

**(2000) 01 SHI CK 0010**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 738 of 1998**

Abhilash Kumar and Others

APPELLANT

Vs

H.P. Krishi Vishva Vidyalaya and Others

RESPONDENT

**Date of Decision :** 06-01-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Himachal Pradesh University of Agriculture Horticulture and Forestry Act, 1986 —  
Section 24(6)

**Citation :** AIR 2001 HP 25 : (2000) 2 ShimLC 174

**Hon'ble Judges :** R.L. Khurana, J;M.R. Verma, J

**Bench :** Division Bench

**Advocate :** Rajiv Sharma, for the Appellant; Sanjay Karol, Advocate General, P.S. Patwalia and N.K. Thakur, Harsimran Singh Sethi and Ajay Kumar, for the Respondent

## Judgement

R.L. Khurana, J.—The five petitioners, namely, Sarvshri Abhilash Kumar, Brijesh Pratap, Vishal Thakur, Vinay Rana and Rajnish Sharma. having been unable to seek admission to the B. V. Sc. and AH course in the H.P. Krishi Vishva Vidyalaya (hereinafter referred to as the University), had approached this Court by way of a writ of certiorari to quash the proceedings dated 7-9-1998, filed as Annexure PA to the writ petition, as subsequently rectified by the Board of Management of the University on 17-10-1998, insofar as it purports to give benefit of reservation to the wards of deceased employees of the University in B. V. Sc. and AH course, while recommending the names of respondents Nos. 2 to 5 for admission to the said course by applying the principles of severality. Consequently, the admission granted to the respondents Nos. 2 to 5 on 12-10-1998 in the first year of B. V. Sp. and AH course was also sought to be set aside. A further direction was sought to admit the petitioners to the said course on the basis of" the marks obtained by them in the Combined Entrance Test held on 14-6-1998.

2. The writ petition was allowed by a Division Bench of this Court on 16-12-1998 with costs quantified at Rs. 10.000/-. The admissions granted to respondents

Nos. 2 to 5 to the first year of B. V. Sc. and AH course on 12-10-1998 were set aside and quashed, While allowing the writ petition and setting aside the admissions granted to the respondents Nos. 2 to 5, the Division Bench further indicted the Vice-Chancellor of the University Mr. Prem Kumar Khosla. (though name not indicated and hereinafter referred to as the respondent) and commended to the Chancellor to take appropriate action against all those concerned in the case, irrespective of their status or position in the University, in accordance with law. The respondent, in the view of the Division Bench was to be further made responsible to bear the liability of costs awarded, for the role he seems to have played. However, this aspect of the matter was also left to the discretion of the Chancellor to decide.

3. It was observed by the Division Bench of this Court, as under :

"Consequently, there is no escape from the selections and admissions of respondents Nos. 2 to 5 being set aside and we quash the same accordingly.

Before parting with this case we cannot refrain from expressing our displeasure over the manner in which the 1<sup>st</sup> respondent has functioned sacrificing public interest and adopting methods which cannot have the approval of any Court of law. We are also pained to notice the sorry state of affairs in which this institution is being administered, as if it is a personal estate of a private person, who carry vested interests. The counter affidavit filed is of great significance and it appears from the averments therein, itself that the various constituent bodies of the University has chosen to act in such an Illegal manner only to please and oblige the Vice-Chancellor, who seems to have taken this particular course of action to favour respondents 2 to 5 with admission for the course. This calls for serious action against all those concerned including the Vice-Chancellor. Since the Chancellor happens to be Her Excellency the Governor of Himachal Pradesh, under the Act and the Chancellor, has ample powers under the Act to take such effective action against all those concerned, we consider it sufficient to commend for the Chancellor to take appropriate action against all those concerned in this case, irrespective of their status or position in the University, in accordance, with law. But for this litigation such gross illegal acts and instances of misuse and abuse of powers would not have come to light at all and though the petitioners have come to vindicate their rights virtually they have done great public service in exposing such misdeeds by a public Body.

In view of the above, we allow Rupees 10,000/- costs in the writ petition to be paid to the petitioners by the 1<sup>st</sup> respondent. The Vice-Chancellor of the University in our view has to be made responsible to bear this liability from his personal funds without causing any loss to the finance of the University for the role he seems to have played as disclosed in the reply filed by the 1<sup>st</sup> respondent itself. This aspect also is one on which we would leave the discretion to decide, with the Chancellor of the University.

