Dr. Basant Kumar Parida Vs Indian Institute of Technology, Kharagpur and Others

C.R. No. 4365 (W) of 1986

Court: Calcutta High Court

Date of Decision: July 27, 1989

Acts Referred:
Constitution of India, 1950 â€" Article 226#Institutes of Technology Act, 1961 â€" Section 25

Citation: (1990) 2 CALLT 261

Hon'ble Judges: Umesh Chandra Banerjee, J

Bench: Single Bench

Advocate: S. Pal and Mr. D. Chowdhury, for the Appellant;S.B. Bhuniya and Mr. P.R. Mitra, for the Respondent

Final Decision: Dismissed

Judgement

U.C. Banerjee, J.
Normally the Writ Court ought not to interfere or intervene in matters of selects of teachers by the duly appointed

Selection Committee in an Educational Institution since the persons constituting the Selection Committee are in a better position to appreciate the

merit of the candidate. Interference with the findings of such a Selection Committee in effect would mean and imply usurpation of powers of the

Body on which law has conferred the same. The normal rule, however, proceeds on the basis of fairness and lack of malafides. In the event of

there being contra action, if found by the Law Courts, the Law Courts would be within its jurisdiction to intervene arid interfere and set right the

wrong.

2. The concept of fairness is no longer in, the realm of consideration for the Law Courts but at is now well-settlers a principle of law. The

Educational, Institution ought to be guided by such a concept and the same ought to be the most accepted methodology to be adopted by the

Educational Institutions.

3. In this writ petition, the petitioner challenged the appointment of one Shri P. K. Sinha in the post of Professor of Aircraft Structures in the

Department of Aeronautical Engineering at the Indian Institute of Technology, Kharagpur on the ground of lack of fairness rendering the

appointment as wholly invalid.

4. Before, however, proceeding further in the matter, a brief reference to facts ought to be made at this juncture. The petitioner in holding the post

of an Assistant Professor in the Department of Aeronautical Engineering at the Indian Institute of Technology, Kharagpur. The Institute is a Body

Corporate and has been incorporated under the provisions of Institute of Technology Act, 1961. The Body Corporate apart from the Institute at

Kharagpur also has other Institute at Delhi, Bombay, Kanpur and Madras. The Institute at Kharagpur consists of a Chairman, a Director and other

members of the Board. Appointment of teaching staff is conducted in accordance with the Statutes and Ordinances made this brief and all the

provisions of the Institutes of Technology Act, 1941 and the Statutes framed thereunder being the Indian Institute of Technology, Kharagpur

Statutes are made applicable.

5. The objects and reasons and the preamble to the Act of 1961 lay down the wishes of the law makers that the Institute would be an Institute of

national importance for training personnel who will combine highest technological competence with broad human sympathy and practical outlook

and awareness of social implications of life. It is on this score that Mr. Mukherjee appearing in support of the application submitted that the

concept of fairness ought to be the guiding factor in the matter of selection of candidates in the post of Professor at the Indian Institute of

Technology, Kharagpur.

6. The petitioner has been in employment with the Indian Institute of Technology, Kharagpur for the last 17 years as a lecturer in Aeronautical

Engineering and thereafter as an Assistant Professor in Aeronautical Engineering. Prior to his appointment at the Indian Institute of Technology,

Kharagpur the petitioner obtained his B.Sc. Engineering in Mechanical Engineering from Utkal University and his Masters Degree in Aircraft

structures from the Indian Institute of Science, Bangalore. In the course of his service with the Institute at Kharagpur, the petitioner obtained his

Phd. Degree in Aeronautical Engineering from the Institute itself. The petitioner was awarded the Distinction of being granted his Scholarship for a

two year period for highest specialization in Aircraft Structure Design in U.S.S.R. From January 1983 to May 1983 the petitioner was the Chief

Design Engineer on deputation to the Aeronautical Research and Development Board Scheme (Study of Low Cost Expendable Remotely

Controlled Flight Vehicles) in the department of Aeronautical Engineering at Kharagpur. The petitioner also obtained a teaching assignment under

Foreign Assignment Scheme of the Government of India, in Iraq where the petitioner worked in the Military Technological College, Bagdad as a

Professor and was responsible for the preparation of the Syllabai in the area of Aeronautical Engineering at Bagdad.

