
(1996) 09 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2017 of 1996

Dr. S.D. Kapoor

APPELLANT

Vs

The Chancellor, Jai Narain Vyas University and Others

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Jai Narain Vyas University Jodhpur Act, 1962 — Section 16(1), 22
Rajasthan General Clauses Act, 1955 — Section 18

Citation : AIR 1997 Raj 217 : (1997) 1 WLC 218 : (1996) 2 WLN 328

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : M. Mridul, R.N. Upadhyay, R.S. Saluja, Kumari Kusum Rao, Vineet Mathur, Narendra Acharya and Vivek Gupta, for the Appellant; L.S. Udawat, AAG, L.R. Mehta, J.M. Bhandari, Rajendra Mehta and A. Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—In the instant writ petition petitioner questions impugned order dated 29-6-96. Anx. 2, passed by the Chancellor nominating Dr. S. L, Verma, Retired Professor (Department of Political Science) of University of Rajasthan, as his nominee in the syndicate of Jai Narain Vyas University, Jodhpur thereafter referred as respondent University)w.e.f. 28-6-96 for a period, three years in supersession of his earlier order dated 15-9-95 a communication whereof is filed and marked as Anx. I.

2. The genesis of challenge of the validity of the impugned order terminating petitioner stunure as nominated member of Syndicate of the respondent University before expiry of the period of three years is based on grounds inter-alia that power of the Chancellor to nominate a member of Syndicate under clause (iv) of Sub-section (1) of Section 16 of Jai Narain Vyas University Jodhpur Act, 1962 thereafter referred as Act No. 17 of 1962) stands exhausted with nomination of the petitioner.

3. It is averred in the writ petition that under Sub-section (2) of Section 16 of the aforesaid Act the elected members and members nominated under clauses (iv), (vi) and (viii) of Sub-section (1) of the said section shall hold office for a period of three years and members nominated under clause (ii) and (iii) for a period of one year from the date of election or nomination as the case may be. It is alleged that order impugned has been passed against the principle of natural justice. It is per se arbitrary and as such violative of Article 14 of the Constitution. The petitioner also pleaded to get the benefit of doctrine of legitimate expectation and principle of promissory estoppel.

4. After service of notice, a return has been filed on behalf of Chancellor denying the averments made in the writ petition in present form. It is stated that a Division Bench of this Court in DB Civil Writ Petition No. 530/96 (Dr. Irfan Mehar v. State of Rajasthan), DB Civil Writ Petition No. 777/96 (Miss Shruti Goyal v. State of Rajasthan), DB Civil Writ Petition No. 647/96 (Ramesh Joshi v. State of Rajasthan), DB Civil Writ Petition No. 821/96 (Dr. Smt. Aruna B. Kumar v. State of Rajasthan) and DB Civil Writ Petition No. 866/96 (Dr. Anupma Gaur v. State of Rajasthan) issued the following directions amongst others to the respondent University which reads thus :--

"In the result, we issue the following directions: (1) the prevailing system of adhocism in appointments stand deprecated and we mandate upon the University to make regular appointments in respect of the sanctioned posts by August 31, 1996 positively. The selection process may be commenced within a fortnight hereof."

5. It is further stated in return filed by the Chancellor that in faithful compliance of the mandate issued by the Division Bench of this Court the respondent University commenced the process of selection for making regular appointments in respect of sanctioned post of teachers. The selection committees held selections in the month of June, 1996 in compliance of the above direction of the Division Bench of this Court and the Vice-Chancellor convened a meeting of Syndicate as envisaged under Sub-section (3) of Section 12 of Act No. 17 of 1962 on 25-6-96 for approval of the recommendations sent to him by various selection committees in sealed covers. The Vice-Chancellor of the respondent University apart from sending formal communications to all the members of the Syndicate including the petitioner requested him on telephone several times and obtained his confirmation on 24-6-96 for attending the said meeting of Syndicate.

6. It is further stated in reply that in spite of giving solemn affirmation on 24-6-96 to the Vice-Chancellor to attend the meeting of Syndicate on 25-6-96, the petitioner deliberately abstained from attending the said meeting and as such the meeting was frustrated due to lack of requisite quorum making the faithful compliance of the mandate of the Division Bench of this Court impossible for respondent University. The Chancellor after coming to know about deliberate abstention of the petitioner from attending the meeting of Syndicate passed the impugned order of supersession Anx. 2 to save the meeting of the Syndicate

from being frustrated in future in order to ensure faithful compliance of order passed by Division Bench of this Court.

7. It is also averred in the reply filed on behalf of Chancellor that power conferred upon him is unfettered and can be exercised from time to time as occasion requires in the interest of the University.

8. The respondent University has filed a separate preliminary reply to the writ petition taking a plea that power to withdraw any nomination made by the Chancellor under clause (iv) of Sub-section (I) of Section 16 of Act No. 17 of 1962 inheres in him to remove such nominated member of Syndicate by virtue of the provisions contained u/s 18 of Rajasthan General Clauses Act, 1955 (hereinafter referred as Act No. 8 of 1955).

9. After service of copies of aforesaid two replies the petitioner has filed a circumlocutory rejoinder stating therein that the petitioner was constantly emphasizing the desirability of holding selections to fill in more 22 posts of Professors and 32 posts of Readers (not covered by the decision of Division Bench of this Court) and pointed out that if selections were not held for these posts, it would necessitate ad hoc/temporary appointments of lecturers against the higher posts in order to meet the demands of work load of respondent University.

