
(2014) 08 KL CK 0027
In the High Court Of Kerala
Case No : WP(C). No. 13809 of 2014 (A)

A.V. George

APPELLANT

Vs

The Chancellor, Mahatma Gandhi University

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 361
Mahatma Gandhi University Act, 1985 — Section 10, 7, 7(10)

Citation : (2014) 4 ILR 144 : (2014) 3 KLT 987

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

Bench : Single Bench

Advocate : M.K. Damodaran (Sr.), P.K. Vijayamohanan, Alan Papali, Gilbert George Correya, Nishil P.S. and K. Gopalakrishna Kurup (Sr.), Advocate for the Appellant; Girija Gopal, Spl. Government Pleader and Sajith Kumar V., Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The legality of the order of the Chancellor of the Mahatma Gandhi University, removing the petitioner from the office of the Vice-Chancellor of the University, is the issue that comes up for consideration in this writ petition. The brief facts necessary for the disposal of this writ petition are as follows;

2. The office of the Vice-Chancellor of the Mahatma Gandhi University having fallen vacant, proceedings were initiated in accordance with the provisions of the Mahatma Gandhi University Act, 1985 (hereinafter referred to as the "MGU Act") for appointing a new incumbent to the said office. As a first step in that direction, the Chancellor of the University issued a notification dated 26.11.2012 constituting a three member committee as contemplated in Section 10 of the MGU Act. The Chief Secretary of the State was the nominee of the Chancellor in the said committee and he was also to be the Convener of the committee. While the committee began to receive applications from interested candidates immediately after its constitution, pursuant to a meeting held by the members of the committee on 20.12.2012, it was decided by the committee to receive

applications from interested candidates till 28.12.2012, before commencing the process of shortlisting of candidates for submission to the Chancellor. Thereafter, on 31.12.2012, the committee submitted two panels of names. Two members of the panel submitted a panel of three names and the other member submitted a separate panel of three names. From among the panel of names submitted by two members of the committee, the Chancellor appointed the petitioner as the Vice-Chancellor of the University vide Notification dated 05.01.2013.

3. Immediately after the appointment of the petitioner as the Vice-Chancellor of the University, the Chancellor received representations from the 3rd respondent citing certain irregularities in the appointment of the petitioner. The Chancellor, thereupon, vide Ext. R2 (g) communication, forwarded the same to the Chief Secretary for necessary action. The Chief Secretary, as convener of the committee, caused the 2nd respondent to conduct a detailed enquiry in the matter and submit a report to him. Ext. R3 (m) is a copy of that report and therein it was opined that the appointment of the petitioner as Vice-Chancellor was tainted and invalid on account of misidentification, misrepresentation, deception and misleading the appointing authority.

4. In the meanwhile, the 3rd respondent preferred a writ petition-W.P. (C). No. 13317/2013-in the nature of a Public Interest Litigation, challenging the appointment of the petitioner as the Vice-Chancellor of the University and praying inter alia for a direction to the Chancellor to hear and dispose the representations preferred by him before the Chancellor. Another writ petition-W.P. (C). No. 24003/2013-was also preferred by the 3rd respondent seeking a writ of quo warranto against the appointment of the petitioner as the Vice-Chancellor. Both the aforementioned writ petitions were disposed by this Court, by separate judgments dated 08.01.2014, finding that insofar as the Chancellor was seized of the matter regarding the validity of the appointment of the petitioner as Vice-Chancellor, the writ petitions were not maintainable before it. These judgments came to be passed because, while the writ petitions were pending, and based on interim orders passed therein, the Chancellor had caused Ext. P2 show cause notice to be issued to the petitioner seeking his explanation with regard to the findings in Ext. R3 (m) report as also the contents of the representations received by the Chancellor from the 3rd respondent.

