

(2015) 10 KAR CK 0195

In the Karnataka High Court

Case No : Writ Petition No. 5945/2015 (GM-RES)

H.N. Jagannatha Reddy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 156(1)

Citation : (2016) 1 AKR 154 : (2016) 2 KarLJ 237

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Narayana Bhat M., Advocate, for the Appellant; D. Nagaraj, AGA, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the notification bearing No. F.2-4/2013(Cm) dated 19.01.2015 (Annexure-H) whereby the third respondent has been nominated to the Executive Council of the Visvesvaraya Technological University ("VTU" for short) as a nominee of the University Grants Commission ("UGC for short) to replace the petitioner.

2. The Executive Council of VTU consists of the members indicated in Section 19(3) of the Visvesvaraya Technological University Act, 1994 ("VTU Act" for short). Though the petitioner refers to the earlier action whereby the petitioner was removed by a stigmatic order which was challenged before this Court and the order being withdrawn during the pendency of the petition, the same will not be relevant for the present consideration as the instant case pertains to the subsequent nomination. Presently, the petitioner as well as the third respondent are claiming right to be a member of the Executive Council as the nominee of the UGC in terms of Section 19(3)(f) of the VTU Act.

3. Heard Sri M. Narayana Bhat, learned Counsel for the petitioner, Sri Madhusudan R. Naik, learned senior counsel appearing on behalf of Sri Abhishek

Malipatil for the third respondent, Sri D. Nagaraj, learned Government Advocate for the first respondent, Sri Krishna Dixit, learned Assistant Solicitor General for the second respondent and perused the petition papers including the original file relating to the nomination secured from the second respondent-UGC.

4. The petitioner was earlier nominated to the Executive Council by the Chancellor, as provided under Section 19(3)(e) of the VTU Act. The said nomination made on 15.01.2013 was withdrawn. The petitioner was thereafter nominated under Section 19(3)(f) as a nominee of UGC through the communication dated 01.10.2013. The UGC thereafter has nominated the third respondent as its nominee through the communication dated 19.01.2015. Since the UGC can nominate only one person to the Executive Council, the nomination of the third respondent will displace the petitioner who had been nominated earlier. It is in that view, the petitioner claims to be aggrieved and is before this Court against the nomination of the third respondent.

5. The contention on behalf of the petitioner is that the nomination of the petitioner has not been withdrawn and as such the nomination of another person cannot be made. The nomination of the petitioner vide Annexure-A is made through the communication dated 01.10.2013 addressed by the Under Secretary, UGC. It is contended that the nomination of the third respondent vide the communication dated 19.01.2015 is made by the Section Officer, UGC. Hence, the same cannot override the nomination of the petitioner, is the contention. It is contended that without there being withdrawal of the petitioner's nomination, no other nomination could have been made and as such, the non-communication in that regard will be fatal to the subsequent nomination. In that regard, the learned counsel for the petitioner has relied on the following decisions;

"(i) The case of *Bipromasz Bipron Trading SA Vs. Bharat Electronics Limited (BEL)*, wherein it is held that an order passed by an authority cannot be said to take effect unless the same is communicated to the party effected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of a final order. Such an un-communicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated.

(ii) The case of *Bachhittar Singh Vs. The State of Punjab*, wherein it is held that the essence is, the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open for the Council of Ministers to consider the matter over and over again and therefore, till its communication the order cannot be regarded as anything more than provisional in character.

(iii) The case of *State of Punjab Vs. Amar Singh Harika*, wherein it is held that mere passing of an order of dismissal would not be effective unless it is

published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify the order.

(iv) The case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, wherein it is held that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the Act are only creature of statute. They must act within the four corners thereof.

(v) The case of B.P. Singhal Vs. Union of India (UOI) and Another, wherein the position has been summarised as follows:

"83. We summarise our conclusions as under:

(i) Under Article 156(1) , the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.

(iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government.

(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient."

6. The learned senior counsel for the third respondent and the learned Assistant Solicitor General would however seek to sustain the action of the UGC. It is contended that nomination in issue is at the pleasure of the UGC to be exercised by the Chairman. The learned senior counsel contends that when it is a pleasure nomination, no reasons need be assigned nor any notice be issued. The nomination of the third respondent will make it evident that the earlier nomination of the petitioner had come to an end. Hence, the issue of a separate withdrawal order is not contemplated. To that effect, reliance is placed on the decision of this Court in the case of A.M. Bhaskar and Others Vs. State of Karnataka and Others, .

7. The learned Assistant Solicitor General also would contend that though the petitioner was nominated, the facts brought before the UGC about the earlier position was kept in view and the continuation of the petitioner not being desirable, the third respondent was nominated. The Chairman himself has applied his mind to nominate the third respondent and what has been issued by the Section Officer is the communication which is based on the approval granted. It is asserted in the objection statement that the third respondent is the nominee of the UGC.

8. In the above backdrop, what is evident is that the UGC is required to nominate only one person to the Executive Council of the University. Such nomination is at the pleasure of UGC. The fact that the petitioner was nominated through the communication dated 01.10.2013 and the third respondent was thereafter nominated on 19.01.2015 is a matter of record. The question therefore is as to whether the subsequent nomination of the third respondent is invalid in view of there being no formal withdrawal of the nomination of the petitioner and no communication is made in that regard to the petitioner? Further, what requires consideration is also whether the nomination of the third respondent is invalid as contended, since the impugned notification at Annexure- H is issued by the Section Officer of UGC?

