UNIVERSITIES : THE COMMITTEE MEETING AND THE QUORUM RULE

THE RECENT decision of the Supreme Court in *Ishwar Chandra* v. *Satyendrain Sinha*,[1] can usefully be cited as a leading precedent on some aspects of the scantily developed law of meetings. Two significant, though interrelated, aspects of the law of meetings seem to have been decided in this case. These relate to (*i*) the circumstances that subscribe legality to the convening of committee meeting by the convener and (*ii*) about the requisite quorum needed for the validity of deliberations held thereat.

The foregoing legal issues resultantly emerged on account of filling the incumbency of Vice-Chancellor of the University of Saugar. Under the University of Saugar Act 1946 the vacancy of the Vice-Chancellor's office has to be filled in in accordance with section 13 of the Act which provides :

> 13(1)—The Vice-Chancellor shall be appointed by the Chancellor from a panel of not less than three persons recommended by the Committee constituted under sub-section (2) :
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> Provided that if the Chancellor does not approve of any of the persons so recommended or the person or persons approved by the Chancellor out of those recommended by such Committee are not willing to accept the appointment, the Chancellor may call for fresh recommendations from such Committee.
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> (2) The Committee shall consist of three persons, two of whom shall be elected by the Executive Council by single transferable vote from amongst persons not connected with the University or a College and the third shall be nominated by the Chancellor. The Chancellor shall appoint one of the three persons to be the Chairman of the Committee.

Accordingly, a committee of three members with one named as chairman, who was also to act as convener was set up to recommend a panel of names. Out of the panel the Chancellor could have approved a name for appointment as Vice-Chancellor of the university. In the instant case the committee met with two members attending the deliberations to empanel the names and sent the same to the Chancellor, who approvingly opted for the appellant's name and announced that the appointment was to be effective from a specified date for a period of five years.

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1. A.I.R. 1972 S.C. 1812.

After the above announcement was made known the Governor of the State of Madhya Pradesh sought to amend the University Act by Ordinance No. 1 of 1970. In essence, the legislative changes aimed at divesting the then Chancellor[1a] of office and powers, and investing the same in the Governor. It also equipped the Governor-Chancellor with such powers as may enable him to act and review actions and orders passed by his predecessor-in-office, including the appointment of the appellant to the office of the Vice-Chancellor. The amended provisions of the University of Saugar Act 1946, relevant for the purposes of this discussion, read as under :

> 43. If any question arises whether any person has been duly appointed, elected, nominated or co-opted as, or is entitled to be, a member of any authority or other body of the University or any officer of the University, the matter shall be referred to the Chancellor whose decision thereon shall be final.
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> 43-A. The Chancellor may, either on his own motion or on the application of any party interested, review any order passed by himself or his predecessor in office if he is of the opinion that it is not in accordance with the provisions of this Act, the statutes, the Ordinance or the Regulations or is otherwise improper and pass such orders in reference thereto as he may think fit.

The Governor, in his newly assumed capacity of Chancellor,[2] then proceeded to address a communication to the appellant seeking him to explain as to why the order of his appointment as Vice-Chancellor be not rescinded. It said that the Chancellor had been advised that the meeting of the selection committee which yielded the recommendation and the consequential appointment of the appellant as Vice-Chancellor had been attended by only two out of the three members of the committee and therefore, the meeting was not tenable in terms of section 13(2) of the Act. Hence the decisions taken by the committee and the recommendations made thereof were not legal.

The appellant sought to negative the stand taken by the Governor-Chancellor through a memorial addressed to him who, thereupon, rejected

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1a. Prior to the vesting of the office of the Chancellor in the Governor by the amendment, Maharani Vijaya Raje Scindia was the Chancellor of the University. The appointment of the appellant as Vice-Chancellor was made by the Chancellor, Maharani Scindia, which subsequently became the subject matter of this case. Unlike many other universities the unamended University of Saugar Act, 1946, did not provide that the Governor of the State will be the *ex-officio* Chancellor.

2. Various university Acts empower the Chancellor to review actions and orders passed by university bodies and authorities (*e.g.*, s. 42 Allahabad University Act, 1921). These powers are of a quasi-judicial nature; see *Dr. Ishwari Prasad* v. *Allahabad Univeristy*, A.I.R. 1955 All. 131.

the same. Consequently, the appellant's appointment as Vice-Chancellor was cancelled; and directions were issued to the university to fill up the vacancy of the office of the Vice-Chancellor by submitting a fresh panel of names in accordance with section 13 of the University of Saugar Act, 1946.

The appellant, thereupon, filed a writ petition in the High Court of Madhya Pradesh, which was dismissed. On appeal the matter came up before the Supreme Court which reversed the decision of the High Court and stated significant propositions relating to the law of meetings generally.