5. It is relevant to note that, on receipt of Ext. P2 show cause notice and on coming to know of Ext. R3 (m) report relied upon therein, the petitioner preferred W.P. (C). No. 29926/2013 challenging Ext. R3 (m) report as also W.P. (C). No. 32310/2013 challenging Ext. P2 show cause notice. The latter writ petition was disposed by judgment dated 27.12.2013 directing the Chancellor to consider the objections of the petitioner against the show cause notice. Based on this judgment, the former writ petition was dismissed as infructuous. Although, the petitioner approached the Supreme Court against the judgments in W.P. (C). Nos. 29926/2013 and 32310/2013, through SLP Nos. 6599-6600/2014, the same were eventually dismissed as withdrawn. The petitioner, thereafter,

preferred Ext. P3 reply to the show cause notice issued by the Chancellor. He was also afforded an opportunity of hearing before the Chancellor. Subsequently, when there was a change in the office of the Chancellor, he was afforded a fresh opportunity of hearing before the new Chancellor. The Chancellor then passed Ext. P4 order dated 12.05.2014, removing the petitioner from the office of the Vice-Chancellor of the Mahatma Gandhi University. By Ext. P5 notification, issued on the same day, the Chancellor also conferred the powers of the Vice-Chancellor on the Pro-Vice Chancellor of the University.

6. A perusal of Ext. P4 order of the Chancellor reveals that the three issues that came up for consideration before the Chancellor were as follows:

Whether the petitioner was disqualified from holding the post of Vice-Chancellor insofar as he did not possess the qualifications prescribed by the UGC for the post of Vice-Chancellor?

Whether the petitioner had attempted to make misrepresentation in his bio-data by falsely suggesting that he was "Head of Department of Environmental Sciences, Central University of Kerala" at the time when he was considered for appointment as Vice-Chancellor of the Mahatma Gandhi University? and

If the petitioner had so misinterpreted and that had resulted in his being appointed as Vice-Chancellor, Mahatma Gandhi University, could he be proceeded against only under Section 7(10) of the Mahatma Gandhi University Act or could the appointing authority exercise its inherent powers to remove him from office?

7. It is seen from Ext. P4 order that the Chancellor did not deem it necessary to go into the first question since the Government had admitted that the UGC Regulations were not being adopted into the University Statute. As regards the second question, it was found that the petitioner had clearly misrepresented facts regarding the position held by him as on the date of his consideration for the post and that this amounted to a commission of fraud upon the appointing authority. As regards the third question, it was found that the appointing authority had inherent power to determine the service of an appointee on the ground that the appointment is vitiated on account of misrepresentation made by the appointee. It was also found that in such cases, the provisions of Section 7(10) of the MGU Act did not apply. It is these findings in Ext. P4 order that are impugned by the petitioner in the present writ petition.

8. Counter affidavits have been filed on behalf of the 2nd and 3rd respondents. In the counter affidavit filed on behalf of the 2nd respondent that stand taken is that the petitioner had, by misrepresenting material facts, secured appointment to the post of Vice-Chancellor of the MG University. The manner in which, according to the respondents, the petitioner went about that task is also detailed in the said counter affidavit. In the counter affidavit filed on behalf of the 3rd respondent emphasis is laid on the fact of misrepresentation by the petitioner of his status at the time of submitting his bio-data for the post of Vice-Chancellor of the MG University. The delayed attempts of the petitioner to try and get the

mistake corrected are also emphasized therein to suggest that the said actions lacked bona fides.

9. I have heard learned Senior Counsel Sri. M.K. Damodaran and Sri. Gopalakrishna Kurup, assisted by Advocates Sri. P.K. Vijayamohanan and Gilbert George Correya, on behalf of the petitioner, the learned Advocate General Sri. K.P. Dandapani, assisted by Advocate Smt. Girija Gopal, on behalf of the 1st and 2nd respondents and Advocate Sri V. Sajith Kumar on behalf of the 3rd respondent.

10. The issue to be decided in this case is the legality of the finding in Ext. P4 order that the petitioner had, through the bio-data submitted by him to the committee constituted to assist the Chancellor, misled the said committee and the appointing authority by falsely stating in his bio-data that he was serving as the Head of the Department of Environmental Science in the Central University of Kerala, Kasaragod during the relevant time when, in fact, he was not. The other issue to be considered is whether the Chancellor can, in exercise of inherent powers, remove a person who has been appointed as a Vice-Chancellor, on grounds other than those expressly mentioned in Section 7 of the MGU Act.

