

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of decision: 7<sup>th</sup> July, 2016.**

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**W.P.(C) No.4992/2015**

**DR. V.K. AGRAWAL**

**..... Petitioner**

Through: Mr. Kumar Rajesh Singh, Adv.

Versus

**UNIVERSITY OF DELHI & ORS**

**..... Respondents**

Through: Mr. Amit Bansal with Ms. Seema  
Dolo & Mr. Akhil Kulshrestha, Adv.  
for R-1&2.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This petition under Article 226 of the Constitution of India impugns the order dated 18<sup>th</sup> August, 2014 of the respondent No.2 Vice-Chancellor of the respondent No.1 University of Delhi allowing the appeal filed by the respondent No.3 Mr. Sandeep Narula against the acceptance by the Election Officer, of the nomination of the petitioner for election to the Executive Council of the University, and consequently disqualifying the petitioner.

2. The petition came up first before this Court on 19<sup>th</sup> May, 2015 when notice thereof was issued. None appeared for the respondent No.3 despite service. Counter affidavit has been titled by the University and to which a

rejoinder has been filed by the petitioner. The counsels were heard on 19<sup>th</sup> May, 2016 and judgment reserved.

3. It is the case of the petitioner:

(a) that the petitioner and the respondent No.3 had filed nomination papers for the election to the Executive Council under Statute 5(1)(x) of the University;

(b) that as per Statute 5(1) of the University, the Executive Council is to comprise *inter alia* of:

*“(x) Four persons, none of whom shall be an employee of the University or of a recognized College or Institution, elected by the Court from among its Members in accordance with the Rules laid down in Appendices ‘A’ and ‘X’ to these Statutes, at least one of those so elected being a member of the Alumni Association;”*

AND

*“(xi) Two persons elected from amongst themselves by the teachers of the University & Library staff of the rank of Professional Junior and above of the University Library & College librarians other than the Deans of Faculties, the Principals of Colleges and the Proctor, the election to be held in accordance with the Rules laid down in Appendices ‘H’ and ‘X’ to these Statutes.”*

with the elected candidates from category (x) holding the membership of Executive Council for a term of two years and the

elected candidates from category (xi) holding the membership of the Executive Council for a three years term;

(c) that the electoral roll of the aforesaid two categories is separate and distinct;

(d) that the respondent No.3 preferred an appeal before the Vice-Chancellor of the University as an Appellate Authority, against the acceptance of the nomination paper of the petitioner under category (x), only on the contention that the petitioner had already been elected for two terms as member of the Executive Council under category (xi) aforesaid;

(e) that the petitioner was a teacher of a constituent college of the University and held the membership of the Executive Council as a teacher representative under category (xi) for two terms during the period from 18<sup>th</sup> December, 1994 to 17<sup>th</sup> December, 1996 and from 23<sup>rd</sup> December, 1998 to 22<sup>nd</sup> December, 2000;

(f) that the petitioner retired from regular service of the constituent college of the University with effect from 31<sup>st</sup> July, 2004;

(g) that the petitioner, post retirement was elected to the University Court with effect from 26<sup>th</sup> February, 2013 for a term of five years from the category of Alumni Association;

(h) that the petitioner having become a member of the University Court became eligible to be elected by the Court from amongst its members as member of the Executive Council under category (x) aforesaid;

(i) that Statute 5(2) of the University is as under:

*“(2) No person shall be a member under item (x) or (xi) of Clause (1) for more than two terms.”*

(j) that Statute 5(2) of the University limiting the tenure of membership to two terms applies separately to each of the categories;

(k) that the two categories (x) & (xi) are distinct in terms of tenure as well as the composition of electoral roll and cannot be clubbed together for the purpose of the restrictive clause in Statute 5(2) of the University;

(l) that the Vice-Chancellor of the University has vide the impugned order wrongly held the petitioner to be not eligible for

election to the membership of the Executive Council of the University under category (x) aforesaid;

(m) that the respondent No.3 did not raise any objection at the time of the petitioner filing the nomination form and / or at the time of scrutiny thereof and till the time of the Election Officer declaring the nomination of the petitioner valid and was precluded thereafter from preferring the appeal and the appeal ought to have been dismissed by the Vice-Chancellor of the University on this ground alone;

(n) that the petitioner has never been the member of the Executive Council of the University under category (x) aforesaid;

(o) that the election of the petitioner as a member of the Executive Council under category (xi) cannot bar the petitioner from seeking election under category (x);

(p) that the impugned order is without any reason;

(q) that the two categories are mutually exclusive.

