1) The eligibility criteria as advertised for the purpose of selection had been illegally amended in disregard of the provisions of the Statutes of the University;

2) The Selection Committee was not legally constituted;

3) No records had been maintained by the Selection Committee as to how the inter-se grading was done between the candidates;

4) The selection process was vitiated by bias;

5) The appellant was not qualified and did not possess the essential qualifications as advertised for the post.

After the decision of the High Court, since the selection of the appellant as Professor, Marine Science was set aside, a special post was created for the appellant by the University where he is now serving.

The first submission raised on behalf of the appellant is in the nature of a preliminary objection. According to him, the respondent No. 5 having withdrawn the earlier writ petition without liberty to file a fresh application on the same cause of action could not be permitted to re-agitate the identical issues again.

The submission is misconceived. The first writ application had been filed on the ground of apprehended bias on the part of the respondent No. 2. In the present case, the allegation is of actual bias. Furthermore, the subject matter of the earlier writ application was the selection which was due to be held on 13th September 1995 pursuant to the advertisement issued on 10th August 1994. The subject matter of the subsequent writ application is in connection with the advertisement issued in October 1995 and the selection which was held on 20th May 1996. The subject matter of both proceedings being different, the second writ application is competent.

To appreciate the arguments of opposing counsel on the merits, the framework of the law within which the events took place are noted. The University of Goa was established in 1984 by the Goa University Act, 1984 (hereinafter referred to as 'the Act'). The Act provides for the management and running of the University by Statutes framed under Sections 22 and 23, Ordinances under Section 24 and Regulations under Section 25. Under the Act, the Lt. Governor of the Union Territory has been constituted ex- officio Visitor of the University. By virtue of an amendment to the Act in 2000, the Visitor is now known as the Chancellor of the University. The Chancellor is the Head of the University. Among the authorities of the University, we are concerned with the Executive Council and the Academic Council. The Executive Council is the principal executive body of the University (Section 18) and is empowered by Section 23 (2) to make Statutes subject to the approval of the Chancellor dealing with a range of subjects including the appointment of teachers and other academic staff of the University. The Academic Council is, on the other hand, the principal academic body of the University and is mandated to 'subject to the provisions of the Act, the Statutes and Ordinances, co-ordinate and exercise general supervision over the academic policies of the University'.

The first Statutes of the University are set out in the Schedule to the Act. They have been amended from time to time and further Statutes have also been incorporated in the Schedule. We are concerned primarily with Statutes 8 and

15. Statute 8(1) empowers the Executive Council:

"(i) to create teaching and academic posts, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Readers, Lecturers and other academic staff and Principal of colleges and institutions maintained by the University;

Provided that no action shall be taken by the Executive Council in respect of the number, qualifications and the emoluments of teachers of the University and academic staff otherwise than after consideration of the recommendations of the Academic Council."

Statute 15 provides for constitution of the Selection Committee for making recommendations to the Executive Council for appointments of the various posts. The constitution of the Selection Committee varies according to the nature of the post. For the post of Professor, the Selection Committee is required to consist of the Vice Chancellor, a nominee of the Chancellor (Visitor), the Head of the Department and in case of his non-availability, a person nominated by the Planning Board from its members, the Dean of the Faculty concerned, one Professor to be nominated by the Vice Chancellor and three persons not in the service of the University nominated by the Executive Council out of a panel of names recommended by the Academic Council for their special knowledge of or interest in the subject with which the Professor as the case may be, will be concerned.

According to the respondent No. 5, the amendment of the qualifications for the post of Professor of Marine Science was illegal. It was contended that under Statute 8, it is the Executive Council which has to prescribe the qualifications after considering the recommendations of the Academic Council. According to the respondent No. 5, the qualifications which were prescribed in the 1995 advertisement and hand-out issued to the applicants in connection therewith had not been prescribed by the Executive Council nor recommended by the Academic Council. Whether this is so or not, this is not a grievance which could have been raised by the respondent No. 5. He knew that there was a change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed.