11. Learned Senior Counsel Sri. M.K. Damodaran and Sri. Gopalakrishna Kurup, appearing on behalf of the petitioner, would submit that:

The petitioner had submitted only two copies of his bio-data to the committee constituted by the Chancellor to select the Vice-Chancellor. The said copies contained corrections which clearly indicated that the petitioner had held the post of Head, Department of Environmental Science, at the Central University of Kerala, Kasaragod, only till 29.11.2012 and that he had re-joined Christ College, Irinjalakuda, on superannuation on 30.11.2012, as Head, Department of Geology and Environmental Science.

The petitioner had not submitted any copy of his bio-data prior to Ext. P1 copy that was sent under cover of letter dated 26.12.2012. Ext. P1 was sent in response to the press release dated 23.12.2012 that indicated that the last date for submission of the bio-data was 28.12.2012.

There was nothing on record to show that the members of the search committee had been misled by the contents of the bio-data. In fact, a reading of Ext. P2 show cause notice would indicate that the allegation against the petitioner was that he had distorted and falsified his bio-data to show that, at the time of applying for the post of Vice-Chancellor of MG University, he was a candidate who had experience in the "University System". Such a falsification of the bio-data, even if established, could not have had the effect of misleading the committee members. This is because the said representation could have had a relevance only if the standards prescribed by the UGC were to be met by a candidate seeking appointment to the post of Vice-Chancellor and it was the admitted stand of the Government that the standards prescribed by the UGC were not being adopted into the University Statute.

The respondents never had a case that the petitioner was not qualified to hold the post in question. In fact, in Ext. P6 counter affidavit filed by the State Government, in a writ petition filed by the 3rd respondent challenging the appointment of the petitioner as Vice-Chancellor, the State Government had clearly indicated their stand that the selection process and appointment of the petitioner was done strictly in conformity with the provisions of the MGU Act and that the search committee had, by a decision of majority of its members, recommended the name of the petitioner for the post. The said counter affidavit is dated 05.07.2013 and the change in the stand of the respondents as seen from Ext. P2 dated 21.12.2013 is suspicious.

The power of the Chancellor, to remove the petitioner from the post of Vice-Chancellor to which he was validly appointed, was traceable only to Section 7 of the MGU Act. Other than this power, the Chancellor did not have any inherent power to remove the petitioner from his post. Alternatively, even if it is assumed that the Chancellor did have inherent powers, the said powers were not properly exercised insofar as there has been no independent consideration of the issue by the Chancellor in the instant case.

A perusal of Ext. R3 (m) report of the 2nd respondent clearly revealed that the 2nd respondent had exceeded his mandate, while furnishing the said report to the Chief Secretary who was the convener of the search committee, by making suggestions and recommendations for the removal of the petitioner from the post of Vice-Chancellor of the MG University. The Chancellor, by placing reliance on this report while issuing Ext. P4 order, had virtually acted under dictation and failed to act independently while taking the decision therein. Reliance is placed on the decisions reported in *Deepak Vs. University of Kerala*, and *Ashok v. Chancellor, Kerala Veterinary and Animal Sciences University*, 2012(3) KLT 829 to contend that Ext. P4 decision of the Chancellor is vitiated on account of his acting under dictation.

12. Per contra, the submissions of the learned Advocate General, briefly put, are as follows:

The petitioner had submitted three sets of bio-data to the committee constituted by the Chancellor to select the Vice-Chancellor. The first of these was Ext. R2 (c), which was submitted by the petitioner, in person, to the Chief Secretary sometime between the 10th and 18th of December 2012. The second set, produced as Ext. R2 (d), was received by the committee on 27.12.2012 and the third set, produced as Ext. R2 (e), was received by the committee on 03.01.2013.