7. Whilst the petitioner was at Bagdad, the post of Professor of Aircraft Structure at the Indian Institute of Technology, Kharagpur, fell vacant on

the retirement of Prof. C.M. Laxinarayan. With a view to fill up the vacancy, the department of Aeronautical Engineering sent a request to the

Registrar of the Institute for recruitment of one Professor in Aeronautical Engineering specifically for Aircraft Structure, in pursuance of which

advertisements were issued inviting application for the post of Professor of Aeronautical Engineering as well as other subjects. The qualification and

experience request for the Professor of Aeronautical Engineering was to the effect that the candidate must be an eminent scholar with published

work of high quality, actively engaged in research with 10 years experience of teaching and/or research together with experience of guiding

research at the doctoral level or an outstanding Engineer/Technologists with established reputation who has made significant contribution in the

field. With the above noted advertisement, a note was also appended to the following effect:

If a person is not found suitable for the post of Professor, he may be offered the post of Associate Professor in the scale of Rs. 1500-2000.

8. Be it mentioned here that the post advertised was for the post of Professor of Aeronautical Engineering for Aircraft Structures.

9. The petitioner, however, in pursuance of the advertisement submitted an application for being considered for the post of Professor in Aircraft

Structures. Along with the application, a separate representation was also made for consideration of the petitioner''s case in absentia since the

petitioner was on teaching assignment in a foreign country. Subsequently, however, two candidates were selected-one being Dr. P.K. Sinha, a

Civil Engineer form Vikram Sarabhai Space Centre possessing the Bachelor and Masters Degree and a Phd. in Civil Engineering and one Dr.

Prem Prokash having a Bachelor and Masters Degree in Mechanical Engineering with the Phd. In Aeronautical Engineering. These appointments in

Aeronautical Engineering (Aircrafts Structures) are under challenge in this writ application.

10. Mr. Mukherjee appearing for the petitioner strongly commented on the constitution of the Selection Committee and the method of appointment

of the members of Selection Committee.

11. The Act of 1961 conferred power on the Institute to frame the statutes in pursuance whereof the Institute has in fact framed the Indian Institute

of Technology, Kharagpur Statutes.

Statute 12 inter alia provides as follows:

12. Appointments -

(1) All posts at the Institute shall normally be filed by advertisement, but, the Board shall have the power to decide on the recommendations of the

Director that a particular post be filed by invitation or by promotion from amongst the members of the staff of the Institute.

(2) While making appointments, the Institute shall make necessary provision for the reservation of posts in favour of the schedule castes and

scheduled tribes in accordance with the decisions of the Board.

(3) Selection Committees for filing posts, under the Institute (other than the posts on contract basis) by advertisement or by promotion from

amongst the members of staff of the Institute shall be constituted in the manner laid down below namely (a) In the case of posts of Deputy Director

and Professor, the Selection Committee shall consist of:

(i) Director.....Chairman

(ii) One nominee of the Visitor.....Member

(iii) Two nominees of the Board, one beige an expert but other than a member of the Board.....Member

(iv) One expert nominated by the Senate other than a member of the Senate and.....Member

(b) In the case of posts of Assistant Professor, Senior Scientific Officer and lecturer, the Selection Committee shall consist of :

(i) Director.....Chairman

(ii) Two nominees of the Board, one being an

expert but other than a member of the Board.....Members.

(iii) One expert nominated by the Senate and..... Member

(iv) Head of the Department concerned if the post for which selection is being made is lower in status than that occupied by the Head of the

Department.....Member.

12. It is at this juncture that Section 25 of the Institute of Technology Act, 1961 (Act 59 of 1961) ought to be noted. Section 25 prescribes that all

appointments on the staff of any Institute except that of the Director shall be made in accordance with the procedure laid down in the Statutes by

the Board, in the event of the appointment being made on the academic staff in the post of lecturer or above or if the appointment is made an the

non academic staff in any cadre, the maximum pay scale for which exceeds Rs. 600/- per month and by the Director in any other case.

