

(2000) 12 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 4298 of 2000

Bhupendra Singh

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2001) 2 AD 293 : (2001) 89 DLT 661 : (2001) 57 DRJ 423

Hon'ble Judges : Dr. M.K. Sharma, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. Prashant Bhushan, with Mr. Amit Khemka and Mr. Nitendra Sharma, for the Appellant; Mr. S.K. Kaul, Senior Advocate with Mr. Amit Bansal, Mr. V.P. Chaudhary, Senior Advocate, with Ms. Saroj Bidawat and Mr. Nitinjya Chaudhary, Mr. Meet Malhotra with Mr. Ramesh Kainthola, for the Respondent

Judgement

Anil Dev Singh, J.—This is a writ petition whereby the petitioner, inter alias challenges the appointment or nomination of the members of the governing body of Dayal Singh College by the Vice-Chancellor of the Delhi University w.e.f. January 14, 2000. The facts necessary for the disposal of the writ petition are as follows:-

2. The erstwhile Vice-Chancellor on January 18, 2000 nominated/renominated the following persons as the members of the Governing Body of Dayal Singh College w.e.f. January 14, 2000:-

1. Prof. P.B. Mangla (Chairman) Nominated Lib. & Information Science.
2. Prof. T.N.Bali Re-nominated (to continue)
3. Prof. S.V. Goswami Re-nominated (to continue)
4. Prof. B.S. Garg Nominated (Deptt. of Chemistry)
5. Prof. V.P.Singh (Sr.Advocate) Nominated (in place of Prof. M.M.Kapoor)
6. Prof. R.K. Agnihotri Nominated Deptt. of Linguistics (in place of

Prof.S.Chakravorty)

7. Prof. A.K. Sen. Re-nominated (to continue)

8. Prof. I.P.S.Monga Nominated. (in place of Dr. Deepak Kumar)

3. The decision of the Vice-Chancellor was communicated to the Principal of the Dayal Singh College (Day) by the Deputy Registrar of South Campus of the Delhi University by letter dated January 18, 2000 (for short "the impugned letter"). The petitioner, who is an advocate, has challenged the impugned order on the ground that the Vice-Chancellor had no authority either to approve, nominate or appoint any person to the Governing Body of the college and it was the Executive Council alone which under Ordinance XX-I had the power to appoint the Governing Body of the college.

4. In response to the writ petition, the Joint Registrar of the University of Delhi has filed an affidavit on behalf of the University of Delhi, the Vice-Chancellor and the Executive Council, in which it is stated that the Governing Body of Dayal Singh College was nominated by the Vice-Chancellor in exercise of the power conferred on him by clause 11-G(4) of the Statutes. It is pointed out therein that the competent authority to appoint the Governing Body of Dayal Singh College was the Executive Council. It is also averred that the term of the Governing Body of Dayal Singh College expired on October 27, 1999 and after the said date the Executive Council met on November 30, 1999 and January 5, 2000, but no proposal regarding the nomination of the governing body of Dayal Singh College was placed before the Executive Council. The affidavit goes on to state that on January 18, 2000 the Vice-Chancellor invoked the emergency powers under clause 11-G(4) of the Statutes of the University to nominate the members of the Governing Body of Dayal Singh College. It is significant to note that the affidavit clearly states that there is no recording on the file about the nature of the emergency. The affidavit also alludes to the fact that the Executive Council met on February 19, 2000 but the issue of constitution of the Governing Body of Dayal Singh College was not placed before it.

5. The learned counsel for the petitioner, challenged the very existence of emergency on the basis of which the impugned action was grounded. According to him the exercise of power by the Vice-Chancellor was malafide and was based on extraneous reasons. He also submitted there was no emergency for invoking the provisions of clause 11-G(4) of the Statutes by the Vice-Chancellor.