While receiving Ext. R2 (d) bio-data, the Principal Secretary, Higher Education department had endorsed the words "already entered" on the covering letter sent by the petitioner, indicating thereby that another bio-data of the petitioner had already been received by the committee earlier. The stand of the petitioner Ext. R2 (c) bio-data had never been submitted by him was therefore, factually incorrect.

The contention of the petitioner that only Ext. R2 (d) bio-data, that was submitted immediately after 20.12.2012, could be considered since it was the one submitted after the date of the press release calling for applications, is factually incorrect because the press release referred to by the petitioner did not call for applications but was one that intimated all concerned that applications would be received by the committee only till 28.12.2012.

While, Ext. R2 (c) bio-data, which was the one relied upon by the selection committee while making the selection, showed the address of the petitioner as "Head, Department of Environmental Science, Central University of Kerala, Kasaragod", the same representation was also contained, at different places, in the other bio-data's submitted by the petitioner, notwithstanding that there had been some corrections incorporated therein by the petitioner. The said representation misled the members of the search committee while recommending his name for appointment as Vice-Chancellor.

Insofar as the petitioner had, by misrepresenting material facts, secured appointment to the post of Vice-Chancellor of the MG University, it was well within the powers of the Chancellor to remove him from the post de hors the powers under Section 7 of the MGU Act. It is settled law that fraud and misrepresentation vitiate any appointment secured through those means and hence Ext. P4 order of the Chancellor that removed the petitioner from the post of Vice-Chancellor, after complying with the rules of natural justice, could not be legally assailed. Reliance is placed on the following decisions to substantiate the said contention viz. Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others, ; Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, ; A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, ; Hindustan Lever and others Vs. Hindustan Lever Mazdoor Sabha and others, ; Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., and Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, .

The power of the Chancellor to remove the petitioner from the post of Vice-Chancellor is not traceable only to Section 7 of the MGU Act. The Chancellor does have inherent powers to remove a person who has secured his appointment by misleading the selection committee and the appointing authority. Reliance is placed on the decision reported in Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, for this purpose.

In the alternative, it is submitted that even in circumstances where the proceedings concluded against the petitioner by the Chancellor are found to be legally vitiated, the Court can, while deciding whether or not to grant the discretionary relief under Article 226 of the Constitution in favour of the petitioner, consider factors such as the petitioner's conduct and character, the nature of the post to which he seeks appointment, and whether he is a person suitable for appointment to the said post. In support of this contention reliance is placed on the decisions reported in State of Maharashtra and Others Vs. Prabhu, and Devendra Kumar Vs. State of Uttaranchal and Others, .

13. Adv. Sri. V. Sajith Kumar, appearing on behalf of the 3rd respondent would submit that Ext. R3 (a) would show that it was very possible that the petitioner had, in fact, submitted a bio-data to the convener of the search committee on a date between the 10th and 18th of December, 2012. Ext. R3 (a) is the notification dated 26.11.2012 whereby the Chancellor constituted the search committee. The said notification indicated that the recommendation by the committee was to be made within a period of one month from the date of the notification. It was likely, therefore, that the petitioner submitted his bio-data to the convener immediately thereafter. He would also point out that although Ext. R3 (d) letter sent by the petitioner to the Chancellor, seeking to correct the mistake in the designation shown against his name in the appointment order, is dated 31.01.2013, the said letter was actually received by the Chancellor only on 11.03.2013 as is evident from Ext. R3 (d) letter of the Chancellor. He also refers to Ext. R3 (h) relieving order dated 28.11.2012 issued to the petitioner by the Central University of Kerala wherein also he is not shown as Head of the Department of Environmental Science. The said references are made to demonstrate that the conduct of the petitioner is not worthy of one who seeks appointment to the post of Vice-Chancellor of a University.

14. I have considered the facts and circumstances of the case as borne out by the pleadings and also the submissions made by the learned counsel. I have also gone through the files of the Chancellor that were made available for my perusal by the learned Advocate General.