10. It is also stated in the rejoinder that when his attempt to get information from Chancellor and Vice-Chancellor failed he thought it proper to avoid situation that might precipitate discord and confrontation between the Vice-Chancellor and other members of the Syndicate especially as meeting of Syndicate was convened after the Vice-Chancellor was requested not to hold a meeting during this period.

11. In order to maintain brevity suffice it to say that the petitioner made new allegations about the hostile discrimination alleging in his rejoinder that before nomination of the petitioner by the Chancellor Mr. V. S. Vyas and Mr. M. V. Mathur were also nominated as members of Syndicate by him in the past but they did not attend the meetings of Syndicate yet they were not removed.

12. With the consent of the learned counsel for the parties the present writ petition is being disposed of at admission stage.

13. I have given my thoughtful consideration to the rival gravitative contentious legal points raised at the Bar and examined the materials available on record critically.

14. Before itemising the posers springing from the competing submissions so that contentions raised at the Bar may be concretised, I would like to observe at the outset that the petitioner was nominated by the Chancellor of respondent University as his nominee in the Syndicate of Jai Narain Vyas University w.e.f. 15-9-95 for a period of three years purely on pious and altruistic mission with a solemn expectations by all that he would render his free services to the aforesaid

University. The petitioner has not alleged that the order impugned superseding his nomination from the membership of Syndicate has been passed capriciously having a tinge of laissez faire. It is also not alleged that the order impugned is based on non-existent ground. A mere look at the impugned order throws a flood of light that it is an innocuous order and not stigmatic. With the aforesaid circumspection now I propose to deal with the arguments raised at the Bar.

15. It is contended at the first instance by Senior Counsel Shri M. Mridul on behalf of petitioner that Statute 26(1) of the respondent University framed under Act No. 17 of 1962 is a self-contained code for removal of members of Syndicate and as such Section 18 of Act No. 8 of 1955 cannot be pressed into service. In support of his aforesaid contention he placed reliance on a decision rendered by the learned Single Judge of this Court in case of Manik Chand Sutaiaa v. State of Rajasthan reported in 1993 (2) WLC (Raj) 49. Opposing the aforesaid argument it is urged by Shri L. R. Mehta, learned counsel for respondent University and Shri L. S. Udawat, learned Additional Advocate General appearing on behalf of Chancellor that the provisions of Statute 26(1) are applicable only to officer members of Syndicate and these provisions have no application with other two categories of members of Syndicate i.e. elected and nominated members. Learned counsel for contesting respondents strenuously urged that power to appoint includes power to remove within the meaning of Section 18 of Act No. 8 of 1955. According to them the Chancellor possessed unfettered power to remove a nominated member of Syndicate u/s 18 of the said Act. It is to be noticed that the provisions of Statute 26(1) of the respondent University framed by Senate in exercise of its power u/s 22 of the Act No. 17 of 1962 leads towards an irresistible conclusion that any member of the Senate, the Syndicate or the Academic Council may be removed by a resolution of the Senate, the Syndicate or the Academic Council as the case may be, passed by a majority of not less than two thirds of its members on either of the grounds enumerated under the said Statute.

16. A conjoined reading of Sections 9 and 16 of the Act No. 17 of 1962 cast light that the body of Syndicate consists of officer members of Syndicate, nominated members of Syndicate and elected members of Syndicate. It is further evident that under Statute 26(1) of the respondent University only officer members of Syndicate can be removed under said Statute on specified grounds enumerated (herein. According to the definition of the officers given u/s 9 of Act No. 17 of 1962 only Vice-Chancellor is an officer member of Syndicate under clause (i) of Sub-section (1) of Section 16 and by necessary implication the Director of College Education Rajasthan can be said to be the officer member of Syndicate under clause (v) of Sub-section (1) of Section 16 of the aforesaid Act. Rest of the members of the Syndicate u/s 16 of Act No. 17 of 1962 are either nominated members or elected members who do not fall within the ambit of Statute 26(1) of the respondent University.

17. Learned counsel for the petitioner frankly admitted during the course of his

argument that Statute 26(1) of the respondent University is not happily worded, therefore, after taking recourse of construction the other two categories of members of Syndicate i.e. nominated and elected members may also be treated to be within its scope. I am not able to persuade myself to agree with the aforesaid submission of Shri Mridul for the reasons stated hereinbelow.

18. In my humble opinion whenever and wherever an expression is defined in an enactment of Legislature and the same expression in such enactment is subsequently used by it then the Courts of law are under legal obligation to assign same meaning to such expression as given by Legislature. To my mind what Legislature has not written in an enactment a Court of law may writ after taking recourse of construction while contrary to it is not true. In such cases if recourse of construction on the specious plea of ambiguity is adopted it would tantamount naked usurpation of Legislative function under the thin disguise of interpretation which is impermissible.

19. An identical question came up for consideration before me in the case of Bheru Dan v. Firm Sohanlal Shiv Narain in SB Civil First Petition No. 3 of 1978, decided on 21-4-94. wherein in paragraph 29 it was held which reads thus :--

"Where Statutes or Rules are not ambiguous or capable of two interpretations, it is hardly necessary to have recourse to rule of construction. In such cases, what a Court has to do, is to see of those words and give effect to them regardless of the consequences that may ensue. If language is plain, the fact that the consequence of giving effect to proviso of Rule 175 of the said Rules may lead to some inconvenience to the subordinate Courts and Officer-in-charge of the Record Room in Rajasthan to know about the pendency of the Civil Appeal or Revision in the higher Courts, is not a factor to be taken into account in interpreting the said Rules. The Rule making authorities in this case may be unconsciously are without sufficient fore-sight may have framed these Rules, but if so, it must be left to the Rule making authorities to correct its error."