A few more facts need to be elaborated for the appraisal of the rule relating to the committee meetings as has been decided in this case. Pursuant to the setting up of the committee under section 13(2) of the Act, the chairman exchanged correspondence with two other members of the committee to fix a convenient date, and place for the meeting. The members found themselves in agreement with regard to the proposed date but one member differed on the issue of venue on the ground of personal inconvenience, and he insistently asked for a venue of his choice.

The chairman ultimately set the date and the place for the meeting as proposed by him. The member who had differed on the question of venue did not attend the meeting, nor did he send any names for consideration and inclusion in the panel even though he had been specifically requestted by the chairman to do so in case he was unable to attend the meeting. As stated above the legality of the committee meeting and its recommendations were later on questioned by invoking the newly acquired jurisdiction under section 43-A of the Act by the Governor-Chancellor himself.

With a view to examining the circumstances that lend the legality to the convening of a committee meeting by the convener, it may be noted that the chairman of the committee was required by the Chancellor to call the meeting and submit the panel within six weeks of the receipt of the letter. Accordingly, the fixing of date and venue became the exclusive concern of the chairman. It may, however, be added that this duty was to be carried out reasonably. Thus the convener of a committee is well within his powers in fixing the date and the place for convening the meeting, provided the committee members are posted with sufficient notice[3] about the schedule time and place coupled with the fact that the place of meeting is reasonably situated so as to make it conveniently possible for each member to attend the same on the specified date and time.

The exercise of discretion by a convener to convene a meeting is particularly valid if the consent for venue, date and time is forthcoming from the majority of members constituting the committee. The determination of the venue, date and time for the committee to meet for delibertions cannot be left to the varying options of the individuals constituting the

3. "A notice means not only a formal intimation to all those who are entitled but also an informal one.... It is an intimation to all concerned that a particulrar body is going to meet at a particular place, time and date for transacting a given business," (1966) 1 M.L.J. 160.

committee. Nor is it practical to make persistent efforts to evolve unanimity about the preliminaries.

Thus, the varying options of individual members cannot affect the discretion of the convener in setting up a stage for the deliberations to be held. The basic issue of convening the committee meeting by the convener remains unchallenged and more so when it has been concurred by the majority of members. However, if shortfall in attendance takes place in the scheduled meeting then the validity of the deliberations held, thereon are affected on account of the lack of quorum.

As, in the instant case, the scheduled meeting had taken place on the proposal of the convener-chairman which had been positively confirmed by another member of the committee, The convener's decision to convene the meeting on a scheduled date and place was fortified with the concurrence of the majority and without valid objections by any. The Supreme Court did rightly hold that the decisions taken at the meeting were valid and that these decisions could not be the subject-matter of the review by the Chancellor under section 43-A of the Act.

An issue ancillary to the above was raised that the validity of transactions conducted at the meeting sufferred from the want of quorum. It cannot ascertainably be said as to what percentage of membership of a body would necessarily constitute the requisite for a quorum.[4] Sometimes the quorum may be prescribed by the statute, rules, regulations or bye-laws of the body. But in the absence of any such rule the rule of a majority of members being in attendance, has found application both in India and in England. However, the general rule relating to quorum and its effect has been aptly stated to be that :

> Where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid.[5]

In the above context the majority would be the larger chunk of the whole membership of the association, present for the purpose of attending the deliberations of the meeting called. This majority need not be necessary to validate the decisions taken at the meeting. Only the majority of the members present and voting for an item under consideration is enough to make the decision binding on all the persons constituting the body and the corporation itself.[6] Numerically speaking the decision-makers may

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4. "A 'quorum' in fact means a given number of individuals out of the whole body, all of whom have had notice of the meeting, who have attended the meeting." Blagden, J., in *George Bell* v. *R.W.I. Turf Club*, A.I.R. 1946 Bom. 88 at 89. See also Frank Shackleton, *The Law and Practice of Meetings* 38-39 (5th ed. 1967); B.A. Masodkar, *Law of Meetings* 242 (Mayor *etc.*) (1969).

5. IX *Halsbury's Laws of England* 48, 95 (3rd ed.).

6. *Ibid.* Also *Staple of England* (*Mayor etc.*) v. *Bank of England*, (1887) 21Q .B.D. 16; *York Tramways Co.* v. *Davy*, (1882) 8 Q.B.D. 685; Daly, *Club Law* 21 (6th ed. 1970).

be a miniscule of the entirety for whom and on whose behalf the decision has been taken, nevertheless the fact of the quorum being in order has the effect of subscribing legality to the business transacted. In *General Manager* v. *Jagmohan*,[7] the Lahore High Court endorsed the rule that :

> The whole are not bound not only by the major part, but by the major part of those present at a regular corporate meeting whether the number present be a majority of the whole or not.[8]

The foregoing discussion on the law and the effect of quorum of meetings is understood to be in application to the meetings of members of corporate bodies. It is not clear if the same rule would be equally valid when an association or a corporate body constitutes a committee for transacting a part of its business. In the case under comment[9] the issue of quorum had to be determined in relation to a committee meeting constituted under the University of Saugar Act with a view to transact business on behalf of the corporate body.

