

(1988) 02 CAL CK 0034

Calcutta High Court

Case No: None

Satipati Chatterjee and Another

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision: Feb. 3, 1988**Acts Referred:**

- Calcutta University Act, 1979 - Section 21, 21(1)(b), 21(1)(b)(ix)(a)(ii), 21(1)(ix)(a)(n), 21(a)
- Constitution of India, 1950 - Article 226

Citation: 92 CWN 736**Hon'ble Judges:** Ajit Kumar Sengupta, J**Bench:** Single Bench**Advocate:** Somnath Chatterjee and Pranab Chatterjee, for the Appellant; Debi Pal and Asok Ganguly, Sunil Chatterjee for the Vice Chancellor, for the Respondent

Judgement

Ajit Kumar Sengupta, J.

In this application, the election of Shri Kamal Ghosh, the Fourth Respondent, one of the candidates to the Syndicate of the Calcutta University from the Constituency of Readers and Lecturers who are the members of the Faculty Councils for Post Graduate Studies has been challenged. The first petitioner is a Reader and Head of the Department of Physiology and the second petitioner is the Head of the Department of Sociology of the University of Calcutta. Both the petitioners were the members of outgoing Senate of the University of Calcutta. The first petitioner was a member of the Post Graduate Faculty Council Science and the second petitioner was the member of the Post Graduate Faculty Council in Arts. Both the petitioners are in the electoral roll of the electorate for election of two members to the Syndicate by the Readers and Lecturers of the University in terms of section 21(1)(b)(ix)(a)(ii) of the Calcutta University Act, 1979. The Registrar of the University of Calcutta issued a Notification for holding the aforesaid election to the Syndicate which was fixed on 4th December, 1987 at 3 p.m. In the said election, the electors who are the Readers

and Lecturers of the University were required to elect two representatives to the Syndicate. In the said election, Dr. Satya Kinakar Pal, Dr. Ashis Roy, the fifth respondents and Shri Kamal Ghosh, the fourth respondent duly filed their nomination papers as candidates which were scrutinised and ultimately found valid. On 4th December, 1987, election took place. The petitioners as voters were also present at Darbhanga Hall. According to the petitioners, the then Vice-Chancellor, Dr. Santosh Kumar Bhattacharya was present in the said Hall where votes were cast. According to the petitioners, it is the members concerned of the Faculty Councils for Post Graduate Studies who are entitled to be present and cast their respective votes.

2. On 4th December, 1987, out of 63 electors, 62 participated in the aforesaid election to the Syndicate which was being held in terms of section 21(1)(ix)(a)(n) of the Calcutta University Act, 1979. After counting the valid ballot papers, it appeared that 35 votes were cast in favour of Dr. Satya Kinkar Pal but Shri Kamal Ghosh and Dr. Ashis Roy the fourth and fifth respondents respectively, got equal number of votes i.e., 33 votes each. In the instant case, according to the petitioners, although it was the Presiding Officer being the Registrar of the Calcutta University should have exercised the casting vote in terms of the Statute, but as a matter of fact, the Vice-Chancellor who was present in the meeting expressed his desire to extend his support to Sri Kamal Ghosh and the Vice-Chancellor declared the said Kamal Ghosh as elected to the Syndicate. According to the petitioner, the said election of Sri Kamal Ghosh to the Syndicate from the Constituency of the Faculty of Science from Post Graduate Studies is illegal mainly on three grounds. Firstly, the Vice-Chancellor was not the Presiding Officer and accordingly he could not cast his casting vote when there was a tie between the two candidates. Secondly, he did not, as a matter of fact, cast any vote at all. He merely expressed his desire to do so. Thirdly, the Returning Officer having been present the election result could not be declared by anybody else.

3. An affidavit has been filed on behalf of the then Vice-Chancellor Dr. Santosh Kumar Bhattacharya. In the said affidavit, it has been submitted that he exercised his casting vote in favour of the said Kamal Ghosh.