20. I see no reason in the present case to differ from the principle enunciated by me in the case of Bheru Dan (supra), therefore, it is hereby reiterated.

21. In the present case this Court is also called upon to determine the question about applicability of Section 18 of Act No. 8 of 1955. The question about applicability of General Clauses Act came up for consideration before Apex Court in case of Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, where it was Held that the power to appoint implies the power to determine the employment. Referring to Section 14 of Punjab General Clauses Act 1898 which is *pari-materia* to Section 18 of Act No. 8 of 1955 the Supreme Court propounded the well settled rule of interpretation holding that the power of appointment includes the power to determine the employment.

22. In case of Manik Chand Surana (supra) it was held that Section 18 of Act No. 8 of 1955 will have no application if a person holds an office under the provision of a Statute which fixed certain modes and methods for appointment, dismissal

or removal. It was found by the learned single Judge in case of Manik Chand Surana (supra) that Chairman appointed under Rajasthan Khadi and Village Industries Act, 1955 became a non-official member of Board, therefore, provisions contained under Sections 7,11,12,13 and 17 of the said Act which relate to tenure and condition of service of non-official members equally apply to him. Thus the facts of the case of Manik Chand Surana (supra) are not applicable to the facts of the present case as there were provisions regulating removal of Chairman under Rajasthan Khadi and Village Industries Act, 1955 under which he was appointed whereas in the case on hand there are no provisions either under Act No. 17 of 1962 under which the petitioner was nominated as member of Syndicate or under Statute 26(1) framed thereunder regulating his removal.

23. From the facts stated above I have no hesitation to hold that Statute 26(1) of the respondent University is not a self-contained code regulating the procedure for removal of either nominated or elected members of Syndicate, therefore; general provisions envisaged u/s 18 of Act No. 8 of 1955 can be made applicable for removal of the petitioner from membership of Syndicate. In fact power of removal is a necessary concomitant of power to appoint within the meaning of Section 18 of the aforesaid Act provided, such removal order is passed reasonably and not arbitrarily.

24. It is next contended by learned counsel for the petitioner Shri M. Mridul that pleasure doctrine is not importable u/s 18 of Act No. 8 of 1955 while with equal vehemence it is urged on behalf of respondent University by Shri L. R. Mehta and learned Additional Advocate General Shri L. S. Udawat appearing on behalf of the Chancellor that doctrine of pleasure is applicable to the aforesaid section and Chancellor possessed unfettered power to remove a nominated member of Syndicate at will and such removal order is not justiciable. In support of his argument, learned Additional Advocate General placed reliance on an unreported decision rendered in Civil Writ Petition No. 229 of 1993 between Suresh Bhardwaj v. H. P. University decided on 30-11-93 by Division Bench of Himachal Pradesh High Court.

25. Before dwelling upon aforesaid rival contentions advanced before me by the learned, counsel for the parties, I consider it proper to discuss some of the landmark judgments of the Supreme Court dealing with pleasure doctrine. Way back in 1961 the Apex Court in the case of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, held that power of Governor to dismiss at pleasure subject to the provisions of Article 311 is not an executive power under Article 154 but a constitutional power and is not capable of being delegated to officers subordinate to him. In the case of Babu Ram Upadhyaya (supra) the majority view laid down seven propositions at page No. 761. All those seven propositions were reviewed by the majority opinion of the Apex Court in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., and the Apex Court restated that the proposition No. 2 must be read along with subsequent propositions specified as propositions No. 3,4, 5 and 6. According to review in

case of Moti Ram Deka (supra) the pleasure of the President or the Governor to dismiss can, therefore, not only be delegated but is also made subject to Article 311. Thus the majority view in Babu Ram Upadhyay's case (supra) is no longer good law after the decision in Moti Ram Deka's case (supra).

26. The aforesaid question of pleasure doctrine again came up for consideration before Hon'ble seven the then Judges of the Supreme Court in the case of Samsher Singh Vs. State of Punjab and Another, and in this case the Apex Court reiterated the majority view taken in the case of Moti Ram Deka (supra).

27. The pleasure doctrine again came up for consideration before a constitutional bench of Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, by that time Article 311(2) was drastically amended by, 42nd Amendment Act, 1976. After taking into account all the previous decisions on the question of pleasure doctrine the majority view (the then Hon'ble Thakkar, J. contra) ruled that doctrine of pleasure need not be exercised by the President or the Governor personally it can be delegated to other authorities under the Rules of Business of the Government. It is also held that the pleasure doctrine is exception to Article 311(1) and (2) but not Article 309 hence Rules framed under Article 309 or Act referable to it cannot imping upon pleasure of President or Governor.

28. In case of Dr. D.C. Saxena Vs. State of Haryana and Others, a question based on pleasure doctrine came up for consideration before Supreme Court where State Legislature has expressly provided u/s 4-A of Haryana Board of School Education Act that the Chairman, Vice-Chairman and members to hold office during pleasure of State Government.