15. At the outset, it must be noted that the jurisdiction I am called upon to exercise in this case is one of judicial review under Article 226 of the Constitution of India. Accordingly, I am required to examine Ext. P4 order of the Chancellor of the University with a view to ensuring that it conforms to the requirements of legality, rationality and procedural propriety and, further, not hit by the legal vice of *Wednesbury* unreasonableness. The jurisdiction is not an appellate one and hence I need concern myself only with the manner in which the decision was arrived at and whether the said decision was in accordance with law.

16. Ext. P4 order of the Chancellor of the MG University, that is impugned in this writ petition, is premised on the finding that the petitioner had, through the bio-data submitted by him, suppressed material information and made a false statement that had weighed with the search committee, as also the appointing authority, while appointing him to the post of Vice-Chancellor of the MG University. To test the legality of the said order, therefore, one has to examine whether the Chancellor was justified in arriving at the finding that (i) there was a misrepresentation by the petitioner, either through suppression of material information or through the making of false statements, to the members of the search committee and (ii) the misrepresentation was such that it misled the committee into taking a decision that conferred some benefit or advantage to the petitioner. An examination of the first aspect requires me to peruse the material that was made available by the petitioner to the search committee in connection

with the consideration of his candidature for the post in question. The matter gets a bit complicated here because the petitioner maintains that he had submitted only two copies (Exts. R2 (d) and R2(e)) of his bio-data to the convener of the search committee, both under cover of his letter dated 26.12.2012, whereas the respondents would maintain that there were three copies of his bio-data that were available with them viz. the two referred to by the petitioner and an earlier copy (Ext. R2(c)) that was handed over by the petitioner, in person, to the convener of the search committee sometime between 10.12.2012 and 18.12.2012. While Ext. R2(e) need not be looked into since it is admitted by both sides that the said copy was received by the search committee only on 03.01.2013, much after 31.12.2012 when the search committee met to make the selection, the question as to whether Ext. R2(c) was available with the search committee becomes relevant because it is the specific case of the respondents that that is that copy of the bio-data that they considered while recommending the petitioner for the post. Further, the said copy of the bio-data did not contain the corrections or inscriptions that are found on Ext. R2(d) copy through which the petitioner appears to have indicated that his tenure as the Head of the Department of Environmental Sciences at the Central University of Kerala was only up to 29.11.2012.

17. A perusal of the files, that were made available to me during the course of the hearing, reveals that Ext. R2(c) copy of the bio-data was indeed available before the search committee when they met on 31.12.2012 to conduct the selection. Although, by that date, they also received Ext. R2(d) copy of the bio-data, the unauthenticated inscriptions in the said copy were apparently not noticed by the search committee on 31.12.2012. This may have been, as counsel for the 2nd respondent put it, on account of the fact that the search committee did not realize the significance of another copy of a bio-data which they had already received from the petitioner. In fact, Ext. R2(d) copy carries on the face of it a stamp showing its receipt on 27.12.2012 and an endorsement by the Principal Secretary (Higher Education) stating "already entered". It is apparent, however, that on the date when the search committee met to make the selection, they had before them both Exts. R2(c) and R2(d) copies of the bio-data and they appear to have relied only on Ext. R2(c) while making the selection.

18. The search committee, that met to sift through the applications and finalise a panel of three names for submission to the Chancellor, was not unanimous in its choice of names. While two of the three members of the panel, including the convener thereof, suggested a panel of three names including that of the petitioner, the panel suggested by the UGC nominee did not contain the name of the petitioner. It may not be out of place to note here that the petitioner was the only person, among those empanelled, who was not designated as a Professor. It is also relevant to note that when the panel, suggested by the majority of the members of the search committee, was forwarded to the Chancellor for the latter's decision, the names of the empanelled persons were listed with specific mention of their current designation. Accordingly, the names of those empanelled

were shown as:

Prof. G. Gopa Kumar, UGC-Emeritus Fellow, University of Kerala.

Prof. V. Prasannakumar, Professor of Geology and Director, Inter-University Centre for Geospatial Information Science and Technology.