6. On the other hand, Mr. V.P. Chaudhary, learned senior counsel appearing for respondent No.4, Governing Body of Dayal Singh College, sought to justify the nomination of the members of the Governing Body by the Vice-Chancellor on the ground that the Principal of the Dayal Singh College was retiring on March 27, 2000 and if the members of the Governing Body by the Vice-Chancellor on the ground that the Principal of the Dayal Singh College was retiring on March 27, 2000 and if the members of the Governing Body were not nominated by the Vice-Chancellor on January 18, 2000 the college would have been without a Principal.

According to him, this would have impaired the functioning of the college. He submitted that in order to prevent such a situation the Vice-Chancellor invoked emergency powers under clause 11-G(4) of the Statutes.

7. Mr. Kaul, learned senior counsel appearing for the Delhi University, Fairly submitted that there was nothing on record to show why the Vice-Chancellor exercised the emergency powers under Clause 11-G(4) of the Statutes.

8. We have considered the contentions of the learned counsel for the parties. In order to appreciate the rival submissions, it will be necessary to refer to Clause 11-G of the Statutes. This clause reads as follows :-

"11.G. (1) The Vice-Chancellor shall be the principal Executive and Academic Officer of the University and shall take rank in the University next to the Pro-Chancellor. He shall be the ex-officio Chairman of the Executive Council, the Academic Council and the Finance Committee, and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation to confer degrees. In the absence of the Chancellor and the Pro-Chancellor, he shall also preside at the meetings of the Court./ He shall be entitled to be present at and to address any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic Council and shall perform all such acts, as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:

Provided further if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.

(5) The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the Authorities of the University.

(6) All powers relating to the proper maintenance of discipline, in the University shall stand vested in the Vice-Chancellor."

9. Thus under clause 11-G of the Statutes a duty has been cast on the Vice-Chancellor to ensure that the Act, the Statutes, the Ordinances and the Regulations are duly observed and for this purpose he has been conferred with all the requisite powers. Under the said provisions, Vice-Chancellor being the Head of the Executive Council is vested with the power to convene the meetings thereof. He is also required to perform all such acts as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

10. Clause 11-G(4) of the Statutes empowers the Vice Chancellor to take such action as he deems necessary, if in his opinion an emergency has arisen which requires him to act immediately. Action taken because of an emergency is required to be reported by him for confirmation at the next meeting of the Authority which in the ordinary course would have dealt with the matter. It is not disputed that the present term of the Governing Body of Dayal Singh College expired on October 27, 1999. The Executive Council of the University met on November 30, 1999 and January 5, 2000, but the matter relating to the appointment/nomination of the members of the Governing Body of Dayal Singh College was not placed in its aforesaid meetings. On January 18, 2000, the Vice-Chancellor, however, on his own nominated the members of the Governing Body of Dayal Singh College w.e.f. January 14, 2000. A question arises why the matter was not placed before the Executive Council in its meeting held on November 30, 1999 and January 5, 2000. As is evident from clause 11-G(3) of the Statutes and as already noted it is the Vice-Chancellor who had the power to convene the meetings of the Executive Council and is required to perform all such acts as may be necessary to carry out the provisions of the Act, the Statutes and the Ordinances. According to the Statutes, admittedly it was the Executive Council who has been entrusted with the power to appoint members of the Governing Council. This being so, the Vice-Chancellor should have brought the matter relating to appointment of members of the Governing Body of the college to the Executive Council well in time before he himself made the appointment of the members of the Governing Body of the college. A question arises why this was not done. Mr. Chaudhary, learned counsel for the Governing Body, had no worthwhile Explanation. He merely stated that the Vice-Chancellor invoked provisions of clause 11-G(4) of the Statutes as there was immediate necessity to appoint the members of the Governing Body so that they could in turn appoint a new Principal of Dayal Singh College as the term of the then serving Principal was expiring on March 27, 2000. We wonder how the members of the Governing Body, whom Mr. Chaudhary represents, could make prognosis of the reasons for exercise of the power by the Vice-Chancellor under clause 11-G(4) of the Statutes. In fact it was for the University to state why emergency powers were exercised by the Vice-Chancellor. The University does not have an answer because the record is silent. The then Vice-Chancellor on record of the University could explain the nature of emergency which impelled him to exercise power u/s

11-G(4) of the Statutes. The Vice-Chancellor of the time did not pen down any reasons.

