

UTKAL UNIVERSITY ETC.

v.

DR. NRUSINGHA CHARAN SARANGI AND ORS.

JANUARY 7, 1999

[MRS. SUJATA V. MANOHAR AND R.C. LAHOTI, JJ.]

*Service Law—University—Appointment to the post of Reader—Selection—Writ challenging selection by unsuccessful candidate—High Court setting aside the selection on the ground that (i) Degree of D. Litt. acquired by unsuccessful candidate not taken into account (ii) A member of Selection Committee was biased in favour of a candidate selected—Appeal by University—Judgment of High Court set aside.*

*Locus standi—University—Reader—Appointment of—Selection—Locus standi of unsuccessful candidate to challenge selection.*

*Jashbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors., [1976] 3 SCR 58, referred to.*

*University—Appointment to the post of Reader—Candidate acquiring D. Litt. Degree after submitting the application but before interview date—Held there was nothing wrong in the Selection Committee in not taking this qualification into account.*

*Bias—University—Reader—Appointment of—Selection Committee—Member—Specific personal interest in the selection of a candidate—Allegation of—Held allegation of bias must be carefully examined before setting aside the selection—Selection should not be set aside unless there is adequate material indicating strong likelihood of bias—The mere fact that the expert as well as one of the candidates were members of the same organisation and connected with the magazine brought out by it held not sufficient to come to a conclusion that the selector had a specific personal interest in the selection of that candidate.*

*Bias—Waiver—Selection Committee—Unsuccessful candidate appearing before Selection Committee—No objection taken to the composition of Selection Committee—Objection taken only after selection—Held this would amount to waiver of objection.*

A *G. Sarana v. University of Lucknow & Ors.*, [1977] 1 SCR 64 and *U.D. Lama & Ors. v. State of Sikkim & Ors.*, [1997] 1 SCC 111, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3236 of 1995 Etc.

B From the Judgment and Order dated 9.3.94 of the Orissa High Court in O.J.C. No. 2342 of 1990.

Vinoo Bhagat for the Appellant in C.A. No. 3236/95.

C Ranjit Kumar, and Ms. Anu Mohla for the Appellant in C.A. No. 3237/95.

A.P. Medh, (NP) for the Respondents.

The following Order of the Court was delivered :

D The appellant-Utkal University issued an advertisement inviting applications, *inter alia*, for the post of Reader in Oriya. The advertisement was dated 10.11.1989. The last date for submitting the applications was originally 11.12.1989 which was subsequently extended to 12.3.1990. 37 candidates applied for the post of Reader in Oriya. Out of these, 33 candidates were called for interview and 23 appeared at the interview which was held by the Selection Committee on 22.6.1990. The Selection Committee consisted of Mr. T. Pradhan, Vice Chancellor, Dr. G.P. Guru, the nominee of the Director of Higher Education and three experts, Dr. K.B. Tripathy, Dr. K. Mohapatra and Dr. J.B. Mohanty. The minutes of the Selection Committee of that date record that,

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

G (1) Dr. Surendranath Dash

(2) Dr. Bijay Kumar Mohanty

H for appointment as Reader for the Post Graduate Department of Oriya."

The Syndicate of the University accepted the recommendation of the Selection Committee to appoint Dr. Surendranath Dash as Reader in Oriya at the meeting of the Syndicate held on 13.7.1990. Dr. Surendranath Dash was accordingly appointed reader in Oriya.

In the meanwhile, respondent No. 1, Dr. Nrusingha Charan Sarangi, who was one of the candidates for the post, filed a writ petition in the High Court challenging the selection so made. In his writ petition, he challenged the constitution of the Selection Committee on the ground that the three experts on the Committee were not from outside the State of Orissa. He also contended that after the expiry of the last date for submitting applications but before the interview, he had acquired D. Litt Degree. However, no marks had been given to him by the Selection Committee for this degree. The third ground of challenge was that one of the members of the Selection Committee, Dr. K. Mohapatra, was biased in favour of Dr. Surendranath Dash, the selected candidate.

In the impugned judgment and order, the High Court upheld the composition of the Selection Committee. The High Court, however, set aside the selection of Dr. Surendranath Dash on the ground that the degree of D. Litt of the petitioner before it, Dr. Nrusingha Charan Sarangi, was not taken into account by the Selection Committee. It also held that Dr. K. Mohapatra was a member of an Organisation "Shri Jagannath Gabesana Parishad" and was on the Editorial Board of a magazine brought out by this organisation while the selected candidate was the Editor of this magazine. He was, therefore, biased in favour of the selected candidate.

The present appeals have been filed before us by the University as well as the selected candidate. Although we adjourned these appeals on the last occasion because learned counsel for the first respondent was absent, the first respondent and his advocate are absent though served, when the matter is again called out today. We have, therefore, heard the appeals in their absence.

The University has drawn our attention to the guidelines formulated by the University in respect of, *inter alia*, educational qualifications and other conditions for the teaching posts of the University which were advertised on 10.11.1989. The guidelines, *inter alia*, deal with essential

A qualifications for the post of Reader. The guide-lines require good academic record with Doctoral degree or equivalent published work. Evidence of being actively engaged in (i) Research, or (ii) Innovation in teaching methods or (iii) Production of teaching materials would be taken into account. In respect of experience at teaching, the guidelines prescribed about five year's experience of teaching or research provided that at least

B three of these years were as a Lecturer or equivalent position. This condition may be relaxed in the case of candidates with outstanding record of teaching/research. By the time the interviews took place, the University had framed statues. Under Schedule A framed pursuant to Statute 258, an objective system of evaluation of candidates for teaching posts had been