Dr. A.V. George, Head, Department of Environmental Science, Central University of Kerala, Kasaragod.

19. I have thought it fit to mention this aspect here because, sans any other material available on record to gauge the criteria adopted by the search committee for empanelment of the candidates, the reference to the current designation of the empanelled persons, in addition to their names, does suggest a possibility of the designation of the person having been a criteria for the choice of candidates. It is pointed out that the particular designation of the petitioner as Head, Department of Environmental Sciences, Central University of Kerala, would have had relevance only if the UGC Regulations were adopted into the University Statutes and, insofar as in the instant case the State Government had since decided not to adopt the UGC Regulations into the University Statutes, the factual misrepresentation, if any, could not have had any relevance or significance. I am not impressed with the above contention since in my opinion, it ignores the distinction between considerations of eligibility and suitability. While for the purposes of determining a candidate's eligibility for the post, the qualifications prescribed under the Statute would be relevant, different considerations may apply when what is considered is his suitability for the post. In the context of a consideration of suitability, the issue as to whether a representation by the petitioner had the effect of misleading the search committee or not, has to be examined not in the light of the petitioner's perception of what was relevant but in the light of what the committee perceived as a relevant criteria. On a perusal of the files in the instant case, the possibility of the designation of the petitioner as Head of the Department of Environmental Sciences, Central University of Kerala, having weighed with the search committee while determining his suitability for empanelment, cannot be ruled out.

20. It is against the above backdrop that one has to examine whether the Chancellor was justified in holding that the representations in the petitioner's bio-data amounted to a misrepresentation of facts to the members of the search committee. As already noted, Ext. R2(c) bio-data, that was admittedly relied upon by the search committee, contained a clear representation that the petitioner was then holding the post of Head of the Department of Environmental Sciences at the Central University of Kerala. Although, the petitioner would vehemently contend that this copy of his bio-data was never sent by him or handed over in person to the convener of the search committee, in the absence of any material to suggest the contrary, one has to place reliance on the fact that the said copy of the bio-data, carrying the signature of the petitioner, was received at the office of the Chief Secretary on 19.12.2012, as evidenced by the

seal of the said office on the face of the document. Under these circumstances, the view of the Chancellor, that the representation as regards current designation in the said document, amounted to a clear misrepresentation of facts that misled the committee while empanelling him as a candidate for the post in question cannot, when viewed in the context of the criteria that was apparently adopted by the search committee, be held to be either arbitrary or unreasonable.

21. The petitioner also has a contention that insofar as he had submitted Ext. R2(d) copy of his bio-data, that contained unauthenticated inscriptions thereon to suggest that he held the post of Head, Department of Environmental Science, Central University of Kerala only up to 29.11.2012, and the said document was admittedly available in the office of search committee on 31.12.2012 when they met to finalise the panel, the search committee could have avoided any confusion with regard to his current designation by referring to the said copy of the bio-data. Attractive though this contention might appear at first blush, it has to be noticed, as was done by the Chancellor in Ext. P4 order, that the said copy of the bio-data also contained the same representation, as regards his holding the post of Head, Department of Environmental Science, Central University of Kerala, at many other places. In this view of the matter, Ext. R2(d) copy of the bio-data, more than clarifying the actual position, could only have added to the confusion since it was, on the face of it, ambiguous in what it stated. At any rate, since the search committee admittedly did not place reliance on the said document, nothing turns thereon save to the extent of examining whether, by not referring to the said document, the search committee had, in some way, contributed to the confusion. In the light of the criteria, which in all likelihood was adopted by the search committee, I do not think the corrections in Ext. R2 (d) copy of the bio-data could have come to the aid of the petitioner.