11. The emergency power conferred on the Vice-Chancellor under clause 11-G(4) of the Statutes can be exercised where an unforeseeable event takes place. It cannot be resorted to where an event is predictable and action by the Executive Council could be taken in time in anticipation of the event. If the Vice-Chancellor did not convene the meeting of the Executive Council which he could have convened for enabling the Executive Council to take action as per the Statutes, he cannot for his own neglect or inaction take recourse to emergency powers and do something which Executive Council was required to do. In the circumstances, the Vice-Chancellor cannot be allowed to exercise power under clause 11-G(4) to meet a self created emergency. It is significant to note that before the expiry of the term of the Principal the meeting of the Executive Council took place on February 19, 2000 but the matter of the nomination of the Governing Body of Dayal Singh College was still not placed before it. According to clause 11-G(4) of the Statutes the Vice-Chancellor was required to report the appointment or nomination of the members of the Governing Body to the Executive Council at its next meeting. Therefore, according to the Statutes the matter should have been placed before the Executive Council on February 19, 2000 which was the very next meeting or first meeting after January 18, 2000 when the members of the Governing Body were nominated by the Vice-Chancellor. It appears to us that the action of the Vice-Chancellor is not in keeping with the statutory provisions. The provision requiring the action of the Vice-Chancellor taken under the emergency power to be placed before the Executive Council of the University at its next meeting is mandatory in nature. It provides for an inbuilt check against exercise of arbitrary power by the Vice-Chancellor. It may be noted that the term of the Governing Body is of one year duration and if the matter is not reported to the Executive Council immediately, one year period could easily lapse without the action being brought to the notice of the Executive Council.

12. There is another aspect of the matter. It is to be noted that the impugned communication dated January 18, 2000 does not state that the Vice-Chancellor was invoking the emergency powers for appointing or nominating the members of the Governing Body of Dayal Singh College. There is no mention at all of clause 11-G(4) of the Statutes. Whether the Vice-Chancellor at the time of passing the impugned order was conscious of the provisions of clause 11-G(4) is doubtful. The power can be exercised only when an emergency arises which calls for immediate action. While saying this, we are not oblivious of the fact that an order of an administrative authority cannot be faulted merely on the ground that the provision under which the power was exercised was not mentioned in the order. This principle holds good as long as the action of the authority is traceable to a source of power. Be that as it may, in the instant case the University has not shown that the power under clause 11-G(4) was exercised by the Vice Chancellor in view of an emergency that required immediate action. When the very existence of an emergency is in question, the University ought to have pleaded

the necessary facts and placed material on record to show the existence of the emergency in order to justify the exercise of power by the Vice-Chancellor under the aforesaid provision. Rather, Mr. S.K. Kaul, learned senior counsel appearing for the University, candidly admitted that the former Vice-Chancellor had not recorded any reasons for exercising the power under clause 11-G(4) of the Statutes. He has also invited our attention to para 5 of the counter-affidavit of the University which reads as follows:-

"5. On January 18, 2000, the Vice-Chancellor invoked his emergency powers under Clause 11-G(4) of the Statute to appoint the Governing Body of Singh College with effect from 14.01.2000. However, in the present case there is no recording on the file about the nature of the emergency."

13. When the record does not show the nature of emergency that existed, the exercise of emergency powers by the Vice-Chancellor on January 18, 2000 under Clause 11-G(4) of the statutes cannot be countenanced in law.

