BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1893 of 2024
and
W.M.P(MD)Nos.1908 & 1910 of 2024

Dr.D.Muthuramakrishnan ... Petitioner

Vs.

1.The Bharathidasan University,
Through its Registrar,
Thiruchirappalli – 620 024.

2.The Returning Officer,
Elections to Syndicate Member,
Bharathidasan University,
Thiruchirappalli – 620 024.

3.Dr.K.Ramesh ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the third respondent as elected as syndicate member to the first respondent University under the category "Election of two members to the syndicate members elected by teachers of affiliated colleges, other than principals from among themselves who are the members of the senate, in accordance with the system of proportional representation by means of the single transferable vote viz

Class II other members - Sub Sec [b][2] Section 24 of Chapter IV of the Act 1981, "as illegal and against law and consequently direct the respondents 1 and 2 to count all the votes without ignoring any one of 37 polled votes as eligible votes and declare the results by declaring the petitioner as one of the two elected member of the respondent University syndicate.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.J.Anandkumar

For Respondents : Mr.V.R.Shanmuganathan
Standing Counsel for R.1 & R.2

Mr.Lajapathy Roy
Senior Counsel for R.3

ORDER

The petitioner challenges the election of the third respondent as member of the syndicate of Bharathidasan University. The election was held on 27.01.2024. 37 senate members were to elect 2 syndicate members. There were 4 candidates in the fray. One Thiru.Gopala Krishnan obtained 14 first preferential votes and he sailed through without any difficulty. There was a tie between the writ petitioner and the third respondent as both of them got 8 first preferential votes. To break the deadlock, there was a draw of lots. There is no dispute regarding the manner in which the draw was conducted. A lady officer picked one of

the lots and it contained the name of Dr.K.Ramesh / third respondent herein. He was declared winner. Challenging the same, this writ petition came to be filed.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

3.Bharathidasan University as well as the returned candidate filed counter affidavits. The stand of the respondents is that the petitioner has no real cause for grievance. Their contention is that the entire election was held as per the statutes governing the Bharathidasan University. They pressed for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. Two questions have arisen for consideration. The first concerns the invalidation of one ballot paper. The second question concerns the interpretation of the results of the draw of lots.

5.Let me examine the first contention. Before I commence my enquiry, I have to bear in mind that an electoral outcome represents the

Will of the electorate and that it cannot be casually or easily disrupted. A strict approach is warranted. An election result is not a low hanging fruit to be plucked with ease. In ***Jabar Singh v. Genda Lal (AIR 1964 SC 1200)***, it was held as follows :

> ".....when an election petition is filed before an Election Tribunal challenging the validity of the election of the returned candidate, prima facie the acceptance of nomination papers is presumed to be valid and the voting papers which have been counted are also presumed to be valid. The election petition may challenge the validity of the votes counted, or the validity of the acceptance or rejection of a nomination paper; that is a matter of proof. But the enquiry would commence in every case with prima facie presumption in favour of the validity of the acceptance or rejection of nomination paper and of the validity of the voting papers which have been counted...."

One ballot paper in which the first preferential vote was cast in favour of the petitioner had been invalidated on the ground that the marking of the second preference was not as per instructions. The learned counsel appearing for the petitioner submitted that the voter concerned had employed Roman numeral instead of Arab numeral and that this would not go to the root of the matter. In any event, the second preferential vote alone should have been invalidated and not the entire ballot paper. Since

there is no ambiguity regarding the first preferential vote, the returning officer ought to have declared the petitioner as winner as he had secured 9 votes compared to eight obtained by the third respondent. The invalidation of the ballot paper had prejudicially affected the outcome.

6.Instruction No.2 contained on the reverse page is as follows:

> "2. Please vote by placing the figure 1 in the space opposite to the name of the candidate who is your first choice. You may also place the figure 2 in the space opposite to the name of the candidate who is your second choice and 3 for the third choice and so on. Crossess or other marks must not be used."

There is no dispute that the voter concerned had acted in breach of the instructions. It is true that as per the statutes, "where more than one vote can be given on the same ballot paper if one of the marks is so placed as to render it doubtful to which candidate it is intended to apply, the vote concerned but not whole ballot paper shall be invalid on that count." But this proviso will not come to the petitioner's rescue. In this case, there were only 4 candidates. Only two votes had to be cast. The voter had marked the second preference vote as "11". Clause 12 of the statute is as follows :

"12. A ballot paper shall be invalid if-

(a) it does not bear the Registrar's/Returning Officer's initials: or

(b) a Voter signs his/her name or writes any word or makes any mark on it, by which it becomes recognizable; or

(c) no vote is recorded thereon; or

(d) the number of votes recorded thereon exceeds the number of vacancies to be filled; or

(e) it is void for uncertainty.