4. The University in its counter affidavit has pleaded:

(a) that the acceptance of nomination for election to the post of member of Executive Council, Delhi University is not a matter of right

and is subject to fulfillment of eligibility criteria laid down under the provisions of the Statutes of the University;

(b) that vide Notification dated 25<sup>th</sup> July, 2014, the election of four persons for being appointed as members of Executive Council for a period of three years under category (x) was notified by the University;

(c) the petitioner filed his nomination but the respondent No.3 challenged the acceptance of the said nomination on the ground of violation of Statute 5(2) of the University, inasmuch as the petitioner had been elected member of Executive Council, Delhi University for two terms under category (xi);

(d) that in accordance with Section 41 of the Delhi University Act, 1922, the matter was referred to the Vice-Chancellor whose decision is to be final;

(e) that the Vice-Chancellor, after hearing both the parties and on interpretation of Statute 5(2) of the University has found that the maximum period of membership of Executive Council for a person falling under either of the two categories is two terms;

(f) that the word “or” in Statute 5(2) of the University denotes that no person can be a member under either of the two categories for more than two terms;

(g) that Statute 5(2) of the University has no co-relation with the composition of the electoral roll or term of tenure of the two categories;

(h) that accordingly, the nomination of the petitioner was cancelled and the petitioner disqualified from contesting the election to member of Executive Council, Delhi University, 2014;

(i) that the election to member of Executive Council has already taken place on 22<sup>nd</sup> August, 2014.

5. I had during the hearing enquired from the counsel for the petitioner, whether not the petition had become infructuous.

6. The counsel for the petitioner contended that though the election for which the petitioner had filed his nomination and which has been rejected was held much prior to even the institution of the petition but the petitioner nevertheless remains interested because he is desirous of contesting future election also which would be due in the year 2017 and if the impugned order is allowed to remain, the same would come in his way in future election also.

7. On enquiry as to the function of the Court of the University as a member whereof the petitioner now seeks election to the Executive Council of the University, attention was invited to Section 18 of the University Act which constitutes the Court as the supreme authority of the University having power to review the acts of the Executive Council and the Academic Council and to exercise residuary powers of the University. Upon it being further enquired as to where is the provision for Alumni Association through which the petitioner has become a member of the Court of the University, attention was invited to Statute 43 of the University which provides that there shall be an Alumni Association established for the Delhi University and any graduate of the Delhi University can be a member thereof and which membership is to be renewed after every five years.

8. The arguments of the counsels hinged on their respective interpretation of the word 'or' in Statute 5(2) of the University, with the counsel for the petitioner contending that the same indicates that membership of the Executive Council under one category did not come in the way of seeking membership of the Executive Council under the other category, even after having remained member of the Executive Council for two terms and the counsel for the University contending otherwise.



9. I may mention that in the University Calendar, the Statute 5 (2) refers to items (ix) and (x) of Clause (1) and the photocopy thereof filed by the petitioner along with the petition also shows accordingly but both counsels were *ad idem* that the same have to be read as items (x) and (xi) i.e. the items with which this petition is concerned.

10. I may at the outset state that irrespective of the interpretation of Statute 5(2) of the University supra, I am of the view that the interpretation thereof or the view with respect thereto taken by the Vice-Chancellor of the University who, it is not disputed, is empowered to take a view with respect thereto and whose decision has been made final, if has taken a plausible view, should not ordinarily be interfered with. It is the settled principle of law that the interference by the Courts in the functioning and orders of educational authorities should be minimal. The Executive Council of the University, of which the petitioner seeks membership, vide Section 21 of the University Act, is the executive body of the University and in such capacity is concerned with the running of the University and just like the courts have abstained from interfering with the running of the University by the authorities entrusted with the same, so should the Court refrain from composition of the authority entrusted with the running of the University.

Supreme Court, in *Director (Studies,) Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology Vs. Vaibhav Singh Chauhan* (2009) 1 SCC 59 has reiterated that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions.

11. In this regard it may be noticed that the constitution of the Executive Council and the term of office of its members is not prescribed in the University Act but has been left to be prescribed by the Statutes. Though the Statutes of the University are set out in the Schedule to the University Act (see Section 29(1)) but Section 29(2) of the University Act empowers the Executive Council to, from time to time, make new or additional Statutes or amend or repeal the Statutes. Thus seen, the Statutes are of the own making of the Executive Council of the University and Section 41 of the University Act empowers the Vice-Chancellor to decide the question whether a person is eligible under the Statutes to be a member of the Executive Council and makes his decision final. If the Vice-Chancellor is of the view that a particular Statute does not permit a person to be a member of the Executive Council, due weightage has to be given to the said interpretation, if it is a plausible one and the interpretation of the Vice-Chancellor is not to be

interfered with, unless it is such which no reasonable person could have reached or the decision of the Vice-Chancellor is alleged to be for extraneous considerations. There are no such allegations in the present case.