29. Similarly in case of Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, the Supreme Court while dealing with the removal of two women members before expiry of the period of their tenure by appointing new two women members on their places under pleasure theory held that nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds u/s 40 of U. P. Municipalities Act under which the elected members could be removed. But so far as the nominated members are concerned, Legislature in its wisdom has provided that they shall hold office during the pleasure of the government. It is apparent from perusal of amended 4th proviso to Section 9 of U. P. Municipalities Act, 1916 that doctrine of pleasure was expressly provided by State Legislature irrespective of Section 16 of U. P. General Clauses Act, 1904 which is *pari materia* to Section 18 of Act No. 8 of 1955.

30. From aforesaid discussion it is easily deducible that although founding fathers of the Constitution were cognizant of the fact that provisions of Section 15 of General Clauses Act, 1897 which are *pari materia* to Section 18 of Act No. 8 of 1955 are applicable under Article 367(1) of the Constitution yet specific

provisions for applicability of pleasure doctrine are made in the Constitution. Similarly although U. P. Legislature was cognizant of the fact that there are provisions u/s 16 of the General Clauses Act which are *pari materia* with Section 18 of Act No. 8 of 1955 yet in U. P. Municipalities Act 4th proviso was added to Section 9 expressly conferring power of removal of nominated members at the pleasure of State Government. Like manner u/s 4-A of Haryana Board of School Education Act it is expressly provided that Chairman, Vice-Chairman and members to hold office during the pleasure of State Government. I have examined the provisions of Sections 15 and 20 of Himachal Pradesh General Clauses Act, which are *pari materia* to Sections 18 and 23 respectively of Act No. 8 of 1955.

31. In my considered opinion the pleasure doctrine cannot be imported to Sections 18 and 23 of Act No. 8 of 1955 unless State Legislature makes specific provision to this effect. In case of Suresh Bhardwaj (*supra*) even in absence of any specific provision made by State Legislature doctrine of pleasure has been extended to Sections 15 and 20 of Himachal Pradesh General Clauses Act. I have the misfortune to be unable to agree with the erudite opinion of learned Judges constituting Division Bench of Himachal Pradesh High Court in case of Swesh Bhardwaj (*supra*). In my humble opinion the ratio of decision rendered by apex Court in the case of Dr. D. C. Saxena (*supra*) and Om Narain Agrawal (*supra*) based on pleasure doctrine are not applicable to the facts of the present case inasmuch as in those two cases after change of State Governments in furtherance of its policy decisions the Chairman, Vice-Chairman and members of Haryana Board Education as well as two women nominated members of Municipal Board, Shahjahanpur were removed on political considerations whereas in the present case neither the petitioner was nominated on political consideration nor he is being removed by the Chancellor on any political reasons to carry forward policy decision. The petitioner was nominated under clause (iv) of Sub-section (1) of Section 16 of Act No. 17 of 1962 as an educationist and he is being removed by impugned order to make body of Syndicate functional in the interest of public in general and respondent University in particular and also to ensure faithful compliance of decision rendered by Division Bench of this Court.

32. For deeper understanding of the controversy involved, I would like to recapitulate the distinctive features of pleasure doctrine and theory based on subjective satisfaction in following paragraphs.

33. The expression discretionary power in administrative law is in process of evolution. At one hand constitutional functionaries, statutory functionaries and other executive officers are asserting unfettered discretion in the garb of either pleasure doctrine or under theory based on subjective satisfaction while on the other hand the Courts of law are making constant efforts to curb and control such unfettered discretion by evolving principles of fairness akin to principles of natural justice to ensure that such wide discretions may not be abused but properly exercised.

34. In fact discretionary power can be divided into two main categories i.e. based on objective satisfaction and based on subjective satisfaction. The question of objective satisfaction is not involved in the present case, therefore, it is left open to be considered in an appropriate case. I would like to confine the discussion only with respect to doctrine of pleasure and theory based on subjective satisfaction.

35. In my opinion "pleasure doctrine" is genus while theory based on subjective satisfaction is its specy. Thus it is obvious that theory of subjective satisfaction is a taxonomic group of lower rank of pleasure doctrine and as such former is not comparable with the later although element of subjective satisfaction remains intact in both the form of discretionary power. It is true that genus includes specy but specy does not include genus.

36. Now a days in democratic set up pleasure doctrine is not based on prerogative of crown representing a relic of feudalera but it is based on public policy having nexus with policy decision with a tinge of political considerations whereas theory of subjective satisfaction is ordinarily made applicable in individual cases bereft of policy decision and also far away from political considerations.

37. Pleasure doctrine is invariably exercisable either by constitutional functionaries or its dclegatees under the Rules of Business of a Government and it always finds its origin in constitutional provisions or specific statutory provisions with expression "pleasure" whereas theory based on subjective satisfaction is exercisable by any executive authority under an enactment, under statutory Rules or even without framing of Rules or an enactment. In case of doctrine of pleasure only some of the decisions taken by constitutional functionaries such as declaration of war and peace or entering into treaty with foreign countries or in the interest of the security of the State etc. are not justiciable whereas in case of decisions taken on the basis of theory based on subjective satisfaction either after making the law or without making the law are invariably subject to judicial review. At the time of judicial review the presumption to act fairly in case of pleasure doctrine is higher than in a case where decision has been taken by an executive in exercise of his subjective satisfaction.