13. Relying upon the provisions of the Statute, it was contended that there is a definite procedure which has to be followed for the recruitment of

Professor to any department of the Institute. But in this case, there is a departure from the practice as also the procedure. It was contended that

non compliance with the statute has resulted in the selection of a candidate who has neither the experience nor the necessary qualification to hold

the post as advertised and the Petitioner has been unlawfully and malafides deprived from the post as advertised. It is this act of deprivation which

is said to be an illustration of malafides and unfair play behind the back of the petitioner since the petitioner''s case was to be considered in

absentia. Mr. Mukherjee submitted that fairness as a concept which ought to he adopted to be the basic factor in a teaching Institution, lack of

which would render the action invalid in the eye of law. It was further submitted that the Law Courts should rise up to the occasion to put an end to

the unfair play and unfair practice in the matter of selection of candidates, as otherwise it would have a totally demoralising effect as regards

efficiency and competency, the resultant effect of which would be a total waste of national talent and ultimately sufferance of the country, as such,

in the field of development of modern technology. I am in full agreement with the submission of Mr. Mukherjee that fairness ought to be the most

accepted methodology in all. Governmental action including the selection and appointments of Teachers in the Institutes of national importance, as

otherwise the Science research and other technical development would be in complete jeopardy. The competent person ought not to be

suppressed neither the less competent one brought to lime light.

14. Let us, therefore, now consider as to whether there was in fact any such lacuna or any unfair act in the matter of appointment of the Professor

as advertised for the Indian Institute of Technology, Kharagpur.

15. As appears from record, the Registrar of the Institute requested the Head of the Department concerned to send two lists of experts in each

area by specialization in which vacant positions are sought to be filled up to be nominated as per the requirement of law. The Head of the

Department then after due consultations with the senior Faculty Members in the departmental Administrative Committee meeting; then forwards

two lists of experts to the Registrar; these names of experts are then placed in the Senate meeting and before the Board of Governors for their

approval. The Registrar after obtaining the approval, then writes to the Board and the Senate nominees after consulting the Director about the date

of the interview and issue, a letter of invitation to the member to net as members of the Selection Committee Apparently, Professor B.G. Ghosh

who was in temporary charge of the Department of Aeronautical Engineering, sent a first list on 29th May, 1984 which was placed before the

Board of Governors for their approval and the Board an its turn approved the names of one Dr. P.D. Desai of I.I.T, Bombay, Dr. A.K. Rao of

Indian Institute of Science, Bangalore and Dr. S.N. Patnaik of Vikram Sarabhai Space Centre, Trivendrum. But as appears from records, none of

the three experts was available and as such Prof. Ghosh sent the two lists of experts to the Registrar to place before the Senate for their approval

and the experts who were included in the Selection Committee which met on 3rd June 1985 were Dr. S.N. Patnaik of. Vikram Sarabhai Space

Centre, Dr N.R. Chakraborty, Assistant Professor, Mechanical Engineering Department, B.E. College, Shibpur, Dr. A.K. Roy, Mechanical

Engineering Department Jadavpur Engineering College, Jadavpur. It is the exclusion of Dr. N.R. Chakraborty and Dr. A K. Roy that has been

strongly commented upon by Mr. Mukherjee in particular Dr. N.R. Chakraborty being an Assistant Professor. It was strenuously contended that

an Assistant Professor of Mechanical Engineering Department ought not to be allowed to sit in the selection of Professor of Aeronautical

Engineering. Mr. Mukherjee further contended that if two members of the Selection Committee were having mechanical Engineering Degree and as

a matter of fact connected with Mechanical Engineering Department of an Engineering Institute, one being also an Assistant Professor, there cannot

be a fair selection in the post of Professor of Aeronautical Engineering. Mr. Mukherjee submitted that no Selection Committee can be constituted

with an assistant Professor for filling up the post of a. Professor in Aeronautical Engineering at the Indian Institute of Technology, Kharagpur.

Further, the appointment of two Mechanical Engineers in the Selection Committee ought not to be bad since the disciplines are different. The third

ground of attack of Mr. Mukherjee was in regard to the recommendation of Prof. Ghosh as regards the names of Dr Chakraborty and Dr. Roy to

act as members of the Selection Committee after 31st of May, 1985. Admittedly, Prof. Ghosh was in temporary charge of the department of

Aeronautical Engineering with effect from 6th April, 1984 and as such, Mr. Mukherjee submitted that as per the Statute, Prof. Ghosh had no

authority to act as the Head of the Department of Aeronautical Engineering after 5th October, 1984. In the premises, it was submitted that all

actions taken by Prof. Ghosh as such head of the department of Aeronautical Engineering after the lapse of six months from the date he assumed

charge of the department was illegal and a nudity. Consequently the appointment of the members of the Selection Committee also was bad, illegal

and contrary to the provisions of the Statutes.

