

(2004) 11 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 5633 of 2002

C. Krishna

APPELLANT

Vs

University of Mysore and Another

RESPONDENT

Date of Decision : 26-11-2004

Acts Referred:

Karnataka State Universities Act, 1976 — Section 10, 50

Citation : (2005) ILR (Kar) 361 : (2005) 1 KarLJ 368 : (2005) 1 KCCR 26 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Aaren Associates, for the Appellant; Shashikiran Shetty, for Respondent-1 and Rosa Paramel, High Court Government Pleader for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioner is presently working as a Director, Department of Physical Education in the 1st respondent-University. The 1st respondent-University issued a notification dated 27-11-1995 calling for application for filling up of certain teaching and non-teaching posts as per Annexure-C. It is in pursuance of the said notification petitioner had applied for the post of Director in the Department of Physical Education which is a non-teaching post. Subsequently, the Board of Appointment for Non-Teaching Posts constituted by the University under the provisions of Section 50 of the Karnataka State Universities Act, 1976 (for short, hereinafter referred to as "the Act") conducted an interview on 15-5-1997 and in that petitioner was found to be eligible and he was selected. He was required to undergo probation for a period of two years which he satisfactorily completed on 24-4-2000. Petitioner was served with a show-cause notice dated 8th February, 2002, Annexure-A, by the 1st respondent calling upon him to show cause within 15 days as to why his appointment should not be cancelled stating that the said post should have been filled up by a qualified person having Ph.D., qualification and the Government, the 2nd

respondent, as per Annexure-E, the impugned order herein, has annulled the petitioner's appointment.

2. Petitioner contends that as on the date of his appointment he did possess the requisite qualification and the prescribed Ph.D., was a subsequent requirement and therefore there is no invalidity in the appointment to the said post. It is also contended that as per Annexure-B, , Government Order, the Government has annulled the appointment of the petitioner and as a/mere formality it was directed the University to issue a notice to the petitioner giving him 15 days and after receiving reply initiate proceedings for dismissing him from service and therefore he contends that the Order at Annexure-B is in violation of principles of natural justice as he was not heard before passing the order. The so-called directions to follow the principles of natural is only an empty formality as seen from the subsequent direction issued by the Government to the University to terminate the service of the petitioner. Therefore he contends that the impugned orders Annexures-A and B are liable to be quashed.

3. After service of notice the University has entered appearance. They contend that Annexure-A came to be issued in obedience to the directions issued by the Government where they had directed the University to issue a show-cause notice to the petitioner pointing out to him that he did not possess the requisite qualification and after hearing reply from him, terminate his services. They are bound to follow the directions given by the Government and therefore submits that no blame could be laid at the doors of the University.

4. Learned Counsel for the petitioner submits that the power of the Government to annul the order of the University is not disputed. Section 10 of the Act categorically provides, before any such orders annulling the order of the University, the University should be heard.

5. But, in the instant case the effect of annulling the Order of the University is that the petitioner should be removed from services. Principles of natural justice requires that before any such order is passed the person affected should be heard. Therefore, though the principles of natural justice is incorporated in Section 10 merely because there is no express provision for hearing the aggrieved/effectuated person, it cannot be said that the petitioner has no right to be heard. The proper construction of Section 10 would be, all persons aggrieved should be heard including the University is the view taken by this Court in the case of Martandappa B. Hosalli and Others Vs. State of Karnataka and Others, while interpreting the old Act.

6. Per contra, learned Counsel for the respondents contends that they have acted in pursuance of the direction issued to them by the Government u/s 10 of the Act and they have given show-cause notice to the petitioner calling upon him to show-cause why he should not be removed from service and therefore the principles of natural justice has been complied with.

7. Learned Government Pleader appearing on behalf of the State contends that

the Government has considered the case in detail and after being satisfied that the appointment of the petitioner was irregular and in exercise of the power conferred on it u/s 10 of the Act they have passed the impugned order. In fact it can be seen from the impugned order that the University has been directed by the Government to issue a show-cause notice to the petitioner before passing an order of termination and therefore it cannot be said, the principles of natural justice is not followed.

8. Section 10 of the Act empowers the Government to annul orders of the University which reads as under:

"10. Power to annul the orders of the University.-(1) The State Government may by order published in the Official Gazette annul any order, notification, resolution or any proceedings of the University which in its opinion is not in conformity with the provisions of this Act, or the Statutes, Regulations, or Ordinances or is otherwise inconsistent with the policy of the State Government:

Provided that before making any such order, the State Government shall afford an opportunity to the University".