38. Thus, the argument of the learned counsel for the respondents to the effect that the order impugned has been passed on pleasure doctrine and as such the petitioner's nomination as member of Syndicate can be superseded at will of the Chancellor and it is not justiciable, has been raised merely to be rejected hence it is hereby rejected. It is well to remember that judicial review has been declared as basic feature of the Constitution by the Apex Court with an avowed object to ensure that High Courts and Supreme Court are to act as bulwark for the protection of rights of citizens and it would check on the vagaries, negligence and mistakes of the executive or highhandedness of the party before it against another on the anvil of rationality and reasonableness and an argument contrary

to it is not acceptable. It is held that although pleasure doctrine is not importable under Sections 18 and 23 of Act No. 8 of 1955 but impugned order superseding the petitioner from the membership of Syndicate will be treated to have been passed on subjective satisfaction of the Chancellor.

39. It is next contended by Shri M. Mridul on behalf of the petitioner that in the past the Chancellor of the respondent University has nominated Shri M. V. Mathur as well as Shri V. S. Vyas as members of Syndicate and both of them had not attended any meeting of the Syndicate but they were not superseded while the petitioner has been singled-out by superseding his nomination from the membership of Syndicate for single absence. Suffice it to say that for attracting the mandatory provisions enshrined under Article 14 of the Constitution the fact of hostile discrimination must exist in presenti not in the past. More over in the present case no proper foundation has been laid alleging that Shri N. V. Mathur and Shri V. S. Vyas were similarly circumstanced with the petitioner. No where it is alleged that aforesaid two members nominated in the past as members of Syndicate had deliberately avoided to attend the meeting of Syndicate in order to frustrate implementation of any decision taken by a Court of law. No where it is alleged that the aforesaid both members of Syndicate, nominated by the Chancellor under clause (i v) of Sub-section (1) of Section 16 of Act No. 17 of 1962, after giving solemn undertaking to attend the meeting of Syndicate to the Vice-Chancellor, deliberately abstained from attending such meeting.

40. The next limb of argument of Shri Mridul about violation of Article 14 of the Constitution is that Article 14 strikes at arbitrariness in executive and administrative action because any action arbitrary must necessarily involve the negation of an equality. In such matters one need not to confine the denial of equality to a comparative evaluation between two persons similarly circumstanced to arrive at a conclusion of discriminatory treatment. According to Shri Mridul an action per se arbitrary itself amounts denial of equal protection of the laws. In support of his aforesaid submission the learned counsel for the petitioner placed reliance on a decision rendered by apex Court in the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,

41. There is no quarrel with the aforesaid proposition of law argued by the learned counsel for the petitioner but such nature of discriminatory treatment has to be tested on the anvil of action being per se arbitrary. The learned Additional Advocate General Shri L. S. Udawat has produced the original file containing the information and material available on record on basis of which impugned order of supersession has been passed. Mere look at the informations on the original file indicate that by no stretch of imagination the order impugned can be said to be per se arbitrary which would be discussed a little later in this order in detail.

42. From the above discussion it is not possible for me to arrive at a conclusion in the present case that petitioner has been meted out with discriminatory treatment within the meaning of Article 14 of the Constitution.

43. It is also argued by the learned counsel for the petitioner that in the present case the doctrine of legitimate expectation and principle of promissory estoppel are attracted. Suffice it to say that in a welfare State the conferment of discretion on the executive in regard to some matters with an avowed object for relieving citizens or institutions from hardships is inevitable. If executive power is exercised in bona fide manner, it would only promote justice and in case of individual abuse a citizen or an institution always has a remedy to challenge such order passed in exercise of subjective satisfaction.

44. No allegation of laissez faire has been made against the authority passing the impugned order. The order impugned has been passed fairly in public interest and also in the interest of respondent University. Therefore, where order impugned is found to be just and proper within the statutory scope of Section 18 of Act No. 8 of 1955. in such a situation the doctrine of legitimate expectation gets back seat. Principle of legitimate expectation cannot be permitted to be stretched beyond rational limits against factual backgrounds of a case. My aforesaid view is buttressed by a recent decision rendered by Apex Court in case of A. Mahudewaran v. Government of Tamil Nadu reported in 1996 (5) JT 506.

45. In my opinion, ordinarily the doctrine of legitimate expectation as well as principle of promissory estoppel are invoked in those cases where one expects profits pecuniary or any other advantages of like nature. The concept of these principles cannot be invoked by the petitioner in the present case as he was nominated as member of Syndicate on 15-9-1995 for a period of three years purely on pious and altruistic solemn mission to render his free services to the cause of learning in the campus of the respondent University. On this score also the petitioner is not entitled to claim the benefit of doctrine of legitimate expectation as well as principle of promissory estoppel.

46. Bottom line argument of the learned counsel for the petitioner is that the order impugned is arbitrary and has been passed against the principle of natural justice. It is true that the power to nominate a member of Syndicate, under clause (iv) of Sub-section(1) of Section 16 of Act No. 17 of 1962. has its source in the aforesaid Act thus the membership of the Syndicate of the petitioner is a creation of the Statute and his nomination cannot be terminated arbitrarily. As discussed above the Act No. 17 of 1962 the Statutes and the Ordinances framed under the said Act. do not lay down the conditions in which the nomination of the membership of Syndicate of the petitioner may be determined nor do the aforesaid Act. Statutes and Ordinances prescribe any limitations upon the exercise of power of the Chancellor to supersede the nomination of the petitioner.