16. Turning on to the last contention of Mr. Mukherjee first in regard to the act of recommendations being contrary to the Statute and as such are

bad and illegal, it is to be noted that the Selection Committee as recommended did sit and consider the matter and the Board of Governors and the

Senate duly approved the same and issued the appointment letter. Technically there might be some justifications for Mr. Mukherjee"s submission,

but technicality alone would not be a sufficient evidence to scrap a Panel of experts consisting of such luminaries in their respective field which I will

presently deal with, on the ground of lack of authority. In my view, cause of justice ought to be the prime consideration and it would be a travesty

of justice, if the Law Courts strike down a Panel consisting of such eminent personalities on the ground of lack of authority in regard to the

constitution of the panel. More, technicality ought not to outweigh the course of justice-more so by reason of the fact that the panel was duly

approved and all actions have been ratified by the appropriate authority.

17. Incidentally it is to be noted that in terms of the provisions of the Statute, the Director is the Chairman of the Senate and there was due

authorisation for the Chairman to finalise the panel of Experts.

18. In that view of the matter, the contention as regards the lack of authority to constitute the panel in so far as Prof. Ghosh is concerned as

submitted by Mr. Mukherjee, fails.

19. Let us, therefore, now examine the next contention of Mr. Mukherjee as regards the personnel of the Selection Committee, viz., two

Mechanical Engineers-one not being even a Professor constituted a panel of experts for the appointment of the post of a Professor in Aeronautical

Engineering. Admittedly, the statute itself provides the Departments at the Institute. Statute 21 reads as follows :

21. Departments:

(1) The Institute shall have the following Departments:

(a) Aeronautical Engineering,

(b) Agriculture Engineering,

(c) Architecture and Regional Planning,

(d) Chemistry,

(e) Cited Engineering,

(f) Chemical Engineering,

(g) Electrical Engineering,

(h) Electronics & Electrical Communication Engineering,

(i) Geology & Geophysics,

(j) Humanities and social sciences,

(k) Mathematics,

(1) Mechanical Engineering,

(m) Metallurgical Engineering,

(n) Mining Engineering,

(a) Naval Architecture,

(p) Physics and Meteorology,

(q) Computer Science & Engineering.,

(r) Industrial Engineering & Management.

Provided that in addition the Board may establish or abolish one or more schools or centres of research on the recommendation of the Senate.

20. Statute 22 provides that each Department of the Institute shall be placed in charge of a Head who shall be selected by the Director from

amongst the Professors, Associate Professors and Assistant Professors, provided, however, when in the opinion of the Director the situation so

demands. The Director may himself take temporary charge of the Department or place it under the charge of Deputy Director or a Professor from

another Department for a period not exceeding six months and the Head of the Department shall be responsible for the entire working of the

Department subject to the general control of the Director.

21. referring to Statute 21, Mr. Mukherjee submitted that since Aeronautical Engineering and Mechanical Engineering are two different disciplines,

question of having a Mechanical Engineer in the Selection Committee for the post of a Professor in Aeronautical Engineering does not and cannot

arise. Mr. Mukherjee placed the curricula and syllabi for the Four-Year Programme leading to B. Tech (Hons. Degree) at the Indian Institute of

Technology, Kharagpur wherefrom it. appears that the detailed syllabi contains principles of Aeronautics, Flight Mechanics, Aero Dyamics,

Aircraft Structures, Propulsion rocket, Combustion process, Gas Dynamics, Wind Tunnel Design, Aero Elasticity, Aircraft Design, Aircraft

Vibrations, Fracture Mechanics, Boundary Lair Theory, Advanced Wing Theory, Advance Flight, Mechanics, Misile Aero Dynamics, Introduction

to Turbulence, Introduction to Stability Flow, Vibration, Instrumentation and Control and Aircraft Production Technology etc. So far as

mechanical Engineering is concerned, the detailed syllabi provides Mechine Tools and Metal Cutting, Machine Drawing, Flud Mechanics, Metal

Casing and Welding, Metal Forming and Processing of Plastics, Mechanics of solids, Fluid Machinery, Machine Design, Kinematics of Machines,