A copy of this order shall be forwarded to the Chancellor of the University who

happens to be Her Excellency Governor of Himachal Pradesh for taking appropriate action, as indicated In our order and as It may call for in the opinion of the Chancellor."

4. The Chancellor vide order dated 9-1 -1999 placed the respondent under suspension with Immediate effect. By another order of the same day, the Chancellor directed Shri Harsh Gupta, the Additional Chief Secretary to the Government of Himachal Pradesh to inquire into the irregularities committed in relation to the admission to the B. V. Sc. and AH professional degree course in the academic year 1998-99 and to give his findings as to the persons responsible for the irregularities after affording them a reasonable opportunity of being heard and as to whether the respondent or other authorities and officers of the University wilfully omitted to carry out the provisions of the Act or abused the powers vested in him/ them and to submit his report within a period of one month from the date of issuance of the order.

5. By a third order of the same date. during the temporary vacancy in the office of the Vice-Chancellor caused by the suspension of the respondent, the Chancellor, in exercise of the powers vested in him under sub-section (5) of Section 24, H. P. Universities of Agriculture, Horticulture and Forestry Act, 1986 (Act No. 4 of 1987). hereinafter referred to as the Act, appointed Shri Yogesh Khanna, Financial Commissioner-Cum-Secretary to the Government of Himachal Pradesh to carry out the duties of the Vice-Chancellor of the University till further orders.

6. Aggrieved by his indictment by the Division Bench of this Court, the respondent went up in appeal before the Hon"ble Supreme Court, being Civil Appeal No. 4009 of 1999. Such appeal was allowed by the Hon"ble Supreme Court on 26-7-1999 and the Judgment dated 16-12-1998 of the Division Bench of this Court insofar as it affected the respondent including directing the respondent to pay costs was set aside and quashed and the case was remanded for considering the case of the respondent after issuing notice to him and after hearing the parties concerned including the learned counsel for the respondent.

7. The operative portion of the judgment of the Hon"ble Supreme Court reads :

"It is an admitted position that In the writ petition i.e. Civil Writ Petition No. 738 of 1998 which was moved by the writ petitioners who wanted compassionate admissions in the first year of Bachelor of Veterinary Science and Animal Husbandry course of the University, the aforesaid observations, strictures and directions were issued against the appellant for which the appellant had no opportunity to have his say before the High Court as he was not noticed. Learned senior counsel, Mr. Salve vehemently submitted looking to the records of the case, this Court may even go into the questions whether these strictures and directions are justified on facts which are tried to be brought on record before us. We are not inclined to undertake this exercise for the simple reason that the Division Bench of the High Court had no opportunity to consider the case of the

appellant after hearing him on notice. Therefore, only on this short ground and without expressing any opinion on the merits of the controversy between the parties, this appeal is allowed and the impugned judgment of the High Court so far as it affects the appellant including directing the appellant to pay the costs will stand quashed and set aside. The proceedings of the Civil Writ Petition No. 738 of 1998 are remanded to the High Court for the limited purpose of considering the case of the appellant after issuing notice to him and after hearing the parties concerned, including learned counsel for the appellant. The High Court is requested to reconsider the question whether any case is made out for directing any action to be taken against the appellant by the Chancellor on the facts of the case in the aforesaid writ petition and in the light of the evidence that may be brought on record by the appellant and other contesting parties in connection with the aforesaid limited question to be examined in the remanded proceedings."

8. The Hon"ble Supreme Court further observed :--

"..... We may also note that pending this proceeding, this Court had granted stay of the inquiry directed by the Chancellor on 9-1-1999. These proceedings will remain stayed till the final decision of the High Court in the remanded proceeding. So far as suspension order passed by the Chancellor pursuant to the order of the High Court is concerned, the said order will remain stayed subject to the appellant's undertaking to this Court that he will proceed on leave forthwith and will continue to remain on leave till the remanded proceedings are decided by the High Court after hearing him and in the meantime, the present arrangement regarding discharge of the functions of the Vice-Chancellor on day-to-day basis will continue. It is obvious that the suspension order as well as the enquiry against the appellant will abide by the final result in the remanded proceedings. As the question about the functioning of the Vice-Chancellor is involved. It is in the Interest of all concerned that the remanded proceedings are disposed of at the earliest convenience by the High Court. We request the High Court accordingly. No costs."

