

(1999) 10 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 30928 of 1997

Allahabad University Teachers Association, Allahabad and
others

APPELLANT

Vs

Chancellor, U.P. State Universities, Lucknow and another

RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 10, 12(10), 12(2), 12(5)

Citation : (2000) 1 AWC 42 : (2000) 1 UPLBEC 350

Hon'ble Judges : Onkareshwar Bhatt, J;A.A. Desai, J

Bench : Division Bench

Advocate : P. Padia and R.G. Padia, for the Appellant; S.N. Upadhyaya, K.S. Singh, R.P. Goyal, A.G. and Vinod Swaroop, Addl. A.G., for the Respondent

Final Decision : Disposed Of

Judgement

A. A. Desai, J.—The petitioner No. 1 is an Association of Teachers of the Allahabad University. Petitioner Nos. 2 and 3 are members of the Association. They have questioned the constitutionality of various provisions u/s 12 of the U.P. State Universities Act. 1973 (hereinafter referred to as "the Act").

2. In ultimate submission. Dr. R. G. Padia, the learned counsel for the petitioners, confined the challenge to sub-clause (c) of sub-section (2) of Section 12 of the Act. Section 12 reads thus :

The Vice-Chancellor.--(1) The Vice-Chancellor shall be whole-time salaried officer of the University and shall be appointed by the Chancellor except as provided by sub-section (5) or sub-section (10) from amongst the persons whose names are submitted in accordance with the provisions of sub-section (2).

(2) The Committee referred to in sub-section (1) shall consist of the following members, namely :

(a) one person (not being a person connected with the University, an Institute, a

constituent college. an associated or affiliated college or a hall or hostel) to be elected by the Executive Council (atleast three months before the date on which a vacancy in the office of the Vice-Chancellor is due to occur by reason of expiry of his term) ;

(b) one person who is or has been a Judge of the High Court of Judicature at Allahabad including the Chief Justice thereof nominated by the said Chief Justice ; and

(b) one person to be nominated by the Chancellor who shall also be the Convenor of the Committee.

(Impugned provisions).

3. Contention is that the provisions confers unguided and unfettered discretion on the Chancellor to nominate anybody on the Committee to select the Vice-Chancellor of the University. Such power has posed serious threat to the academic affairs of the University. The impugned provisions, therefore, need to be struck down.

4. Learned Advocate General for the State and Sri S. N. Upadhyay. counsel appearing for the Chancellor, questioned the tenability of the petition at the behest of the petitioners. According to them, the petitioners are not concerned in any manner with the selection of a Vice-Chancellor. No right of the petitioners or the organisation has been impaired so as to maintain this petition.

5. However, they agree with the contention that the petitioner being association of the lecturers, each member is engaged in the job to educate the students community admitted to the various disciplines being conducted by the University. Certainly they are involved in the academic affairs which is a primary function of the University. This academic activity is organised, regulated or promoted under the leadership of the Vice-Chancellor. Therefore, it cannot be gainfully said that the petitioners organisation of lecturers are not in any way interested or concerned with the selection of the Vice-Chancellor. The petitioners, therefore, have a locus to maintain the petition.

6. Dr. Padia, learned counsel for the petitioners very vehemently tried to assail the impugned provisions on the ground that they are capable of being misused. Referring to the decision in Civil Mtsc. Writ Petition No. 16888 of 1999. Raj Kumar and others v. Chancellor. Mahatma Jyoti-Ba-Phule Rohilkhand University, Lucknow and others, the learned counsel focussed on the feature that the Chancellor in exercise of powers under impugned provisions nominated his own Secretary of the Committee. Such exercise is fanciful and does not commensurate with the nature and responsibility of the function.

7. The learned Additional Advocate General and the counsel for the Chancellor made a submission that the grievance as canvassed in this petition is hypothetical. The abuse or the misuse of the powers could judicially be reviewed in appropriate case where such abuse has resulted in selecting an inappropriate

person as a Vice-Chancellor. In the earlier occasion, the Chancellor might have nominated his Secretary. In the instant case, however, there is neither a nomination by the Chancellor nor there is a selection, pursuant to the recommendation of the Committee under sub-section (1) of Section 12 of the Act. The petition, for the relief as claimed, therefore, cannot be entertained. We see considerable force in the submission.

8. However, after hearing the learned Additional Advocate General and the learned counsel for the Chancellor, *prima facie*, we do not find the impugned provisions are unguided or they provide arbitrary discretion. The guidance is very much inherent in the scheme of Section 12 of the Act. The Governor is the highest constitutional office of the State. Rightly it is pointed out to us that as per Section 10 of the Act the Governor is an *ex officio* Chancellor of the Universities in the State. The very stature and status of a person holding the office of the Chancellor is an assurance against arbitrariness or misuse of the power.

9. Besides this, under the impugned provisions, a person to be nominated by the Chancellor, being his representative cannot be any person out of free will. As far as possible such a person being the nominee ought to possess same or similar stature and eminence as that of the Chancellor. Furthermore, such a nominee of the Chancellor has to function in a Committee which takes very important decision to recommend the names for appointment of Vice-Chancellor. Such person certainly, as per the scheme, need to be in such position academically and administratively, to deliberate with the members of the Committee. One such member of the Committee is the Chief Justice of the State or any sitting or retired Judge of the High Court. This aspect of the matter also furnishes sufficient guidelines. It, therefore, follows that the persons to be nominated in any manner could not be less in stature and eminence than the other members of the Committee as envisaged by sub-clause (b) of subsection (2) of Section 12 of the Act. Particularly under sub-section (5) of Section 12 of the Act when the Chancellor is obliged to nominate the Committee, the persons need to be of an academic eminence. This also provides a guideline for exercise of power under impugned provisions that the nominee of the Chancellor also need to be of academic excellence.

10. We believe that the Chancellor guide himself in the matter of nomination under impugned provisions having regard to the some of the aspects which are explicit in the scheme of Section 12 of the Act, and referred to above.

11. Rule is, therefore, discharged.