Mechanical Measurements, Applied Theory Dynamics, Advance Fluid Mechanics, Computer Control of Machines, Too1s and Pressures, Theory

of Metal Cuttings, Fluid Power and Control, Mechanisms System and Central, Design of Production Tooling, Heat Transfer, Dynamics of

Machines, Applied Theory Dynamics, Computer Graphs and Interactive Design, Thermal System Design, Product Assurance and Reliability,

Metal Casting Technology, Fatigue Creep and Fracture Technology, Experimental Stress Analysis, Mechanical Vibration, Combustion Turbo

Machinery, Nuclear and Solar Energy, Welding Technology, Technology of Surface Quoting, Applied Illustricity, Modern Control Theory, Finite

Element Methods in Engineering and Machinery Fault Diagnostics etc.

22. These narrations though longish in nature, has been incorporated to appreciate the submission of Mr. Mukherjee that Aeronautical Engineering

and Mechanical Engineering being the two different disciplines, have a completely different Syllabi and Curricula which has also been recognised

by the Institute. Mr. Mukherjee contended that one must have a definite and perfect expert knowledge of the concerned discipline in order to

effectively impart education on the respective branch to the students. One factor ought not to be lost sight of however that the basic element of

physics, chemistry and mathematics would always be common in all engineering sciences. The Selection Board consisting of very eminent people

and experts in their respective fields have also selected Dr. Sinha who has taken charge and have been acting as a teacher at the Indian Institute of

Technology without any complaint from any quarters. It is to be noted that under the Statutes as framed under the Act, the Selection Committee is

the primary authority for the purpose of selection of teachers to be confirmed by the Board of Governors in the facts and circumstances of the

matter under consideration. The same has also been confirmed by the Board of Governors also consists of very eminent people in the field of

education in the country. The selection of the Selection Committee as noted above, has due confirmation in terms of the requirement of law. Would

the Court be justified in interfering with the finding of the Selection Committee and the Board Of Governors.

23. Before proceeding further, however, the observations of the Supreme Court in the case of The Vice-chancellor, Utkal University and Others

Vs. S.K. Ghosh and Others, ought to be noted.

24. We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts:

for ourselves as a Court of appeal but in view of the structures the High Court has made on the Vice Chancellor and the Syndicate we are

compelled to observe that we do not feel they are justified. The question was one of the urgency and the Vice Chancellor and the members of the

Syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some

other way, as for example, in the manner the learned Judges indicate, but it is not the function of courts of law to substitute their wisdom and

discretion for that of the persons to whose judgment the matter in question is entrusted by the law"".

25. The Supreme Court in a subsequent decision in the case of Muni Lal and Others Vs. Prescribed Authority and Others, observed that it is not

for the High Court in exercise of thee jurisdiction under Article 226 of the Constitution to appraise the findings of fact and come to its own

conclusion. Appraisal of evidence is not permissible and finding of fact also ought not to be interfered with even the Court might come to a different

finding on the basis of the available evidence.

26 Interference therefore, would mean and imply, interference with the finding of fact arrived at by the persons empowered under the statute to

come to such a finding. Mala fide motive though attributed, but in my view, does not have sufficient basis. Malice in common English acceptation

means ''spite'' or ''ill-will''. There as no evidence of such a ''spite'' or ''ill-will'' before this Court to come to a definite finding regard thereto. It is to

be borne in mind that the expression, ''mala fides'' not a meaning less jargon, but has a definite connotation in the English language. The chain of

events does not suggest any malice or mala fide motive on the part of the concerned authority in the matter of selection of teachers. The, selection

undoubtedly as noted above, has been effected by a panel and the same have been confirmed by the Board of Governors. In my view, the Law

Court would not be justified in interfering with such a finding on the basis of the facts as disclosed in the pleadings. It will open a Good gate of

litigation, if every action of the Selection Committee is to be scrutinized, by the Law Courts and be declared invalid, unless of course action of the

authority concerned can not but be termed to be grossly irregular and arbitrary in nature. In the facts and circumstances of the matter under

consideration, not only for the purpose of avoiding litigation but it will neither be fair nor proper to interfere with the finding of fact arrived at by an

authority which Under the law is authorised to take such a decision. There is no infraction of law as such warranting intervention of Law Courts.

27. In that view of the matter, the writ, petition fails and is dismissed without however any order as to costs. As prayed for by the learned

Advocate for the petitioners, let the operation of the above order be stayed for two weeks from date.