47. In my humble opinion in absence of any modes prescribed under the Act in which petitioner was nominated regulating his removal from the nominated membership of Syndicate, therefore, the Chancellor has power to remove such member in exercise of his general power u/s 18 of Act No. 8 of 1955. The power to supersede the petitioner from the membership of Syndicate u/s 18 of Act No. 8 of 1955 does not permit to be exercised arbitrarily but it can only be exercised

fairly for good cause. In absence of pleadings and proof in the present case to the effect that the Chancellor of the respondent University has passed the impugned order superseding the petitioner from membership of Syndicate on non-existent ground it is not possible for me to make such order of supersession ineffective by issuing a prerogative writ.

48. This Court being bulwark for the protection of rights of the citizens has to evolve some objective criteria to check vagaries negligence, mistakes or highhandedness of executive while passing order u/s 18 of Act No. 8 of 1955 in exercise of its subjective, satisfaction. In this regard I am of the view that the order of termination, dismissal or removal passed u/s 18 of Act No. 8 of 1955 must be based on something more than a mere rumor or a gossip or a hunch of the authority. According to me there must be some definable material which can be regarded as reliable information. Such orders passed u/s 18 of (the aforesaid Act must be based on credible information having nexus with bona fide belief of the authority to have acted fairly. Before passing an order u/s 18 of Act No. 8 of 1955 it would be condition precedent to verify as to whether the person who is sought to be removed has been appointed under a particular Act or Rules if so whether such Act or Rules prescribe modes for regulating his removal.

49. It is further (true that when an order of dismissal, removal or suspension passed u/s 18 of Act No. 8 of 1955 is challenged in a Court of law then it will be always open to the petitioner to contend that on the facts or informations disclosed, no reasonable man could have arrived to a conclusion at which the authority has arrived.

50. It is well to remember that jurisdiction under Article 226 of Constitution of India is very limited. This Court cannot afford to act as an appellate or revisional Court and as such has no justification to examine meticulously the information on basis of which an order is passed u/s 18 of Act No. 8 of 1955. Suffice it to say that in exercise of extraordinary jurisdiction this Court can examine whether the act of passing order u/s 18 of the aforesaid Act is arbitrary or mala fide or subjective satisfaction envisaged under the aforesaid section is based on non-existent ground. In my considered opinion if the order-passed u/s 18 of Act No. 8 of 1955 is found to be based on definable material and the information on basis of which such order is passed has nexus with the bona fide belief of the authority to have acted fairly then the order passed under aforesaid section shall not be made ineffective. Thus only question in the present can survive to be examined as to whether the order impugned superseding the petitioner from the membership of Syndicate of the respondent University is arbitrary, unreasonable, unjust and against the principle of natural justice, if it is so only then the order impugned can be made ineffective by issuing a prerogative writ. An identical question came up for consideration in case of *Dr. Girendra Pal v. State of Rajasthan* reported in 1994 WLC (Raj) 334 where Dr. Girendra Pal, Principal Homeopaethic Medical College, Jaipur was nominated as a member of Syndicate in the University of Rajasthan, Jaipur by the State Government for a period of

three years u/s 21(4) of the University of Rajasthan Act, 1946. In case of Dr. Girendra Pal (supra) information was received about him that he had association with R.S.S., a banned organisation under Unlawful Activities (Prevention) Act, 1967. After receiving the aforesaid information, State Government did not consider it appropriate to continue Dr. Girendra Pal as a member of Syndicate of said University and as such his nomination was withdrawn with immediate effect.

51. Aggrieved against the withdrawal of his nomination as "a member of Syndicate of University of Rajasthan, Jaipur Dr. Girendra Pal challenged the aforesaid order of curtailment of his tenure of Syndicate of the said University, inter alia, on the ground that the order impugned dated 26/27-2-1993 did not disclose as to with which banned organisation the petitioner was associated. In the case of Dr. Girendra Pal (supra) no material was placed before the learned single Judge of this Court to the effect that the petitioner was a member of any banned organisation hence the order of supersession from membership of Syndicate was set aside as it was found that order impugned was based on non-existent ground. I respectfully concur with the ratio decidendi laid down in the case of Dr. Girendra Pal (supra) although in the facts and-circumstances of the present case on hand the ratio of the aforesaid case is not applicable.

52. Now in the aforesaid backdrop, I would like to examine the merits of the order impugned superseding the petitioner from the nominated membership of Syndicate of the respondent University.

53. From the scrutiny of the original record produced before me by learned Additional Advocate General containing the relevant information, it is evident that the order superseding the petitioner from the membership of the Syndicate of the respondent University has not been passed on a rumour or a gossip or a hunch or on non-existent ground but it has been passed on the definable materials and relevant information sent by the Vice-Chancellor to the Chancellor.

54. Indisputably in faithful compliance of the order passed by the Division Bench of this Court in number of writ petitions mentioned above the respondent University has commenced the process of selections for making regular appointments to sanctioned teachers posts. The selection committees held selections in the month of June, 1996 in compliance of the decision rendered by the division bench of this Court and after receiving recommendations by various selection committees in sealed covers the Vice-Chancellor convened a meeting of the Syndicate on 25-6-1996 for approval of recommendation sent to him. The letter dated 10-5-1996 which has been filed by the petitioner himself as Anx. 3 to the rejoinder is also on record of the original file produced before the Court.