22. Before parting with this issue, I must express my shock and surprise at the indifferent and irresponsible manner in which the petitioner seems to have pursued his application for appointment to what is, undoubtedly, a prestigious post in academic circles. The fact that (a) the original version of the bio-data was prepared using a computer, (b) that the first copy of the bio-data sent in support of his application contained factual mistakes, probably on account of a non-updating of the details contained therein, and (c) that in the subsequent copies of the bio-data, the few corrections that were made, were inscribed by hand without authenticating the same and without incorporating the same corrections in other parts of the document, all point to the rather nonchalant manner in which the petitioner sought to pursue a serious matter. The office of the Vice-Chancellor of the MG University, is of very great importance in the scheme of University level education in the State. The MGU Act describes him as the principal academic and executive officer of the University having administrative control over all the other officers of the University. He is also the Chairman of the Senate, the Syndicate, the Academic Council and the Finance Committee of the University. The manner of his appointment, through a committee constituted by the Governor of Kerala who, by virtue of his office, is the Chancellor of the

University, and the elaborate procedure by which alone he can be removed from his office, as stipulated in the MGU Act, indicate the exalted position that he occupies in academic circles. An applicant to such a post cannot, in my opinion, afford to be imprudent in his ways.

23. I now advert to the contention of the petitioner that in passing Ext. P4 order, the Chancellor was effectively acting under the dictates of the State Government and hence the decision in Ext. P4 was vitiated in law. The contention is based on the settled position in law that a Governor of the State, while exercising the functions of a Chancellor under the University Statute, acts not in the gubernatorial role, on the aid and advise of the council of ministers, but as a statutory authority called upon to exercise the powers vested in him under the Statute. The recent decision of a division bench of this court in Deepak Vs. University of Kerala, , reiterates this legal position. Dealing with the manner in which the Governor was to act when functioning as the Chancellor of the University, the court held as follows:

In view of the contentions raised by the parties, the first question we will have to consider is whether there is a decision by the first respondent Chancellor. Quite clearly, in view of the exposition of law contained in 1990(1) KLT 681 it is clear that when the Governor is exercising his power ex-officio as a Chancellor of the University he is acting purely as a statutory authority. He does not even have the immunity extended to him by virtue of Art. 361 of the Constitution in relation to his acts as Governor. He is not expected to act on the advice of the Council of Ministers. When he acts as Chancellor, he is expected to act as an independent statutory authority just as in the case of any other statutory authority. It is incumbent on him to pose the correct question. He must be guided by relevant matters. He must eschew irrelevant considerations. The repository of every statutory power is only to act for public good. He must imbibe the object of the Act under which he acts and he must effectuate the object of the Act in ultimate analysis. In other words, even in the matter of withdrawal of nomination, he must be guided by what is in the best interest of the University. Of course, needless to say, he has to act bona fide. This is not to say that he cannot seek legal advice on a matter in which he entertains doubts as to the legal position, but at the end of the day when he takes a decision, the decision must be entirely his. It should not be dictated to by anyone.

24. The matter to be examined here is whether the Chancellor, while passing Ext. P4 order, took an independent decision in the matter without being dictated to by the State Government. No doubt, the records in the instant case reveal that on receiving complaints regarding the appointment of the petitioner as Vice-Chancellor, the Chancellor had called for a report from the Chief Secretary of the State who was the convener of the search committee that empanelled the candidates. The Chief Secretary, in turn, called for a report from the 2nd respondent. Ext. R3(m) is that report. Counsel for the petitioner repeatedly referred to paragraphs 78 and 79 of the said report to emphasise that the report

that was to serve as nothing more than a fact-finding report, contained findings as regards the culpability of the petitioner and even a recommendation for his removal from office. Had the Chancellor mechanically adopted this report and removed the petitioner from his post, his action would have been legally vitiated. In the instant case, however, the Chancellor caused Ext. P2 notice to be issued to the petitioner wherein the contents of Ext. R3(m) report, together with the suggestions and recommendations in it, were reproduced and the petitioner's comments called for in response to the said report, as also the representation received by the Chancellor from the 3rd respondent. In Ext. P3 reply submitted by the petitioner in response to Ext. P2 notice, the petitioner has dealt with all the allegations against him by furnishing his explanations thereto. Thereafter, the petitioner was afforded an opportunity of hearing before the Chancellor. Later, when there was a change of incumbent in the office of the Chancellor, he was given a further opportunity of hearing before the new incumbent. The files disclose that the hearing notes in respect of both the hearings were placed before the Chancellor who passed Ext. P4 order and the order itself was passed after obtaining independent legal advice in respect of matters on which the Chancellor required clarification. On a perusal of Ext. P4 order and the file noting leading up to it, I am convinced that the decision of the Chancellor in Ext. P4 order was one that was independently arrived at by the Chancellor and not legally vitiated.