9. At the outset, what cannot be lost sight is that the person to be nominated by the UGC is at its pleasure and there is no other specific procedure contemplated either under the VTU Act or is any other method of selection adopted to nominate a person. The person thus nominated will therefore remain on the Executive Council until he enjoys the pleasure of the nominating authority. Since no procedure is contemplated to be followed either for nomination or discontinuance of the nomination, the decision in the case of Bhavnagar University (supra) relied on by the learned counsel for the petitioner is of no assistance. The said decision was rendered in a circumstance where the procedure relating to acquisition was the issue and in a circumstance where the statute prescribed a procedure which was required to be followed, but the same had not been followed.

10. In the instant case, in view of the lapse in the procedure alleged even in respect of exercise of pleasure, I have verified the file secured from the second

respondent. The procedure followed in replacing the petitioner by nominating the third respondent is contained at S. No. 262 (FR) and S. No. 264 (FR). In view of the communication received from the Principal Secretary, seeking re-look at the nomination of the petitioner made on 01.10.2013 due to the earlier actions and perceiving the conduct of the petitioner to be against the development of the University, a detailed note has been put up to the Chairman, UGC to take a view with regard to the nomination conveyed by the UGC vide its letter dated 1st October, 2013 on the Executive Council of VTU. On perusing the same, the Chairman in his hand has written-"Dr. M. Dhananjaya of Bangalore may be nominated" and affixed his signature on 19.01.2015. Thereafter, the draft conveying the nomination is put up for approval of the Chairman. The same has been approved by the Chairman on 20.01.2015, which is the one that has been issued as per the impugned letter. Hence, the contention of the learned counsel for the petitioner that the nomination of the third respondent is made by the Section Officer is without merit and cannot be accepted.

11. It is no doubt true that there is no material on record to indicate that the withdrawal of the nomination of the petitioner has been communicated to the petitioner. But whether that alone will vitiate the subsequent nomination is the issue to be considered. The nomination of the petitioner was not indicated as being made for any specific period. In the case of *Bipromasz Bipron Trading Sa* (supra) the issue was with regard to the appointment of an Arbitrator and in that light, the effect of an un-communicated order arose for consideration and in that context, it was held that it does not take away the right of the affected party. In *Bachhittar Singh's* case (supra) when the punished Government servant sought to seek benefit of the decision of the Council of Ministers who had decided to reconsider the punishment, such contention was held in the negative since such decision had not been communicated and had therefore not come into effect. In the case of *Amar Singh Harika* (supra), the point for consideration was the consequence of the actions taken by the dismissed officer between the date on which the dismissal order was passed and the date on which he had knowledge of such order. Even if it was otherwise published was also accepted as knowledge of the order and not mere communication.

12. The premise on which the conclusion has been reached in the above cited three decisions is that if an order is made by an authority and is not communicated and has not come into effect, there is a likelihood that the same authority may revisit such order and change his mind. As such, the un-communicated order does not create or extinguish a right. The said decisions would however not be of assistance to the petitioner in the instant case though there is no communication addressed to the petitioner withdrawing his nomination. As noticed in the instant case, the nomination is one which is to subsist during the pleasure of the nominating authority. Further, under Section 19(3)(f) of VTU Act, there can be only one nominee of the UGC. If that be the position, when the UGC nominates another person and communicates to the concerned, it will automatically indicate that the pleasure exercised is to

nominate a different person to be on the Executive Council and that action would extinguish the earlier nomination as only one person can be on the Executive Council. Therefore, on the subsequent person being nominated, the earlier nominee is required to accept the position gracefully as there is no requirement to terminate either with or without the compliance of principles natural justice like in the case of appointment to a post.

13. The issue that requires further consideration is as to whether the action of removal of the petitioner from the Executive Council is to be considered as arbitrary, capricious or unreasonable even though it is a case of nomination at pleasure, in view of the decision in the case of B.P. Singhal (supra) relied on by the learned counsel for the petitioner. At the outset, what cannot be lost sight is that the said decision was rendered by the Hon'ble Supreme Court while considering the case of exercise of pleasure doctrine relating to the high office of the Governor, in the background of the Constitutional scheme relating to appointment of Governors and also the federal set up of the Country in which they are required to function which cannot be similar in all other cases of nomination. Be that as it may, the conclusion therein is also that since there is also no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review.

14. If to the limited extent the present facts as noticed above is considered, prior to the nomination of the petitioner by the UGC the petitioner was on the Executive Council as a nominee of the Chancellor. The fact that there were certain incidents at that point which lead to misunderstanding cannot be in dispute. The petitioner contends that he had highlighted the misdemeanour committed by the Vice Chancellor relating to the funds of the University which lead to the appointment of an one man fact finding committee. It is contended that not honouring the nomination of the petitioner as UGC nominee is also one of the points of reference and as such, the present action is mala fide. Though the petitioner contends so, the sequence which was taken into consideration by the Chairman of UGC to replace the petitioner with the third respondent on the other hand records the conduct of the petitioner as, working against the development of the University and its activities. When such counter view points are available on record and the instant proceedings is not the properly constituted proceedings to adjudicate that matter and since it is not the scope of the instant proceedings, the same will remain as mere allegations. However, the said developments will only demonstrate that there is trust deficit by the nominating authority on its nominee. Even if it is only the perception of the nominating authority, it will certainly matter. When it is a nomination of the present nature, no right is created. Hence, in the process of exercise of pleasure when the reason has been disclosed, it cannot be termed as arbitrary, mala fide or whimsical so as to call for interference in the limited jurisdiction as it is for the nominating authority to decide and choose the person to represent such nominating body. In that view of the matter, no fault can be found with the

nomination of the third respondent.

For all the aforestated reasons, the petition being devoid of merit stands dismissed. No costs.