9. Pursuant to the orders of the Hon"ble Supreme Court, remanding the case to this Court, notice was issued to the respondent, who on having put in appearance filed a detailed affidavit setting out the facts leading to the admission granted to the respondents Nos. 2 to 5. He also placed on record the zerox copies of the record and proceedings of the University pertaining to the admission of respondents Nos. 2 to 5 to the B.V.Sc. and AH course. A complete copy of the paper book of the SLP preferred by the respondent before the Hon"ble Supreme Court was also placed on the record of the present case. A reply-affidavit has also been filed by the Registrar on behalf of the University.

10. We have heard the learned counsel for the parties and have also gone through the record of the case.

11. At the very outset, it may be stated that some irregularities, admittedly, have

been committed, while granting admission to respondents Nos. 2 to 5, It was only due to such illegalities that such admission was set aside and quashed by a Division Bench of this Court on 16-12-1998. This order of the Division Bench of this Court was never assailed by the University or by any of the respondents Nos. 2 to 5. Therefore, such order setting aside and quashing the admissions granted to respondents Nos. 2 to 5 to the B.V.Sc, and AH course has become final.

12. The learned counsel for the respondent has contended that proceeding on the basis that there has been certain irregularities in granting admission to respondents Nos. 2 to 5, there has been no mala fide on the part of the respondent. The power to grant admission was exercised by the respondent bona fide and with the best of intentions. The mere breach of rules and regulations of the University in the absence of bad faith would render the Impugned act ultra vires and the respondent cannot be said to have acted with bad faith. In support of his proposition, the learned counsel for the respondent has taken us through the fresh material placed on record by the parties, which material, it seems, was not before the earlier Division Bench, when the respondent came to be indicted.

13. In *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, the Hon"ble Supreme Court had the occasion to draw a distinction between "exercise of power in good faith", and "misuse In bad faith". It was observed in para 118 of the report :--

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse In bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the Impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh Vs. The State of Punjab*, . A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power. ...."

14. The Hon"ble Supreme Court in para 119 of the report went on to observe :--

"In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, It was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action, in *State of Punjab Vs. Ramjilal and Others*, . it was held that it was not necessary that any named officer was responsible for the act where the validity

of action taken by a Government was challenged as mala fide as It may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the abuse of authority must appear to be reasonably probable."

15. In the present case, it is pertinent to note that the petitioners to the writ petition have nowhere alleged and/or imputed improper motives as against the respondent, in the absence of such allegations/imputations, the learned counsel for the respondent contended that the act of misuse of power in bad faith could not be attributed to the respondent.

16. As stated above, admittedly, there has been certain irregularities in granting admission to the respondents Nos. 2 to 5, which admissions stand set aside and quashed. The only question that remains is whether the respondent acted in a bona fide or mala fide manner in granting such admissions.

17. Considering the fresh material placed on the record by the parties and keeping in view the fact that the petitioners had never made allegations or imputations against the respondent, in our view no finding need be recorded on this aspect of the case by this Court, since the same may tantamount to pre-empting a proposed action, if any, that may be taken by the Chancellor under the Act or to compel the Chancellor to do an act which in his wisdom and discretion he may not be willing to do on the facts and circumstances of the case.

18. Section 24(6) of the Act provides :-

"If, in the opinion of the Chancellor, a Vice-Chancellor wilfully omits or refuses to carry out the provisions of the Act or abuses the powers vested in him or if it appears to the Chancellor that the continuance of that Vice-Chancellor in office is detrimental to the interests of the University, the Chancellor may, by order, remove the Vice-Chancellor, after giving him an opportunity to show cause against the action proposed to be taken against him."

19. In view of the above provisions, holding the respondent guilty of mala fide and indicting him or otherwise especially when there are no Imputations against him by the petitioners, may amount to erosion on the powers of the Chancellor.

20. Therefore, on the facts and circumstances of the case, without commenting on the merits, we refrain ourselves from issuing any directions to the Chancellor and leave the matter to the wisdom and discretion of the Chancellor.

21. Before parting, we may observe that the order dated 9-1-1999 placing the respondent under suspension and the other order of the same date directing Shri Harsh Gupta, the Additional Chief Secretary to the Government of Himachal Pradesh to enquire Into the Irregularities committed in relation to the admission

to the B.V. Sc. and AH professional degree course for the academic year 1998, on the face of it, appear to have been passed by the Chancellor on the basis of the observations made by the earlier Division Bench of this Court indicting the respondent. Since, such observations stand set aside by the Hon''ble Supreme Court and as we have chosen not to comment upon the irregularities or on the role played by the respondent and have decided to leave the matter to the wisdom and discretion of the Chancellor, the further continuance of these two orders may not be warranted. It is ordered accordingly.