4. The records have been produced. It is found from the records that Dr. Satya Kinkar Pal was declared elected who obtained 35 votes and for the second seat "where there was an equality in the number of votes, the Chairman, in accordance with the provision of the Statute, cast his vote in favour of Kamal Ghosh", The name of "Kamal Ghosh" was written in red in by the then Vice-Chancellor. It was also recorded that Shri. Kamal Ghosh was also declared elected for the second seat by the Vice-Chancellor. It was signed by the Registrar. It further appears" that the second counting and recording by the Returning Officer was made at the instance of the Vice-Chancellor himself. A letter was written by Dr. Nilmadhab Roy, Member of the Faculty of Post Graduate Studies in Medicines addressed to the Presiding

Officers requesting to keep the casting vote in a sealed cover before the result is announced as there was a tie between the two candidates till a suitable legal opinion is obtained. On the said application, two notings are found. One in the original as follows : -

3-58 P.M. after the casting vote was given Sd/S.K.B., 4/12". In the xerox copy of the said letter the following note appears

When the counting was completed and it was found that there was a tie for the second seat, verbal objection was raised that the casting vote should have been kept in sealed cover before the counting began.

5. The contention that the Vice-Chancellor did not cast vote is not correct. The Registrar made the following endorsement : "for the 2nd seat, where there was an equality in the number of votes, the Chairman in accordance with the provisions of the Statute, cast his vote in favour of". The Registrar kept the name blank. It was filled up by the Vice-Chancellor. He wrote the name of Kamal Ghosh in red ink with his initial "SKB". This would show that the Vice-Chancellor has cast the casting vote in favour of Kamal Ghosh.

6. The Registrar made the following remarks : -

Shri Kamal Ghosh declared elected for the 2nd seat by the Vice-Chancellor.

7. The result of the election is to be declared by the Presiding Officer and not by the Vice-Chancellor. The Vice-Chancellor was not the Presiding Officer. He, therefore, could not declare the result of the second seat. The only question that calls for determination is whether the Vice-Chancellor was competent to cast the casting vote. It is necessary to refer to the relevant provisions of the Act and Statutes.

8. Section 21 of the Calcutta University Act, 1979 (hereinafter referred to as the said Act) enjoins that the Syndicate shall consist of the members mentioned in the said section. Section 21(a) relates to the Ex-officio members. Section 21(1)(b) relates to the other members to be elected in the manner provided in various sub-clauses thereunder. Section 21(1)(b)(ix)(a)(ii) provides that two Readers or Lecturers (one or both of whom may either be Readers or Lecturers) of the University elected by such Readers and Lecturers of the University members of the Faculty Councils for Post Graduate Studies from amongst themselves.

9. The procedure of the election of the members is contained in the Calcutta University First Statutes, 1979 (hereinafter referred to as the said Statutes). Statute 68B provides for the procedure of election of members of the Syndicate, inter alia, under clause (ix)(a)(ii) of sub-section 91) of section 21. Statute 69 provides that for the purpose of an election in any of the constituencies referred to in Statute 68B, the Vice-Chancellor shall, as soon as may be after the constitution of the Senate or the Faculty Councils for Post Graduate Studies or the Councils for Under Graduate Studies, as the case may be, by order in writing fix a date or dates for filing

nominations, scrutiny of nominations and withdrawal of Candidature. He shall also fix the date on which a meeting of the members concerned of the Councils for Under Graduate Studies, as the case may be, shall be held for the purpose of election. Statute 71B provides as follows:-

71B(1). At the meeting of the Senate or the Faculty Councils for Post Graduate Studies or the Councils for Under Graduate Studies, as the case may be, the Returning Officer shall supply or cause to be supplied to each member thereof present at the meeting a ballot paper in a form approved by the Vice-Chancellor.

(2) The electorate shall then, if they so wish, record their votes on the ballot papers so supplied, in accordance with the instructions set out in the ballot papers. The ballot papers shall then be collected by such person or persons as the returning Officer may appoint for the purposes.

10. It is therefore, evident that the Vice-Chancellor has to fix a date on which a meeting of the members concerned of the Faculty Councils for Post Graduate Studies shall be held for the purpose of election. Section 23(2) of the Act provides for the Constitution of the Faculty Council for Post Graduate Studies. Each Faculty Council for Post Graduate Studies shall consist of several members. The faculty Council for Post Graduate Studies shall consist of, inter alia, the Vice-Chancellor as a Chairman the Pro-vice-Chancellor for Academic Affairs as Vice-Chair man, the Dean of the Faculty Council concerned, the Head or Heads of the Department or Departments concerned, the Professor or Professors of the Department or departments concerned, ten Teachers participating in post-graduate teaching in the subject or subjects concerned, three members nominated by the Vice-Chancellor, three Teachers participating in under-graduate teaching in the subject or subjects concerned, three members nominated by the Vice-Chancellor, three Teachers participating in under-graduate teaching. That apart, provisions has also been made for the other Faculties for Post Graduate Studies. Section 23(4) provides that one-third of the total number of members of a Faculty Council for Post-Graduate Studies shall be a quorum for a meeting of the Faculty Council.

