

(2014) 09 KL CK 0160

In the High Court Of Kerala

Case No : R.P. No. 690 of 2014 (A) in WP(C).13809/2014

A.V. George

APPELLANT

Vs

Chancellor, Mahatma Gandhi University

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 KL CK 0160

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan (Sr.), K. Radhamani Amma and Antony Mukkath, Advocate for the Appellant; Girija Gopal, Spl. Government Pleader and Sajith Kumar V., Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—This is a petition for review of the judgment dated 18.08.2014 in W.P.(C) No. 13809 of 2014. In the writ petition the challenge was against the action of the Chancellor of the University, in removing the petitioner from the post of Vice Chancellor, to which he was appointed, pursuant to the recommendations of a Search Committee, that was constituted for the purpose. It was in that context that the issues as to whether the Chancellor, while exercising powers under the Mahatma Gandhi University Act (hereinafter referred to as "the MGU Act"), had inherent powers and could suo motu act in the matter of removal of a Vice Chancellor was gone into and decided in the judgment.

2. The review petition is premised on the contention that the issue as to whether a Chancellor under the Act could, in exercise of his inherent powers, disregard the recommendation of the Search Committee that had initially recommended the petitioner for appointment as Vice Chancellor, was not considered by this Court while deciding the writ petition. As an additional argument, it is also urged that the Chancellor of the University could not go behind the recommendations made by the Search Committee and had necessarily to appoint only one among

the panel of names recommended to him to be the Vice Chancellor of the University. It is contended, therefore, that while exercising the inherent power to remove a person who was appointed as a Vice Chancellor, it was incumbent upon the Chancellor to consult the Search Committee that recommended the candidates for appointment as Vice Chancellor, and to ascertain from the said Committee, the procedure that was followed by them and whether there was any illegality or infirmity in the said recommendation that warranted a recalling of the said recommendations. The learned senior counsel appearing on behalf of the review petitioner would contend that the issue as to what were the relevant factors which weighed with the Search Committee while recommending the petitioner, along with others, in the panel of names that was submitted to the Chancellor, was decided by the Chancellor without examining the members of the Search Committee and hence the Chancellor had committed a grave error in jurisdiction while arriving at his decision to remove the petitioner from the post of Vice Chancellor. It is, in particular, pointed out that the proceedings of the Search Committee were not minuted and therefore, the factors that weighed with the Search Committee while deciding upon the suitability of candidates for inclusion in the panel, could not be clearly ascertained in the absence of an enquiry with the members of the Search Committee. It is also pointed out that the Chancellor had relied on material that was furnished to him by the Additional Chief Secretary to the Government, to whom the matter had been entrusted by the Chief Secretary, who in turn had been requested by the Chancellor to look into the complaints that had been received by the Chancellor with regard to the suitability of the petitioner for the post of Vice Chancellor. It is contended that the said material was one that was obtained behind the back of the petitioner, in as much as the petitioner's comments on the correctness of the data gathered had not been invited, or called for, before forwarding it to the Chancellor. It is vehemently contended that the reliance by the Chancellor on such material, which was inherently void and unreliable, while arriving at his decision, rendered his decision illegal. Reliance is sought to be placed on the decisions reported in *Rama Shanker Misra and Brothers Vs. Regional Transport Authority, Kanpur and Others*, for the proposition that it is not every misrepresentation that could be seen as disqualifying the petitioner who had sought appointment on the basis of such representations and that it was only those misrepresentations, as obtained for the petitioner a benefit that he would have otherwise not obtained, that could be treated as fatal so to disqualify the petitioner. The decisions in *Girdhari Lal Gupta Vs. D.H. Mehta and Another*, *S. Nagaraj and Others Vs. State of Karnataka and Another*, and *State of Orissa and Another Vs. Mamata Mohanty*, are relied upon for the proposition that, when there was any legal provision or fact that was not brought to the notice of the Court at the time of arguing the writ petition, the subsequent discovery of that provision or fact would be a valid ground for the exercise of review powers by this Court. Further, if facts relating to a dispute were not correctly placed, or the legal points urged, leading to a situation where the court proceeded on an erroneous assumption of the facts, then a review petition would be admissible for the purpose of preventing a

miscarriage of justice.