We then come to the question of the qualifications of the appellant and whether he was qualified to have at all been considered for appointment to the post of Professor. If we analyse the 1995 advertisement and hand-out it will be seen that the minimum qualifications prescribed for a candidate were that he/she had to be:

(a) an eminent scholar;

(b) with work of high quality;

(c) actively engaged in research;

(d) with 10 years' experience in post-graduate teaching and/or research at the University/ national level institution including experience of guiding research at doctoral level OR

(a) an outstanding scholar

(b) with established reputation;

(c) with significant contribution to knowledge.

For a candidate to be qualified under the second limb, apart from a brilliant academic record and having an established standing, the candidate must have been responsible for original research which had added to the field of the particular science, not in small measure but significantly. The appellant has not sought to justify his appointment under this limb but has claimed that he was qualified under the first. For the purposes of this judgment, we will assume that the appellant fulfilled the first three qualifications under the first limb. The difficulty arises in connection with the fourth requirement, namely, 10 years experience of teaching or research.

The appellant claims in his bio-data that he completed his post-graduation in 1982 and acquired his Doctorate in the year 1986. On 17th December 1986, he was appointed as a Lecturer in the University after which he became a Reader on 19th June 1991. The advertisement was issued in October 1995 and the Selection Committee met on 20th May 1996. The appellant claims that if the research which was conducted by him for three years in connection with obtaining his Doctoral degree is counted in addition to his teaching experience, he is qualified.

That a candidate can club together his qualifications of teaching and research to cover the 10 years' period has been held in Dr. Kumar Bar Das v. Utkal University. The question still remains would any kind of research at a University do? Strictly speaking and as a matter of legal interpretation, the phrase 'research at the University/national level institution' should be read ejusdem generis and in the context of the alternate qualifications specified viz. 'teaching experience' and the last phrase 'including experience of guiding research at doctoral level'. In other words, the research must be independent such that the researcher could guide others aspiring for doctorate degrees and not the research where the researcher is striving for a doctorate degree himself. The appellant's research prior to 17th September 1986 was pre-doctoral. Consequently and according to the letter of the law perhaps the appellant was not qualified to be considered as a candidate for a Professorship in 1996 since he had failed to meet the criteria by about four months.

However, the Court would not be justified in adopting a legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility , since it is for the University to decide what kind of research would be adequate to qualify for professorship. The University had intended, understood and consistently proceeded on the basis that the pre-doctoral research could be counted towards the 10 years experience clause. So did the respondent No. 5. When the respondent No. 5 applied for the post when it was advertised in 1994 he did not have 10 years cumulative experience of teaching and post doctoral research. Since he had obtained a doctorate degree in November 1985, the University also considered his application and called him for an interview in September 1985 though according to a strict interpretation of the eligibility criteria the respondent No. 5 was not qualified. Finally in Dr. Kumar Bar Das V. Utkal University 1999 (1) SCC 453, this Court in construing similar eligibility criteria has held (at p. 458) that the research required could include pre-doctoral research experience.

Then it was said that the Selection Committee was faultily constituted. Statute 15 has already been quoted earlier. According to the Registrar's affidavit, the Academic Council had prepared a panel of subject experts and forwarded it to the Executive Council. The panel as approved by the Executive Council was (1) Prof. Subba Rao or Prof. V.V. Modi ; (2) Dr. J. Samant or Dr. D. Chandramohan; (3) Prof. K.T. Damodaran or Prof. R.K. Banerjee, Prof. Subba Rao and Prof. V.V. Modi had both regretted their inability to be

part of the Selection Committee. Dr. D. Chandramohan who had been mentioned as an alternative choice by the Executive Council was inducted into the panel. According to the respondent No. 5, the panel of experts had been prepared by the Executive Council subject wise, the idea being to have experts from the specialised fields mentioned in the advertisement of October 1995. Our attention was drawn to the fact that Prof. Subba Rao was Professor, Immunology and Biochemistry and Professor Modi was from the Department of Biology and Biotechnology.