There is a difference between a corporate body and a committee constituted by it. The prescribing of the majority rule for quorum, as well as the validation of transactions conducted at the meeting of the parent body may not be appropriate for the conduct of the affairs of the committee. Each member of the committee is enjoined upon to put forth his best for the discharge of responsibilities endowed upon the committee members both individually and collectively.

A committee has assumed greater signficance today for administering the affairs of a corporate body because it is generally composed of persons representing skill, experience *etc.* Though a committee is "in some manner or degree responsible or subordinate or answerable in the last resort to the body or person who set it up or committed a power or duty to it".[10] Nonetheless it is capable of influencing the decisions of the corporation through the conclusions arrived at by the members in the committee meeting. It is, therefore, desirable that committee decisions are the result of deliberations by all the members constituting it. It is also noteworthy that after the decisions are transacted by a committee, it becomes *functus officio.* Hence, it is not possible to refer a matter back to it for any rectification or revision of the decisions taken. The position is different in case of the meeting of members of a corporate body. Any distasteful valid decision taken at a corporate body meeting, on the basis of the rule of majority present and vote, is capable of being altered according to the desires of the total majority at the next meeting. As the chances of rectification or revision of

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7. A.I.R. 1942 Lah. 68; also *Knowles* v. *Zoological Society*, (1959) 2 All E.R. 595.
8. *Ibid.*
9. *Supra* note 1.
10. K.C. Wheare, *Government by Committee* 6 (1958),

decisions by a committee are nil, it seems imperative that all the members should act concertedly at one time to conclude their findings and make their suggestions. Such is the accepted rule in English law too. The English law on the subject requires the committee to act in concert because "the members cannot apportion among themselves duties delegated to it".[11] According to Hall "all members of a committee must be present to constitute a valid quorum".[12]

Without inquiring further into the issue of desirability of prescribing different quorum rules for the committee and corporate body meetings respectively, it may be pointed out that seemingly the law in India is different from the rule of English law.

The few earlier decided Indian cases have not cared to take into account the distinction between a committee meeting and the corporate body meeting. The rule prescribed for the meetings of a corporate body has found the application in the committee meetings also. In *Shridhar Mishra* v. *Jaichandra*,[13] a committee of eleven persons was appointed by an association, the Hindi Sahitya Sammelan. In one of the meetings only six members were present. The proceedings and the deliberations of the meeting were questioned for want of quorum. The court viewed it unreasonable to expect all the members to attend the meeting and held that the majority may be taken as forming the quorum. In an earlier case the court placed the committee and corporate body congruently to observe that in relation to quorum of the committee meeting : "the same rule applies where a corporate power is delegated to a smaller body."[14]

In view of the facts of *Ishwar Chandra's* case[15] the Supreme Court held that the quorum for the committee meeting was complete with the attendance of two, out of three, members participating in the deliberations and decisions. It can be read as an endorsement of the quorum rule of "majority being present and voting". The court also derived support from the statement of the English law as stated in Halsbury,[16] which incidentally is a rule governing the law of meetings generally. Apparently, it may be understood that the court has chosen to lay down a rule in terms as stated above. However, it is submitted that in the instant case the Supreme Court had taken note of the fact that the absentee member had withheld his presence and was not ready to attend the meeting except at a venue of his choice. Under these circumstances it was not possible for the committee to deliberate with all the members assembling together. Accordingly, the court did not permit the use of the negative

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11. *Cook* v. *Ward*, (1877) 2 C.P.D. 255.

12. Hall, *Meetings : Their Law and Practice* 136 (1966) ; Frank Shackleton, *supra* note 4 at 41. *Liverpool Household Stores Association* v. *Smith*, (1890) 59 C.J. Ch. 616.

13. A.I.R. 1959 All. 598.

14. *General Manager* v. *Jagmohan*, A.I.R. 1942 Lah. 68.

15. *Supra* note 1.

16. *Supra* note 5.

attitude of the abstaining member to torpedo the concerted action of the committee merely to sustain the technicality of objection that all the members were not present in the committee deliberations.

The foregoing remarks, therefore, inferentially lead to the deducing of a *ratio decidendi* which does not uphold the proposition that the presence of majority members in a committee meeting is the requisite quorum for validation of the meeting. A correct appraisal of the decision would ue that in a committee meeting each constituent member has to pool his skill and energies in an assembly arranged for the purpose of accomplishing decisive results through the concerted action of one and all. A concerted action would demand the presence of all the members. In certain circumstances a constructive presence may be deemed to be the actual one. Such a rule underlies in this decision. However for an explicit judicial declaration to the above effect one may have to wait till some such issue is cogitated before the court again.

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