3. The learned Government Pleader appearing on behalf of the respondents would counter the arguments of learned senior counsel, by pointing out that this is not a case where the Court would be justified in the exercise of its power to review a judgment. It is pointed out that the points urged by the review petitioner have already been considered by this Court in its judgment dated 18.08.2014 and any submission made with regard to the very same contentions would tantamount to arguing the writ petition afresh and this was not permissible in review proceedings. The decisions of the Supreme Court in *Sow Chandra Kante and Another Vs. Sheikh Habib*, AIR 1980 808 (SC) and *Kamlesh Verma Vs. Mayawati and Others*, have been relied on to fortify the said contentions regarding the exercise of review power by this Court under Article 226 of the Constitution.

4. I have considered the submissions made by the learned senior counsel appearing on behalf of the review petitioner as also the learned Government Pleader appearing for the respondents. On a consideration of the said submissions, I am of the view that the review petition must necessarily fail. It is relevant to note that the point urged in the review petition, namely that the contention that the Chancellor of the Mahatma Gandhi University could not, in exercise of his inherent powers, disregard the recommendation of the Search Committee that had recommended the petitioner for appointment to the post of Vice Chancellor was not considered by this Court, is not one that is available to the petitioner to urge in a review petition. Firstly, such a point was never pleaded or urged at the time of hearing the writ petition. Secondly, there was no dispute that the petitioner had in fact been appointed as a Vice Chancellor based on the recommendation of the Search Committee. In that sense, therefore, there was no case that the Chancellor had disregarded the recommendation of the Search Committee while appointing the petitioner as Vice Chancellor. Thirdly, in the writ petition the issue that arose for consideration was the removal of the petitioner from the post of Vice Chancellor, after having been appointed to the said post. The stage of accepting the recommendations of the Search Committee had already been crossed by then and the Search Committee, as contemplated under the provisions of the Act, had virtually been rendered functus officio. In that view of the matter, I do not find any merit in the contention that, while exercising the suo motu power under the provisions of the Act, the Chancellor was required to once again approach the Search Committee, or ascertain whether the recommendations of the Search Committee were in any manner vitiated, through an enquiry with the Search Committee. The scheme of the MGU Act does not indicate the necessity for such a procedure when dealing with the powers of the Chancellor to remove a Vice-Chancellor from office.

5. In the exercise of powers under Article 226 of the Constitution, where this Court exercises the power of judicial review, the concern of this Court is only with the manner in which the decision is arrived at by the authority who passed

the order that is impugned in the writ petition. The impugned judgment is a result of that exercise by this Court. In so far as it is not the case of the review petitioner that any of the points that were urged were not considered by this Court in its judgment dated 18.08.2014 and the only contentions that are now urged are those that were not pleaded or urged at the time of arguing the writ petition, I am of the view that this is not a fit case for the exercise of the powers of review. In this connection useful reference may be made to the decision of the Supreme Court in Kamlesh Verma's case (supra), where the Supreme Court has summarised the principles relating to the exercise of the powers of review in proceedings under Article 226 of the Constitution of India. It has been held that the power of review would be exercisable if there was a discovery of new and important evidence which, after exercise of due diligence was not within the knowledge of the petitioner or could not be produced by him, or there was a mistake or error apparent on the face of the record or any other reason akin to the above. On the other hand, the power of review would not be exercised if what is urged is only a repetition of old and overruled arguments or what is pointed out is a minor mistake of inconsequential import or an error which, though projected as an error apparent on the face of the record, is in reality one that cannot be established except through a prolonged search or a convoluted process of reasoning. What is apparent from the above discussion is that a review petition cannot be equated with an original hearing of the case; neither can it manifest itself as an appeal in disguise. Taking note of the contentions in the review petition, I am of the view, as already noted, that this is not a fit case warranting the exercise of the powers of review. Resultantly, I dismiss the review petition.