11. In this case, the subject-matter is election of one of the two members to the Syndicate by the Readers and Lecturers of the University who are members of the Faculty Councils for Post Graduate Studies and none else. The contention is that the Vice-Chancellor is the Chairman of the Faculty Councils for Post Graduate Studies. It is the Vice-Chancellor who shall preside over the meeting where the election of two members would be held from amongst the Readers and Lecturers of the University who are members of the Faculty Council for Post Graduate Studies. It is true that u/s 9(1) of the Act the Vice-Chancellor, by virtue of his office, is a member and the Chairman of the Faculty Councils for Post Graduate Studies. u/s 23 of the Act, various persons elected and nominated and by virtue of the office or post held would be members of each Faculty Council for Post Graduate Studies. But all of them will not have the right to vote at the said election. Only the Readers and

Lecturers of the Faculty Councils for post Graduate Studies will be entitled to vote in the election for two seats of the Syndicate from that Constituency. Even if the Vice-Chancellor is a member of the Faculty, he cannot have any right to vote. He is not an elector of the said Constituency. It is contended that in terms of section 69(d) of the Statutes the Vice-Chancellor shall fix the date on which a meeting of the member concerned of the Faculty Councils for accordingly the Vice-Chancellor being the Chairman of the faculty Councils he shall be the Chairman of the said meeting to be held for the purpose of the election. I am, however, unable to accept this contention for more than one reason. The Vice-Chancellor no doubt is the Chairman of each of the Faculty Councils for Post Graduate Studies, but all the members of the Faculty Councils is not entitled to vote and accordingly a meeting has to be convened of only the members concerned i.e., the Readers and Lecturers who are entitled to vote for election of two of them to the Syndicate. It is not an ordinary meeting of the Faculty Council. It is a meeting specifically convened for the purpose of election. In such a meeting, the Vice-Chancellor cannot ipso facto become the Presiding Officer. Statute 71C(2) provides as follows:-

(2) In the matter of scrutinising ballot-papers, counting of votes and declaring the results the procedures laid down in Statutes 65, 66 and 67 shall mutatis mutandis apply, subject however, to the condition that in the case of equality of votes in the last seat to be filled, the decision shall be made by the casting vote of the Officer Presiding at the meeting.

12. In my view, no person other than electors can be present in the meeting to be convened u/s 69(d) for the purpose of holding election to the Syndicate from amongst the Readers and Lecturers who are members of the Faculty Councils for Post Graduate Studies. In terms of section 71C(2), in case of equality of votes, the decision shall be made by casting vote of the Officer presiding at the meeting. In this case, as indicated earlier, the Vice-Chancellor exercised casting vote on the ground that he presided over the meeting as the Chairman of the Faculty Councils. Section 71K of the Statutes defines the various expression used in Chapter IV providing for the election of members of different authorities to University. Section 71 K(5) provides as follows : -

"Returning Officer", except in the case of an election under Clause (xxvi) of sub-section (1) of section 18 and under Clause (xi)(c) of sub-section (1) of section 21, means the Registrar and includes any other person appointed by the Vice-chancellor as the Returning Officer in connection with any election by a general or a special order". Section 71K(6) provides as follows :-

"Presiding Officer", means a person appointed by the returning Officer for the purpose of conducting election of any authority or academic body of the University.

13. u/s 69 of the Statute, it is the Vice-Chancellor who by an order in writing fix the date, inter alia, of holding of election to the Syndicate from amongst the Readers

and Lecturers of the Faculty Councils for Post Graduate Studies. Section 70 of the Statutes provides that forthwith upon the receipt of an order of the Vice-Chancellor under Statute 69, the Returning Officer shall issue a notice, in such manner as the Vice-Chancellor may direct, inviting nominations, the date for scrutiny of nominations and the last date for withdrawal of candidature as well as the date fixed for meeting of members concerned of the Faculty Councils for Post Graduate Studies. The Returning Officer u/s 71K is the Registrar and also includes any other person appointed by the Vice-Chancellor as the returning Officer in connection with any election by a general or a special order. It is, therefore, not disputed that the Returning Officer in this case is the Registrar.