There is nothing on the record which shows that the Executive Council had 'paired' the experts according to their special field of knowledge. On the contrary, it has not been pointed out how the subjects of Immunology and Biochemistry on the one hand can be paired with Biology and Biochemistry and not with Marine Biology in which Dr. Chandramohan is stated to be an expert. In fact each of the experts had been approved by the Academic Council as being fit to be to in the Selection Committee. The Executive Council merely prepared the panel in order of preference. If the preferred members were unavailable, the other members approved by the Academic Council and recommended by the Executive Council could be empanelled. There has thus been no violation of Statute 15.

The High Court, however, held that there was a further defect in the proceedings. The Selection Committee was constituted by the following persons:

1.Prof.N.C. NigamVice Chancellor Chairman 2 Prof.S.Mavinkurve-Dean of the Faculty Member

3.Prof.U.M.X.Sangodkar-Head of Department Member (the respondent No. 2)

4. Prof. D.J. Bhat-Nominee of the V.C. Member

5. Ex. Admiral Dr.Menon,Nominee of the VC Member

6. Prof. K.T. Damodaran-Subject Expert Member

7.Prof. J. Samant-Subject Expert Member

8.Dr. Chandramohan-Subject Expert, Member but the Report of the Selection Committee records, "Shri/Dr.D.Chandramohan regretted his/her ability to be present at the meeting". With the absence of Dr. Chandramohan the quorum would have been incomplete.

According to the Registrar's affidavit, this was a typographical error as Dr. Chandramohan had in fact participated and signed the Report. The statement of the Registrar on oath should have been accepted by the High Court, particularly when there was no allegation even on the part of the respondent No. 5 that Dr. Chandramohan did not in fact sit on the Selection Committee.

This brings us to the issue of bias.

Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially. "If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices".

It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self interest whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principle of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the Courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

In A.K. Kraipak and Others V. Union of India and Others 1969 (2) SCC 262, the Selection Committee had been constituted under Regulation 3 of the Indian Forest Service (Initial Recruitment) Regulations, 1966 for the purpose of making selections to any State cadre of the All India Forest Service. The Chief Conservator of Forests was selected. Setting aside the selection, this Court held that the Chief Conservator of Forests being himself one of the candidates seeking to be selected to the All India Forest Service should not have been included as a member of the Selection Board because of the possibility of bias.

As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. For example, if a senior officer expresses appreciation of the work of a junior in the Confidential Report, it would not amount to bias nor would it preclude that senior officer from being part of the Departmental Promotion Committee to consider such junior officer along with others for promotion.

In this case, the respondent No. 5 has relied on the note quoted earlier to allege bias against the respondent No.

2. No doubt the respondent No. 2 has, in the note, lavished praise on the performance of the appellant. As the Head of the Department it would be but natural that he formed an opinion as to the abilities of the Readers working under him. It is noteworthy that it was not the respondent No. 5's case that the respondent No.2's praise of the appellant was unmerited or that the respondent No. 2 had any extraneous reasons or reasons other than the competence of the appellant for selecting the appellant's as Professor. We are also not persuaded as the High Court was, to infer bias merely because at the previous selection in September 1995 the appellant was found unsuitable. If the outcome of the previous selection was conclusive as to the non-suitability of the appellant for all times to come, it was conclusive as far as the respondent No. 5 as well. Yet the respondent No. 5 applied again because he knew that a reappraisal by a new Selection Committee at a later point of time might yield a different result.

As for the failure to keep any record as to the grading of the candidates under Statute 15, the procedure to be followed by the Selection Committee in making recommendations are required to be such as may be laid down in the Ordinances. No Ordinance was drawn to our notice which prescribes a particular mode of rating the respective merits of the candidates. When appointments are being made to posts as high as that of a Professor, it may not be necessary to give marks as the means of assessment. But whatever the method of measurement of suitability used by the Selection Committee, it was an unanimous decision and the Courts will, in the circumstances obtaining in this case, have to respect that.

Accordingly, we set aside the decision of the High Court and allow the appeal but without any order as to costs.