C prescribed. In respect of Professors and Readers, five marks were to be awarded for M.Phil while ten marks were to be awarded for Ph.D. degree. 12 marks were to be awarded if a candidate possessed both M. Phil and Ph.D. degrees. Teaching experience carried 10 marks but only Honours and Post Graduate teaching was to be considered for this purpose. Ten

D marks were also to be awarded for research publications. Relying upon this system of evaluation, the first respondent contended before the High Court that there was no scope for any marks being awarded for D. Litt degree in this system of evaluation. He had, therefore, been deprived of credit for his D. Litt degree. This contention seems to have been upheld by the High

E Court. The University has, however, pointed out in its affidavit filed before the High Court that the objective system of evaluation lays down minimum qualifications for the post and how these qualifications are to be assessed. It is pointed out that if the candidate possesses an additional qualification such as D. Litt degree for which research may have been done by the

F candidate, he can be given suitable credit for that work under the Heading "Research Publications". The University has also rightly pointed out that upto the last date of submitting applications under the said advertisement, the first respondent had not obtained the qualification of a D.Litt degree. He had obtained this qualification, however, prior to the interview. Therefore, there would have been nothing wrong in the Selection Committee not taking this qualification into account.

G

What is, however, important is that the record does not show whether the Selection Committee, in fact, gave or did not give credit for this qualification. What is more important, there is no reason to hold that if any additional marks were to be given to the first respondent for this

H qualification, he would be selected. His name does not figure in the list of

candidates selected by the Selection Committee. Only two persons were selected out of 23 candidates who were interviewed. This contention, therefore, cannot be relied upon for the purpose of invalidating the selection of Dr. Surendranath Dash.

It is in this context that the submission of the University regarding the *locus standi* of the first respondent to file the writ petition must also be considered. The University has rightly pointed out that the original writ petition does not disclose any legal injury to the original petitioner/present first respondent, because there is no reason to come to a conclusion that he would have been selected even if all his contentions in the writ petition were accepted. The University has relied upon the decision of this Court in *Jashbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors.* reported in [1976] 3 SCR 58 at page 71 for the purpose of pointing out that the first respondent stands more in the position of a meddling interloper than a person aggrieved. There is much force in this contention also.

The last contention of the first respondent which has been accepted by the High Court is that of bias on the part of one of the members of the Selection Committee. The so-called bias, as set out in the original petition, is that one of the experts was a member of an Organisation which brought out a magazine of which the selected candidate was the Editor while one of the members of the Selection Committee was on the Editorial Board. Both the University as well as the selected candidate have pointed out that this fact was known to the first respondent throughout. He did not, at any time, object to the composition of the Selection Committee. He objected only after the selection was over and he was not selected. This would amount to waiver of such objection on the part of the first respondent. Reliance is placed on a decision of this Court in *G. Sarana v. University of Lucknow & Ors.* reported in [1977] 1 SCR 64 in which this Court found that despite the fact that the appellant knew all the relevant facts, he had voluntarily appeared before the Committee and took a chance of having a favourable recommendation from it. Having done so, it was not open to him to turn round and question the constitution of the Committee. A similar view has been taken by this Court in the case of *U.D. Lama & Ors. v. State of Sikkim & Ors.* reported in [1997] 1 SCC 111 at 119.

What is more, we fail to see how on account of one of the experts being a member of an Organisation or being on the Editorial Board of a magazine brought out by that Organisation, he would necessarily be

- A favourably inclined towards the Editor of that magazine. There is no allegation of any personal relationship between the member of the Selection Committee and the candidate. Not unnaturally, the concerned member of the Selection Committee has taken strong exception to the charge of bias. In his letter addressed to the University dated 10.6.1994, he has
- B pointed out that he was, in fact, more closely connected with the first respondent, Dr. Nrusingha Charan Sarangi than the selected candidate. He has pointed out that the first respondent hails from his native place, belongs to the family of his priest and the first respondent has dedicated his book to the said member. All this is prior to the said interview. He has
- C also pointed out that he agreed to be associated with the said Shri Jagannath Gabesana Parishad only because his teacher is one of its founders. Another expert on the Selection Committee, Dr. J.B. Mohanty, has also addressed a letter dated 21.1.1994 to the University pointing out that the selected candidate was selected on merit after taking into consideration his academic record, Honours teaching experience, research activities and
- D performance at the interview. The first respondent although he was given time to file a counter affidavit here after all these documents were disclosed, has not filed any reply. Allegations of bias must be carefully examined before any selection can be set aside. In the first place, it is the joint responsibility of the entire Selection Committee to select a candidate
- E who is suitable for the post. When experts are appointed to the Committee for selection, the selection should not be lightly set aside unless there is adequate material which would indicate a strong likelihood of bias or show that any member of the Selection Committee had a direct personal interest in appointing any particular candidate. The expert in question, in the
- F present case, had no personal interest in the selection of any particular candidate. It is not even alleged by the first respondent that he had any such personal interest in selection of the candidate who was selected. The mere fact that the expert as well as one of the candidates were members of the same organisation and connected with the magazine brought out by it would not be sufficient, in the facts and circumstances of the present
- G case, to come to a conclusion that the selector had a specific personal interest in the selection of that candidate. The experts, in the present case, are experts in Oriya language and are men of stature in their field. The candidates who would be considered for selection by the Selection Committee would also be candidates who have some stature or standing in
- H Oriya language and literature, looking to the nature of the post. Any

literary association in this context, or any knowledge about the literary activities of the candidates would not, therefore, necessarily lead to a conclusion of bias. Looking to the circumstances of the present case, it is not possible to come to a conclusion that the Selection Committee was biased in favour of the candidate selected. A

In the premises, the appeals are allowed, the impugned judgment and order of the High Court is set aside and the original writ petition is dismissed. B

T.N.A.

Appeals allowed.