14. It is the Returning Officer who for the purpose of conducting election of any authority or academic body of the University shall appoint a Presiding Officer. The Returning Officer being the Registrar, he cannot appoint the Vice-Chancellor as the Presiding Officer. It is for the Returning Officer to appoint a Presiding Officer to conduct the election of the Constituency of the Readers and Lecturers of the Faculty Councils for Post Graduate Studies. It does not appear whether the Registrar in this case appointed any Presiding Officer at all. The meeting of the concerned members of the Faculty Council i.e., the meeting of the Readers and Lecturers of the University as the members of the Council for Post Graduate Studies is not a meeting of the Faculty Councils as such. In an ordinary meeting of the Faculty Council the question of quorum is relevant. This is not a meeting of the Faculty Council as such but a meeting of only some of the members of the Faculty Councils who are the electors for electing two members amongst themselves to the Syndicate. It is a meeting of the concerned members of the Faculty Councils specially contended for the concerned members of the Faculty Councils specially convened by Mr. Ganguly that in all the meetings of the Faculty Councils, it is the Vice-Chancellor who shall be the Chairman and he is the person who shall preside over the meeting. This contention, however, on a correct reading of various provisions of the Act and Statutes, cannot be accepted. The Vice-Chancellor no doubt is the Chairman of the Faculty Councils. A meeting of the Faculty Councils is convened by the Secretary of the Faculty Councils for Post Graduate Studies shall be convened by the turning Officer because such meeting is not of only one Faculty Council but all Faculty Councils but only of one category of members that is to say the Readers and Lecturers, In that meeting there is no agenda as such. It is convened for the purpose of holding the election of too members from amongst Readers and Lecturers. There is also another falacy because the Vice-Chancellor will be the Chairman of each Faculty Council of Post Graduate Studies. A joint meeting of all the Faculty Councils may be held once or twice to discuss the matter common to all the Faculty Councils. Such a meeting is convened by the Registrar with special agenda. The Chairman presides over such meeting who may be the Vice-Chancellor or in his absence the Pro-Vice-Chancellor. Each Faculty Council with its own agenda holds the regular meeting which is convened by the Secretary of such Faculty. But when the question of election comes

from the Readers and Lecturers who are members of each Faculty Council, such Readers and Lecturers who are electors would assemble in a meeting to be convened by the Returning Officer. This meeting is neither of one Faculty Council nor of all the Faculty Councils but meeting of only of the concerned members of the Faculty Councils for the limited purpose of holding the election. It was the duty of the Registrar to appoint a Presiding Officer of such a meeting. The Vice-Chancellor cannot, by virtue of his office, claim to preside over such a meeting. In this case, there is lacuna in the holding of the election in the second seat inasmuch as the Returning Officer did not appoint any Presiding Officer. The Vice-Chancellor could not be the Presiding Officer in the meeting convened for the election. Therefore, he could not exercise his casting vote when there was equality of votes. The position would be clear from section 43 of the Act. Section 43, inter alia, provides that a meeting of the Faculty Councils for Post Graduate Studies the person presiding at the meeting shall not vote in the first instance, but shall have and exercise a casting vote in the case of equality of votes. It pre-supposes that the person presiding in the said meeting has a vote but he shall not exercise such vote. He shall only exercise the casting vote in the case of equality of votes and not otherwise. But in the case of election meeting of the concerned members of the Faculty Councils, the officer presiding does not have any vote at all. He is not an elector at all. He is only to exercise his casting vote in the case of equality of votes. Thus, two contingencies have been provided for under the Act and the States. In the ordinary meeting of the "Faculty Council, the Vice-Chancellor being the Chairman of the faculty Councils is a part of the Faculty Council, but he is not to vote in the first instance but he shall exercise eating vote in the case of equality of votes. In the case of election meeting he is not a part of the meeting itself. He cannot preside over such meting. It may be mentioned that two separate procedures have made in the Statutes. In the case of election other than the election to the Syndicate from amonst the Readers and Lecturers, the procedure is that when two or more candidates received equal number of votes, the final selection shall be made by the Returning Officer by drawing lots but in the case of election of two members from amongst the Readers and Lecturers of the Faculty Councils, if there be any equality of votes, the decision shall be made by the casting vote of the officer could have appointed himself as the Presiding Officer for the purpose of decision by the casting vote. As indicated earlier, Statute 71C(2) provides that the procedure laid down in Statutes 65, 66 and 67 shall mutatis mutandis apply to the election of the candidates from amongst the Readers and Lecturers of the Faculty Council. Statute 65(2) provides that the Vice-Chancellor, the persons appointed to assist the Returning Officer in counting the votes and the candidates or, in their absence, their agents duly authorised by them in writing, shall have the right to be present at the counting of votes. The Vice-Chancellor was present at the counting of the votes. He could be present in view of the Statute 65(2), but he was not present as the Presiding Officer in the meeting held for election. As a matter of fact, there is no minute of the meeting which is signed by the Vice-Chancellor who alleged that he was the Presiding Officer