55. Judicial restraint does not permit me to make observation about personal opinion of the petitioner on many of his grievances highlighted by him in his letter dated 10-5-1996 Anx. 3 to the rejoinder. Suffice it to observe that it is less difficult to understand the contents of letter dated 10-5-1996 Anx. 3 to the rejoinder although more difficult to approve its contents. The contents of Anx. 3

reveals that the petitioner was putting the cart before the horse and was making conscious effort to create hurdles in faithful compliance of the order passed by the Division Bench of this Court while the Chancellor, Vice-Chancellor of the respondent University including the petitioner were under constitutional and legal obligation to comply with the mandate of Division Bench of this Court positively up to 31-8-1996.

56. There are other reasons also to arrive at the aforesaid conclusion. It is to be imbibed by all of us that the constitution of body of Syndicate u/s 16 of Act No. 17 of 1962 is a democratic institution where decisions are to be taken on the basis of collective wisdom not on individual wisdom. The officer members, elected members and nominated members are to deliberate on any issue concerning the respondent University as envisaged under Act No. 17 of 1962 and to take a decision on the basis of collective wisdom after deliberations. The act of insistency of the petitioner to see that his personal wisdom should prevail over collective wisdom of other members of Syndicate after its deliberations in meeting scheduled to be held on 25-6-1996 and his conscious omission to abstain from attending the said meeting runs hostile to the cultural ethos of an educationist. Averments made in rejoinder to the effect that to avoid a situation that might precipitate discord and confrontation between Vice-Chancellor and members of the Syndicate could have been the consequence especially because it was convened after the Vice-Chancellor was requested not to hold meeting on 25-6-1996 and penultimate but one line of contents of letter Anx. 3 to the rejoinder "A meeting of the Syndicate should be held for this purpose before the selections are made". It is not understandable as to how the petitioner and other members of Syndicate under his leadership ask the Vice-Chancellor not to convene the meeting of Syndicate on 25-6-1996 for faithful compliance of mandate of Division Bench of this Court who has absolute statutory power under Sub-section (3) of Section 12 of Act No. 17 of 1962 to convene the meeting of the Syndicate, Senate and the Academic Council.

57. The petitioner being an educationist was supposed to be an upholder of Indian value system according to which selfless contribution to the cause of learning to posterity is treated to be greatest service. Here in the present case the acts and omissions of the petitioner speak louder than words.

58. In the case on hand the petitioner was nominated as a member of Syndicate of the respondent University being an educationist on subjective satisfaction of Chancellor to radiate his learning nobility and wide experience in field of education telepathically to other members of Syndicate, teachers and students within the periphery of recognised democratic norms having respect for collective wisdom of majority of members of Syndicate and power bestowed to the Vice-Chancellor to convene a meeting of Syndicate for faithful compliance of the mandate issued by the Division Bench of this Court to comply up to 31-8-1996 positively. The connotation "educationist" stands for excellence in learning, nobility in action and in thinking accompanied with skilled knowledge to teach

others and to lead others along the path of righteousness. I am constrained to observe with anguish that an educationist nominated member of Syndicate can prove himself either an asset or disaster to an educational institution. He who takes his job seriously would prove himself as an asset and he who takes himself seriously would prove himself a disaster for the institution by converting serene atmosphere of campus of learning where future generation is under preparation into turmoil. The conversion of serene atmosphere of highest seat of learning of campus of University into a hot bed of politics may lead to grotesque result by affecting the academic excellence.

59. In the present case as discussed above, from the perusal of the original file produced before the Court the existence of information and its relevance in passing impugned supersession order against petitioner under Act No. 8 of 1955 by the Chancellor is successfully demonstrated, therefore, in such a situation I refrain to examine the sufficiency of the information produced before the Chancellor as the order impugned has been passed in exercise of the subjective satisfaction. In my considered opinion, under Article 226 of the Constitution while the sufficiency or otherwise of the information cannot be examined by Court, yet existence of information and its relevance to the order impugned passed by Chancellor u/s 18 of Act No. 8 of 1955 can be considered.

60. The next limb of argument of the learned counsel for the petitioner is about violation of principle of natural justice. It is to be remembered that while interfering in such order, it would not be proper to make a purely idealistic approach to the problem of this nature isolated from the actual realities and grass roots problems involved in the working of the respondent University. A healthy justice oriented pragmatic approach would be sufficient to meet the requirement of principle of natural justice in case of University level institution which would also be in keeping with institutional autonomy in a democratic country like ours. A certain measure of autonomy self governance in internal managements of University level institution would be essential to its well being and in decision making process.

61. It is argued by the learned counsel for the petitioner that before passing the impugned order the Chancellor was required to give an opportunity of hearing and to pass a speaking order. The aforesaid question of principle of natural justice came up for consideration before the Constitutional Bench of Hon"ble Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, where in penultimate paragraph 58. it was ruled which reads thus :--

"The inquiry must, therefore, always be : docs fairness in action demand that an opportunity to be heard should be given to the person affected?"

Now in the present case a question to be posed : does fairness in action demand that an opportunity to be heard should have been given to the petitioner ? For proper appreciation of the points canvassed before me in this regard and also to find out the correct answer to the question posed it would be expedient to look

into some of the important judgments of Supreme Court.

62. In the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, it was ruled by Supreme Court that extent of and application of the doctrine of natural justice cannot be imprisoned with the straight-jacket of a rigid formula. Its application depends upon the nature of jurisdiction conferred on the administrative authority upon the character of the rights of the person affected, scheme and policy of the Statute and other relevant facts of each case.