12. It has also been held in ***Desh Bandhu Gupta & Co. Vs. Delhi Stock Exchange Association Ltd.*** (1979) 4 SCC 565 that *contemporanea expositio* i.e. construction placed by the administrative or executive officers charged with executing a statute, generally should be clearly wrong before it is overturned. It has been further held that such construction, commonly referred to as practical construction, is entitled to considerable weight and is highly persuasive. The said principle was recently reiterated in ***Manohar Lal Sharma Vs. The Principal Secretary*** (2014) 9 SCC 516, commonly known as Coal Block Allocation Scam case and followed by Division Bench of this Court in ***Prem Raj Vs. Land & Building Department*** (2014) 215 DLT 686 (DB).

13. Besides the aforesaid two categories, the composition of the Executive Council is of *ex-officio* members, the term of whose membership of the Executive Council would be determined by the time for which they hold the office specified in Statute 5(1) and would thus in any case be limited. However, the possibility of the persons belonging to the aforesaid two

categories holding office indefinitely, by repeatedly getting elected could not be ruled out and it is for this reason perhaps that the need for Statute 5(2) was felt.

14. I am of the view that if the intent behind State 5(2) of the University was to limit the time for which a person could be a member of the Executive Council, it matters not whether such a person has become a member under one or the other category. The intent was to not allow a person to be a member of the Executive Council for a term longer than total of four years, if under one category and of six years, if under another category. The term of members under different categories is prescribed in Statute 5(3) as under:

*“(3) Members referred to in items (vii)(b) & (c), (viii) and (x) of Clause (1) shall hold office for a term of two years while those referred to in items (ix), (xi) and (xii) for a term of three years.”*

15. Seen in this light, it would matter not which category has sent the member to the Executive Council. The spirit of Statute, of having new blood in the Executive Council from time to time, would certainly be defeated if it were to be held that a person can be a member of the Executive Council for two terms of three years each under category (xi) and thereafter again become a member of the Executive Council for another two terms of two

years each under category (x), giving the person a total term of ten years, instead of four years or six years in the Executive Council.

16. The provisions limiting the number of times a person can seek election as member of such a council, are with a purpose. A Division Bench of the High Court of Bombay in *Shivaji Ramchandra More Vs. State of Maharashtra* AIR 1988 Bombay 315 held that when persons came to be in administrative positions for an abnormally long term, it gives rise to creation of a power centre and misuse of position and power adversely affecting the institution. It was held that it is in public interest to limit the term of office to a reasonable period. The same sentiment was expressed by a Single Judge of this Court in *Narinder Batra Vs. Union of India* MANU/DE/0372/2009 and by me in *Balbir Verma Vs. The Indian Institute of Architects* MANU/DE/2184/2015 though operative part thereof, without going into reasoning, was set aside vide order dated 22<sup>nd</sup> September, 2015 in LPA No.546/2015 preferred thereagainst. The petitioner herein has admittedly functioned as member of Executive Council of respondent University for six years and in my opinion continuance of the petitioner for another four years would be contrary to the spirit of Statute 5(2). The purport of categories (x) and (xi) in Statute 5(1) of the University is to allow broad based

representation in the Executive Council and which broad based representation would be prejudicially affected, if those after ceasing to be the teachers of the University but having an association of over 25 years with Teaching Faculty of the University are permitted to thereafter through the route of Alumni Association again represent the teachers in the Executive Council. The petitioner is not found entitled to discretionary relief for this reason also.

17. Mention may however be made of the judgment of the Division Bench of this Court in **Suresh Chand Jain Vs. Lt. Governor** MANU/DE/0821/1991 where it was reasoned that in normal circumstances every member (of a Co-operative Society) has a right to contest any post for any number of terms and Section 31(5)(a) of the Delhi Co-operative Societies Act, 1971 putting a bar on such a right should not be read as blockading that right to such an extent as may not follow on an interpretation thereof.