The mere fact that Ext. P2 notice issued to the petitioner contained a verbatim reproduction of the findings and suggestions of the 2nd respondent in Ext. R3(m) report, cannot be a reason to assume that the Chancellor had not acted independently while passing Ext. P4 order. As a matter of fact, a mere reading of Ext. P4 order of the Chancellor would belie the contentions of the petitioner in this regard. The challenge to Ext. P4 order of the Chancellor on this ground is therefore repelled. Further, in the light of the above finding, I do not deem it necessary to dwell upon the alternate contention of the respondents that even in circumstances where the proceedings concluded against the petitioner by the Chancellor are found to be legally vitiated, the Court can, while deciding whether or not to grant the discretionary relief under Article 226 of the Constitution in favour of the petitioner, consider factors such as the petitioner's conduct and character, the nature of the post to which he seeks appointment, and whether he is a person suitable for appointment to the said post.

25. Lastly, I must deal with the contention of the petitioner that, having been appointed as a Vice-Chancellor of the MG University, the power to remove him from his office could be exercised by the Chancellor only in terms of Section 7 of the MGU Act. In other words, the contention is that de hors Section 7 of the MGU Act, there is no inherent power in the Chancellor to remove a person from the office of the Vice-Chancellor. In my opinion, the contention of the petitioner ignores the basic distinction between the removal of an employee for proved misconduct and the removal of an employee on the ground that the employment itself was secured through fraudulent means. In the former, there is an employer-

employee relationship that comes into existence, which is thereafter governed by the statutory or contractual conditions of service applicable to the employee. In the latter, the existence of the employer-employee relationship itself is denied. An occasion for exercise of power under Section 7 of the MGU Act arises only in a case where the employer-employee relationship between the University and the petitioner validly comes into existence and is not affected by any vitiating circumstances. An illegality that affects the creation of the relationship, however, stands on a different footing. A Chancellor who seeks to nullify an illegal appointment does not exercise the power under Section 7 of the MGU Act but merely acts on the settled legal premise that the investment by a Statute, of a power to appoint, carries with it a power to determine such employment. No doubt, the power cannot be exercised arbitrarily but only, as observed by the Supreme Court in *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, , "for a good cause i.e. in the interests of the University and only when it is found after due enquiry, held in a manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as a Vice-Chancellor."

26. The courts have always frowned upon an appointment that is obtained by misrepresentation of material facts as was noticed in a recent decision of the Supreme Court in the case of *Devendra Kumar Vs. State of Uttaranchal and Others*, . It is now a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of law. In such cases, the Court does recognise that dishonesty should not be permitted to bear fruit and benefit those persons who have resorted to fraud or misrepresentation. As a matter of fact, courts have thought it fit not to entertain petitions on behalf of such persons so as to prevent a perpetration of the fraud. The appointment obtained by the petitioner, having been found to be vitiated on account of the misrepresentation by the petitioner, was necessarily voidable at the option of the employer. The action of the Chancellor in annulling the appointment was, therefore, legally valid and wholly justified.

For the reasons aforementioned, I find Ext. P4 order, removing the petitioner from the post of Vice-Chancellor of the University, to be legal and valid. The writ petition fails and is accordingly dismissed but without any order as to costs.

Before parting with this case, I must acknowledge the valuable assistance rendered to this Court during the hearing by learned counsel appearing on both sides. A word of appreciation must, in particular, be said of Adv. Smt. Girija Gopal whose lucid and persuasive submissions, backed by meticulous research, rendered them worthy of emulation by junior members of the bar.