63. In historic decision rendered by Apex Court in case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, learned the then Justice K. S. Hedge, J. speaking for the Court held that the aim of rules of natural justice is to prevent miscarriage of justice.

64. The question of principle of natural justice again came up for consideration before Apex Court, in case of Swadeshi Cotton Mills Vs. Union of India (UOI), where majority view was taken to the effect that the phrase natural justice is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast iron formula.

65. In case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, the Supreme Court upheld the decision taken by competent authority under Rule 56(J) of the Fundamental Rules compulsorily retiring a Government servant. It was ruled by Apex Court in the aforesaid decision that it did not require any opportunity of hearing to be given to the Government servant to show cause against proposed action. Hon'ble Hcgcde. J. then observed there is no denying the fact that in all organisations and more so in Government organisations there is a good deal of dead wood. It is in public interest to chop off the same.

66. Much water has run under the bridge after decision of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, where the question before the Supreme Court was whether before exercising the power u/s 31(8)(a) of U.P. State University Act, 1973, the Chancellor was required to observe the principle of natural justice. Holding the power of appointment as of administrative nature the Court held that the Chancellor was not required to act judicially though he was required to act fairly for purpose of which the power is conferred. Ratio decidendi of the case of Km. Neelima Mishra (supra) after surveying its previous cases on the subject it is ruled by Apex Court in para 23, which reads thus :--

"23. xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

For this concept of fairness, adjudicative setting are not necessary, nor it is necessary to have lites inter partes. There need not be any struggle between two opposing parties giving rise to a *Mis*. There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the

administration. But when even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice. We cannot discover any principle contrary to this concept."

67. An identical question came up for consideration before the Apex Court in the case of Dr Rash Lal Yadav Vs. State of Bihar and Others, where after taking into account the previous decision on the point of principle of natural justice it was ruled by the Apex Court that concept of natural justice is not a static one but is a ever expanding concept from its initial stage and its application differ from case to case. In paragraph 10 the Apex Court ruled which reads thus :--

"10. xxx xxx xxx xxx xxxx

xxx xxx xxx xxx xxx

It is obvious from the plaintlanguage of this sub-section that the underlying idea is that the power may be exercised in public interest, that is, to protect the Statutory Board from harm that may be caused to it by a Chairman/Member who is incapable of working or who refuses to work or conducts himself in a manner injurious to the Board's interest. The matter is left to the subjective satisfaction of the State Government which subjective satisfaction must be reached on relevant material on record and not on the whim and sweet will of the Government. The power cannot be exercised unless relevant material is placed before the State Government on the basis of which the State Government as a reasonable person is able to conclude that one or more of the conditions mentioned in the sub-section exists and therefore, it is necessary to exercise power of removal to safeguard the Board from harm. The power is clearly coupled with the twin duty, firstly to ensure that circumstances do exist for the exercise of the power of removal of the Chairman or Member, as the case may be, and secondly to safeguard the institution from harm that may be caused by the continuance of such Chairman or Member on the Board. In the ultimate analysis the power has to be exercised in public interest and for public good because the State Government is duty bound to protect the image and credibility of the Board so that people's faith in the Board is not shaken. Of course, if the State Government exercises the power vested in it under the said subsection and if the exercise of such power is challenged in Court the State Government will have to satisfy the Court that it exercised the power bona fide and on material relevant to establishing the existence of the said power. That can at best be the extent of judicial scrutiny."

68. From the aforesaid discussion in the preceding paragraphs in my considered opinion the petitioner was not entitled to have been given an opportunity of hearing as the order passed by the Chancellor in the present case in exercise of his subjective satisfaction has been passed for good cause in the interest of the respondent University and he has acted fairly in passing the impugned order. The

Chancellor has not exercised his power arbitrarily. Suffice it to say that principle of natural justice is not a straight-jacket formula but its application differ from case to case. Fairness is a fundamental principle of natural justice in administrative law. It is rule to ensure the vast power in the modern State is not abuse but properly exercised. The fairness being component of principle of natural justice to ensure that the statutory authority must arrive at a just decision either promoting an interest of affecting the right of a citizen. Fairness is a prime test for principle of natural justice whenever and wherever an executive order is challenged which is based on subjective satisfaction of the authority. In such cases if the authority in passing such order has acted fairly it would be sufficient compliance of principle of natural justice and no opportunity of hearing is needed unless it has civil consequences. In the present case the petitioner was nominated as a member of Syndicate to render his free services to the respondent University hence no question of civil consequences arises in the present case. In every case against whom some order is passed by an executive in exercise of his subjective satisfaction, such person is bound to have subjective feeling of loss of reputation but such subjective feeling does not make him entitled to be given an opportunity of hearing. The principle of natural justice includes that power must be exercised reasonably and the Court has to reconcile itself with no less important doctrine that the Court must not usurp the discretion of the public authority upon which legislation has reposed to take such decisions within the meaning of Sections 18 and 23 of the Act No. 8 of 1955. The principle of natural justice cannot be stretched beyond a reasonable and rational limits otherwise principle of natural justice itself would become a principle of unnatural justice.

69. In my considered opinion order impugned superseding the petitioner from the membership of Syndicate does not suffer from vices of arbitrariness. The petitioner was not entitled to be given an opportunity of hearing. The Chancellor has acted fairly in passing impugned order.

As a result of the aforementioned discussion, the instant writ petition lacks merit and it is hereby dismissed.

Cost easy.