It is very clear from the above proviso to Section 10 that the State Government shall afford an opportunity to the University before making any such order u/s 10. Therefore the principles of natural justice is specifically engrafted into the aforesaid section. But, the question is, if the order annulling the order of the University affects a third person like the petitioner herein is he entitled to a notice before the Government issues such orders u/s 10. Because once the Government annuls the order of the University then nothing more need to be done by the University. If they issued a notice it would be only an empty formality. Dealing with such a situation under the old Act this Court in the aforesaid Martandappa B. Hosalli's case has observed as under:

"It is well-established principle of law that when any order is made affecting the interest of a person which results in civil consequences, the person affected is required to be heard before passing such an order. The proviso given to Sub-section (8) of Section 8 of the Act, only provides for giving an opportunity to the University. No doubt, that the said provision in explicit terms does not contemplate giving of an opportunity to the parties who are likely to be affected on account of the decision to be taken by the Government. However, the question is that when an order impugned seriously affects the service conditions of the petitioners and results in civil consequences, whether the principles of natural justice does not demand that the parties affected should be heard. To my mind it appears that they should be heard. Merely because the proviso contemplates for giving of an opportunity to the University, it does not dispense with the obligation on the part of the State Government to give an opportunity to the petitioners who are directly affected on account of the impugned order. Proviso given to Sub-section (8) of Section 8 positively mandates the University being heard before any order is passed by the State Government nullifying the

decision of the University. There may be decisions of the University which does not affect the rights of the third parties and under these circumstances, third parties who are not affected by a decision of the University are not required to be heard and it would be sufficient if the University alone is heard. However, if the decision of the State Government nullifying the resolution of the University is likely to affect the rights of the third parties, they are required to be heard. The principles of natural justice demands in such circumstances that the persons who are affected should be heard".

9. The present section also provides for an opportunity to the University before making an order annulling any order of the University. There is no specific provision providing for hearing of the affected person other than the University before the Government passes order u/s 10. Providing for hearing of the University would satisfy the requirement of the principles of natural justice when an order is passed by the Government u/s 10 which affects only the University and none else. However, if the order passed by the Government u/s 10 affects the third person then providing an opportunity of hearing to the University would not meet the requirement of principles of natural justice. The Statute does not expressly state that it is not necessary to hear any third person who would be affected by an order u/s 10. In the absence of such express provision, the application of principles of natural justice ought to be followed by the Government before passing any order u/s 10. The law on the point is well-settled. In the absence of an express prohibition contained in the Statute exempting the authorities from following the principles of natural justice, the principles of natural justice is engrafted into the provisions of law by implication. When the Statute is silent on this aspect, the aforesaid rule can be read into it by implication. Although there are no positive words in the Statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature. Therefore, such a provision is held to be incorporated in Section 10 by necessary implication, then only the procedure prescribed under the Act would be right, fair and just and it would not suffer from the vice of arbitrariness and unreasonableness, it would be in conformity with the requirements of Articles 14 and 21 and does not fall foul of those Articles.

10. In view of these circumstances, I am of the view notwithstanding the absence of any specific provision in Section 10 of the Act, petitioner has a right to be heard as the impugned order passed by the Government affects his rights. The direction in the impugned order to the University to issue show-cause notice and to hear the petitioner before passing an order of termination is an empty formality, as when once the Government issues a direction, the University is bound to carry out the said direction as it is clear from the order. No discretion is left to the University to seek explanation from the petitioner and pass appropriate orders in accordance with law. The Government without hearing the petitioner has already taken a decision that his appointment is illegal and the same has to be annulled. The notification issued by the University to the petitioner is a follow up action as they have directed the University to issue a

show-cause notice, receive reply and a positive direction has been given terminating the services of the petitioner, notwithstanding the contents of the reply and without leaving any discretion to the University. In that view of the matter the impugned order at Annexure-B and the show-cause notice Annexure-A issued by the University cannot be sustained. Accordingly they are quashed. Hence, I pass the following order:

(i) Rule made absolute.

(ii) Annexures-A and B are hereby quashed.

(iii) Liberty is reserved to the Government to initiate proper proceedings u/s 10 of the Act, and after hearing the petitioner pass appropriate orders in accordance with law.

No costs