

Gujarat High Court  
Dr vs Veer on 25 June, 2008  
Bench: Ravi R.Tripathi

SCA/7978/2008      2/ 4      JUDGMENT

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL  
CIVIL APPLICATION No. 7978 of 2008

For  
Approval and Signature:

HONOURABLE  
MR.JUSTICE RAVI R.TRIPATHI

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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DR

VIPULBHAI JAMNADAS SOMANI - Petitioner(s)

Versus

VEER

NARMAD SOUTH GUJARAT UNIVERSITY & 1 - Respondent(s)

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Appearance :

MR

KK TRIVEDI for Petitioner(s) : 1,

NOTICE SERVED BY DS for

Respondent(s) : 1 - 2.

MR DC DAVE for Respondent(s) :

1,

GOVERNMENT PLEADER for Respondent(s) :

2,

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CORAM

:

HONOURABLE

MR.JUSTICE RAVI R.TRIPATHI

Date

: 25/06/2008

ORAL

JUDGMENT

Rule.

Mr.D.C. Dave, learned advocate for the respondent-University waives service of rule. With the consent of the learned advocates, the matter is taken up for hearing.

2. The present petition is filed challenging the Notification dated 21st May 2008, which is produced at Annexure 'A', whereby the petitioner, who is serving as Reader in Mahatma Gandhi Rural Studies PG Section was appointed as Officiating Head by Resolution No.52 passed by the Syndicate in its meeting dated 13th December 2007. Taking into consideration the contents of letter dated 17th

December 2007 bearing No.JN/ EST/ T/ 15077/ 2007 he was conferred the status of Ex-Officio Member of the University, as he was appointed as Officiating Head of the Said Department. The University then decided to remove him from the Membership of the Senate, to which he was elected uncontested.

3. Learned advocate for petitioner submitted that it is not in dispute that the petitioner is appointed as Officiating Head and by virtue of that appointment he is conferred Ex-Officio Membership of the Senate. But then his Membership of Senate, which he obtained by getting elected uncontested cannot be taken away. Learned advocate for the petitioner submitted that in the event the University decides to appoint someone else as Head of Department in place of the petitioner as he is the only officiating head, the petitioner will lose this Ex-Officio Membership as well as the one to which he is elected uncontested.

4. The Court finds substance in the submission of the learned advocate for the petitioner. It was recorded on 28th May 2008 by this Court that the petitioner is ready to relinquish his charge as In-charge/ Officiating Head of the Department, Faculty of Rural Studies. It was after recording this decision that the 'notice' was issued so as to find out the stand of the University.

The learned advocate for the University submitted that the University is of the opinion that a person cannot be allowed to be a Member of the Senate in two capacities. The petitioner is appointed as Officiating Head and by virtue of that he gets Ex-Officio Membership of the Senate. Therefore, he is to be removed from the Membership of the Senate, to which he was elected uncontested.

Learned advocate for the respondent-University relied upon Statute 287 of South Gujarat University Statutes, 1998. The Statute reads as under:

§(a) If a candidate elected to the Senate from (sic., from) more than one constituency, he shall by notice in writing signed by him and delivered to the Registrar of the University within seven days of the publication in the Gazette of the result of the last of such elections, choose which of these constituencies he shall represent and such choice once made shall be conclusive; Reliance placed is not well placed. What is provided in Statute 287 is, if a candidate is elected to the Senate. In the present case the petitioner is not elected from more than one constituencies. He is elected from one constituency only. So far as another Membership is concerned, it is the conferred one on account of he being appointed as Officiating Head of the Department. In view of that, Statute 287 cannot be said to have any application to the facts of the present case. Learned advocate for the respondent-University also contended that there is alternative remedy available under section 59 of the Act. The Court finds that the same is not applicable to the facts of the case.

5. The contentions raised on behalf of the University cannot be accepted. In view of that, the decision of the University of removing the petitioner from the Membership of Senate, to which he was elected uncontested, is hereby quashed and set aside. The petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(RAVI R. TRIPATHI, J.) karim