of the meeting. If the contention that there was such a meeting, then the proceedings of the meeting should have been recorded in the manner it is done, that is to say, the Presiding Officer would sign the proceeding. Secondly, if the Returning Officer is appointed under the Statute for holding the election as has been done in this case then in that event the Vice-Chancellor could not declare the result. It is recorded in a piece of paper as follows : -

4.12.87 (3 P.M.)

Election of 2 members (Readers & Lecturers) of the Syndicate from the faculty Councils for P.G. Studies [as per Clause ix(a)(ii) of sub-section (1) of section 21]

Total No. of Ballots received	- 62
No. of Ballots found valid	- 62
No. of Ballots found invalid	- Nil
Votes polled by : -	
1. Kamal Ghosh	- 33
2. Satya Kinkar Pal	- 35
3. Asish Kumar Roy	- 33

Sri Satya Kinkar Pal was declared elected for the 1st seat. For the second seat, where there was an equality in the number of votes, the Chairman, in accordance with the provision of the Statutes, cast his vote in favour of

KMAL GHOSH

"SKB"

Sri Kamal Ghosh declared elected for the 2nd Seat by the V.C.

Sd/- "SNG" 4.12.

15. For the reasons aforesaid, I am of the view that Vice-Chancellor was not and could not have been the Presiding Officer of the Election meeting. He could not therefore, exercise his casting vote. He was, (sic)t also the Returning Officer and he could not declare the result of the Second Seat as he purported to do.

16. A contention has been raised by Mr. Sunil Chatterjee on behalf of Sri Santosh Kumar Bhattacharya, the former Vice-Chancellor that the dispute with regard to the

election should have been referred to the Chancellor of the University and the petitioner exhausted that remedy cannot avail of the writ jurisdiction of this Court. I am, however, unable to accept this contention. If the validity of the election depends on the interpretation of the relevant provisions of the "Act and Statute in that event it is the writ court which has to interfere because even after the Chancellor determines one way or the other, the question regarding the validity of the election would come to this Court for final determination.

17. It is true that when a right or liability is created by a statute which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular remedy before seeking the discretionary remedy under Article 226. But that this rule of exhaustion of the statutory remedies before a writ will be granted is a rule of policy, convenience and discretion. It is not a rule of law. The Court may in exceptional circumstances issue a discretionary writ even though the statutory remedies have not been exhausted. In this case the decision depends not on appreciation of evidence on disputed fact, but on the interpretation of the statutory provisions. The alternative remedy would involve inordinate delay and in this case the matter required expeditious determination. Accordingly the writ has been entertained. For the reasons aforesaid this application is allowed. The election of the Respondent No. 4, Kamal Ghosh to the Syndicate by Readers and Lecturers of the University who are members of the faculty Councils for Post Graduate Studies is set aside. Inasmuch as this election is set aside on the ground that casting vote could not be validly exercised by the Vice-Chancellor who was not and could not be the Presiding Officer, only part of the election which remains to be re-done is the exercise of the casting vote by the Presiding Officer, is directed to appoint a Presiding Officer who shall exercise casting vote in view of the equality of votes of the two candidates, Dr. Ashis Roy and Mr. Kamal Ghosh the Respondent Nos. 4 & 5 respectively. Let the Presiding Officer be appointed and a meeting be convened by the Returning Officer being the Registrar of the University of Calcutta, within a week from date. The casting vote shall be exercised by the Presiding Officer in presence of the two candidates, Dr. Ashis Roy and Mr. Kamal Ghosh who shall be present at the time when, such vote will be cast to complete the election. The other voters of the constituency, if they so desire will be at liberty to attend the said meeting. Upon casting vote being exercised the Returning Officer shall declare the result of the election then and there.

Let a plain copy of the operative part of the judgment duly countersigned by an officer of this Court being given to the learned Advocate appearing for the parties on their undertaking to apply for certified copy.