18. However a post of an office bearer of a co-operative society is different from that of a member of the Executive Council of the University. Moreover the law of election is a special law and it has famously been said by the Supreme Court in **Jyoti Basu Vs. Debi Ghosal** (1982) 1 SCC 691 that a right to elect or to be elected, fundamental though it is to democracy, is

anomalously enough neither a fundamental right nor a Common Law Right and is pure and simple a statutory right; and that outside of statute, there is no right to elect, no right to be elected and no right to dispute an election – statutory creations they are and therefore subject to statutory limitations.

19. I am also unable to read the word ‘or’ in Statute 5(2) of the University as indicating otherwise. Though the word “or” is normally disjunctive and the word “and” is normally conjunctive, however it is settled principle of law that there may be cases where these words are to be read as *vice versa* to give effect to manifest intention of the legislation as disclosed from the context. Reference can be made to recent judgment in ***Spentex Industries Ltd. Vs. Commissioner of Central Excise*** (2016) 1 SCC 780.

20. Here, the Statute restricts the term of the elected members of the Executive Council of the University. Such elected members are from two categories only. The use of the word “or” in such restrictive statute, in my view has to be read as preventing something which has already happened in either of the categories. Supreme Court in ***Patel Chunibhai Dajibhai Vs. Narayanrao Khanderao Jambekar*** AIR 1965 SC 1457 held that the word “or” in conjunction with negative, is equivalent to and should be read as “nor”. Again, in ***Punjab Produce & Trading Co. Ltd. Vs. Commissioner of***

*Income Tax* (1971) 2 SCC 540 a distinction was drawn between a positive state of affairs and negative conditions while interpreting the meaning to be assigned to the word “or”. It was held that the effect of the word “or” read with negative or disqualifying conditions has to be gauged. Applying the said test also, I find no error in the interpretation of the Vice Chancellor of the respondent University of Statute 5(2), language whereof is restrictive, negative and prohibitory. The same is found to be limiting the term of an elected member to the Executive Council to two terms, under whichever category. Justice G.P. Singh in his “Principles of Statutory Interpretation” 13<sup>th</sup> Edition (of the year 2012) has also authored “speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by ‘or’ are read in the alternative but negative conditions connected by ‘or’ are construed as cumulative and ‘or’ is read as ‘nor’ or ‘and’ ”.

21. Supreme Court in *J. Jayalalitha Vs. U.O.I.* (1999) 5 SCC 138 held that the dictionary meaning of the word 'or' is : "a particle used to connect words, phrases, or classes representing alternatives". It was further held that the word 'or', which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing



but at times to mean 'and' also; alternatives need not always be mutually exclusive; it is a matter of common knowledge that the word 'or' is at times used to join terms when either one or the other or both are indicated.

22. Interestingly, a Single Judge of this Court in ***All India Small & Medium Newspapers Federation Vs. Press Council of India*** AIR 2000 Del 409 while interpreting Sections 6(7) of the Press Council Act, 1978 providing that “a retiring member shall be eligible for renomination for not more than one term” and concerned with the question whether the same bars more than two successive terms, while holding that it did not impose an absolute prohibition or a ban on a person from seeking nomination for more than two terms, gave the example of Statute 5(2) supra as clearly and categorically imposing such a bar. However the Division Bench in ***Press Council of India Vs. All India Small and Medium Newspapers Federation*** AIR 2001 Del 366 held the provision to be imposing such a bar. The matter travelled to the Supreme Court in ***Harbhajan Singh Vs. Press Council of India*** (2002) 3 SCC 722 which set aside the judgment of the Division Bench and agreed with the view of the Single Judge and held the illustration given by the Single Judge of Statute 5(2) supra barring / holding of the office mentioned therein for more than two

terms to be apposite. Though the learned Single Judge had also relied on *Suresh Chand Jain* supra but the Supreme Court did not go into the said aspect and decided on an interpretation of the relevant provision of the Press Council Act.

23. I have also wondered as to what difference it would have made had the word 'and' instead of the word 'or' been used in Statute 5(2) supra. According to me the same also would not have indicated that the total of the terms in the Executive Council, whether under category (x) or under category (xi), could be more than two. I am therefore of the opinion that the word 'or' in Statute 5(2) has been used only as a particle to connect categories (x) and (xi) representing alternatives, as held in *J. Jayalalitha* supra and the purport thereof is to bar more than two terms for elected members of the Executive Council, under whichever category from which election can be sought. Had the intention been to provide two terms under each of the two categories from which election to the post of member of the Executive Council can be sought, the statute would have been worded as "No person shall be a member for more than two terms under each of the items (x) and (xi) of clause (1)".

24. No merit is thus found in the petition, which is dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**JULY 7, 2016**

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