14. In *M.N. Gupta and Another Vs. University of Delhi and Others*, , a Division Bench of this Court in somewhat similar fact situation took the same view and held as follows:-

"18. When the very existence of emergency on which the impugned action is sought to be based, has been questioned, it is the duty of the respondents to plead necessary facts and place material on record, at least to prima facie show existence of emergency in order to justify the exercise of emergency powers. To this extent the issue is justiciable. The respondents have failed to discharge this burden, Therefore, we are of the view that there was no such grave emergency prevailing in the university to justify exercise of powers under statute 11(G)(4) by the Vice Chancellor. It is worth pointing out here that the Executive Council was meeting on the same date, i.e., 13th August, 1991 when the impugned action was taken by the Vice Chancellor against petitioner No. 2. The matter could have been placed before the Executive Council in the first instance."

15. The observations of the Division Bench in the aforesaid case are sufficient to demolish the argument of Mr. V.P. Chaudhary, learned senior counsel for the Governing Body. But Mr. V.P. Chaudhary undaunted by the legal position adumbrated in the aforesaid decision submitted that the order passed by the Vice-Chancellor is not justiciable as it was based on his subjective satisfaction. We have considered the submission of Mr. Chaudhary. It is true that whenever a statute confers a power on the administrative authority and makes the exercise of that power conditional on the existence of certain circumstances or conditions, the formation of an opinion by that authority regarding their existence, an element of subjectivity may be involved.

16. But it is equally true that when the exercise of power rests on fulfillment of conditions precedent, it must be shown that the existence of such conditions led to the exercise of that power. It must also be shown that exercise of power was based on relevant grounds. In other words, the authority must show of the

conditions precedent for exercise of power as no order passed by an authority even on the basis of its subjective opinion is above judicial scrutiny. The opinion of the authority originating from its own subjective satisfaction regarding the existence and satisfaction of the conditions precedent for exercise of power under the statute is subject to judicial review. Though the satisfaction was of the Vice-Chancellor, it related to facts which were capable of being proved objectively. These facts have not been proved. As already noted the counter-affidavit of the University makes it clear that there is nothing on record to show the existence of the emergency which called for action by the Vice-Chancellor under Clause 11(G)(4) of the Statutes.

17. In these circumstances, the impugned order passed by the Vice Chancellor cannot be sustained. It must be noted that almost eleven months have lapsed since the impugned order was passed by the Vice-Chancellor and the same was not placed before the Executive Council for confirmation. In the circumstances, we are not inclined to direct the Executive Council of the University at this distance of time to consider whether or not the action of the Vice Chancellor should be confirmed. There is an unprecedented delay in placing the matter before the Executive Council. In the circumstances, it will be appropriate to quash the impugned nomination/appointment of the members of the Executive Council.

18. Even Mr. S.K. Kaul, learned senior counsel appearing for the University, submitted that since the provision relating to reporting the action taken by the Vice-Chancellor under his emergency powers to the Executive Council at its next meeting is mandatory and since the matter was not placed before the Executive Council in that meeting held immediately after the nomination of the members of the Governing Council of Dayal Singh College by the erstwhile Vice Chancellor, the Executive Council ceased to have jurisdiction to approve or disapprove the action taken by the Vice-Chancellor. He pointed out that the Visitor of the University has ordered an enquiry into the nomination/appointment of the members of the Governing Body by the Vice-Chancellor.

19. In view of the foregoing discussions and keeping in view the circumstances of the case, we hereby quash the impugned order of the Vice Chancellor dated 18th January, 2000. The result of this direction would be that the persons appointed/nominated by the Vice Chancellor as members of the Governing Body of the Dayal Singh College with effect from 14th January, 2000 will cease to be the members thereof with immediate effect. This direction will also apply to the appointment of Shri P.B. Mangla, who was appointed as chairman of the Governing Body by the Vice-Chancellor, as he had first to be appointed validly as a member of the Governing Body and after becoming a member in accordance with law he could have been appointed as Chairman by the Vice-Chancellor. Since Shri P.B. Mangla had not been appointed as a member of the Governing Body in accordance with law, his appointment as Chairman by the Vice-Chancellor has no validity in the eye of law. Accordingly, his appointment as

Chairman of the Governing Body of Dayal Singh College by the Vice-Chancellor is also hereby quashed. The writ petition is disposed of.