Provided that where more than one vote can be given on the same ballot paper if one of the marks is so placed as to render it doubtful to which candidate it is intended to apply, the vote concerned but not whole ballot paper shall be invalid on that count."

The proviso to clause 12 relied on by the petitioner's counsel will be attracted only if there is doubt regarding the casting of the vote other than the first preferential vote. The proviso will not kick in if the ballot paper itself is rendered invalid for other reasons set out in clause 12. By putting the figure "11", the ballot paper has become recognizable. Since there were only four candidates, the question of putting "11" does not arise at all. The voter concerned could have written 1, 2, 3 or 4 or I, II, III or IV if at all. Thus, Clause 12(b) got attracted and the entire ballot

paper became invalid. The returning officer was justified in rejecting the said ballot paper in its entirety.

7.When specific instructions had been issued as to how the vote should be marked, the voter is obliged to conform to the same. 1, 2, 3... alone should have been put. He did not have the choice of employing equivalent expressions or figures. What's in a name? That which we call a rose by any other name would smell as sweet. This rule of literature does not hold good in election law. 2 and II may have the same mathematical value but they will not have the same result when it comes to marking on a ballot paper.

8.There was an interesting detour during arguments. When the petitioner's counsel employed the expression “Arab numerals”, I intervened to remark that they should actually be known as “Hindu numerals”. The learned Senior Counsel appearing for the contesting respondent was careful enough to say “Indian numerals”. In fact, Jawaharlal Nehru in his 'Discovery of India' talks of “Hind numerals and Indian numerals”. 'History of Hindu Mathematics' by B.Data and A.Singh (1935) convincingly establishes that the Arab scholars borrowed from our ancient system. In that monumental work, the expression

"Hindu numerals" alone is found. The Nehruvian hesitation is probably on account of equating the term "Hindu" with religion. The great Tamil poet Bharathi talks of "சேதமில்லாத ஹிந்துஸ்தானம்" (unvivisected Hindusthan) in the immortal poem "பாப்பா பாட்டு". It is time to understand the term "Hindu" as having territorial connotation. Dr.S.Radhakrishnan asserted in 'The Hindu View of Life' that the term "Hindu" had originally a territorial and not a credal significance. This was cited in ***Sastri Yagnapurushadji and ors v. Muldas Bhudardas Vaishya [AIR 1966 SC 1119]***. Shashi Tharoor in "Why I am a Hindu" writes thus :

> "In many languages, French and Persian amongst them, the word for Indian is Hindu. Originally, Hindu simply meant the people beyond the river Sindhu, or Indus."

9.The learned Standing Counsel appearing for the Bharathidasan University made available all the ballot papers. I went through all of them. All the other voters have put "1" or "2". In the invalidated ballot paper alone, the mark "11" is found. It thus makes it recognizable. That is why it was rejected. If there is some doubt regarding second preferential vote, then the first preferential vote can be taken into account and the ballot paper will not be rendered invalid. But if making a mark

on the ballot paper has rendered it recognizable, then the invalidity will affect the entire ballot paper. I answer the first question in favour of the respondents.

10.That takes me to the next contention raised by the learned counsel appearing for the petitioner. He states that in the draw of lots, the chit containing the name of the third respondent was taken and therefore he should have been excluded. The learned counsel would rely on Clauses 48(c) and 49 in support of this contention. The said provisions read as follows:

> "**48. (c)** When only one vacancy remains unfilled and there are only two continuing candidates, and those two candidates have each the same number of votes and no surplus remains capable of transfer, one candidate shall be excluded under the next succeeding statute and the other deemed elected.
>
> **49.**Equal surpluses – Two or more candidates lower on the poll
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> If when there is more than one surplus to be distributed, two or more surpluses are equal or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same number of votes and are lowest on the poll regard shall be had to the original votes of each candidates and the candidates for whom

fewest original votes are recorded shall have his surplus first distributed, or shall be first excluded, as the case may be. If the number of their original votes is the same, the Vice-Chancellor shall decide by lot which candidate shall have his surplus distributed or be excluded."

The above provisions are merely to the effect that through the lot process, one candidate should be excluded. In normal circumstances, the person whose name is drawn in the lot is declared as winner. The aforesaid provisions do not contain anything to the contrary. Nowhere it is stated that the person whose name is drawn should be excluded. Hence, the returning officer was justified in going by the standard practice. I hold that the third respondent was rightly declared as a winner. The second question is also answered in favour of the respondents.

11.I also find considerable force in the contention of the learned Senior Counsel appearing for the third respondent that having participated in the draw of lots, the petitioner cannot be allowed to retrace his steps and question the invalidity of one of the ballot papers. The principle of estoppel by conduct would apply against the petitioner. The clock cannot be put back.

12.This writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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