

(2009) 04 MP CK 0079

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1173 of 2008

K.S. Gaharwar

APPELLANT

Vs

Barkatullah Vishwavidyalaya

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1), 6(12)

Madhya Pradesh Universities Act, 1973 — Section 23, 4, 5, 6, 6(10)

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 12(2), 12(3), 15, 15(2), 15(4)

Citation : (2009) ILR (MP) 1241 : (2009) 2 JLJ 198

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Advocate : Ravish Agrawal and Arpana J. Pawar, for the Appellant; Rejendra Tiwari and Anup Mishra, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—In this appeal preferred u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the legal sustainability and substantiality of the order dated 8.9.2008 passed by the learned Single Judge in Writ Petition No. 2209/2003 is called in question.

2. Shorn of unnecessary details the facts which are essential to be adumbrated are that the Appellant upon completion of due formalities submitted his thesis on the subject "The Effect of The Latex of *Opuntia Coecinelifera* On The Fertility of Female Albino Rat with Special Reference To Uterine Mast Cells" and the Respondent university after due scrutiny conferred the degree of Ph.D. which was notified on 25.2.1987. On 10.7.2000 when the Appellant was posted as Registrar of the Respondent university one Dr. H.V. Tiwari was appointed as the Vice-Chancellor. At that juncture, a complaint was made by certain persons to the effect that there were irregularities in award of Ph.D. degree to the

Appellant. The Chancellor took note of the said complaint and by letter dated 19.12.2000 required the Vice-Chancellor to send a report in that regard. The Appellant on his part submitted explanation on 13.3.2001 to the Chancellor. In the said explanation it was stated by the Appellant that though various allegations were made in the complaint, there was no whisper to the effect that he had copied certain portions from the thesis of his guide, Dr. S.P. Norton. When the matter stood thus, the Vice-Chancellor who was not well disposed towards the Appellant, by communication dated 20.7.2002 addressed to the Chancellor that the Appellant had copied certain portions from the thesis of his guide, Dr. S.P. Norton. On receipt of the said letter the Chancellor by letter dated 29.10.2002 required the Vice-Chancellor to place the matter before the Executive Council, but, the Vice-Chancellor instead of placing the matter before the Executive Council, sent the thesis of the Appellant to the Vice-Chancellor of the Madras University for getting the same examined by two Professors. The said step was taken by the communication dated 25.2.2003. In pursuance of the aforesaid, a report was sent by the Vice-Chancellor of the Madras University on the basis of analysis made by two Professors. The Vice-Chancellor of the Respondent university apprised the Chancellor about the communication received from the Madras University and the Chancellor, in his turn directed the Vice-Chancellor to place the matter before the Executive Council. The Executive Council met on 15.4.2003. Though the issue of Ph.D. of the Appellant was not included in the agenda, yet, in its meeting the Executive Council accepted the report of the two experts of Madras University. The recommendation made therein to the effect that the thesis of the Appellant is to be resubmitted after removal of the copied portion and the two chapters should be re-written taking into account the literature available till date under a new supervisor was also accepted without following the principles of natural justice.

3. The decision of the Executive Council was assailed in Writ Petition No. 2209/2003 with a prayer for quashment of the resolution passed by the Executive Council. The learned Single Judge referred to Sections 6 and 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973 (in short "the Act"), Ordinance No. 14, addressed himself with regard to the powers of the Executive Council, and further referred to the decisions rendered in *The Dargah Committee, Ajmer Vs. State of Rajasthan*, , *Sudhir Kumar Mishra v. Municipal Corporation, Jabalpur* 1978 J.L.J. 155 : 1978 M.P.L.J. 9, *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, , *Shrawan Kumar Jha and others Vs. State of Bihar and others*, and *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, , and came to hold that the powers conferred under Clause (xxx) of Section 24 can be exercised by the Executive Council by the university; that the impugned decision is not beyond the scope of power of withdrawal of degree as engrafted under Clause (xxx) of Section 24; that the delineation by the Executive Council of the subject without the same being in the agenda did not suffer from any procedural illegality; that there has been no violation of Ordinance 14 of the University, that there has been violation of the principles of natural justice, that the Executive Council has

not applied its mind to the facts in issue and has been totally guided by the recommendation of an outside agency; that the order passed by the Executive Council is unsustainable in law; that the writ Petitioner had substantially copied certain pages from the thesis of Dr. Norton; and that the Executive Council is at liberty to take a fresh decision after following the principles of natural justice and granting reasonable opportunity of hearing to the Petitioner.

4. Mr. Ravish Agrawal, learner senior counsel appearing for the Appellant, questioning the defensibility of the order passed by the learned Single Judge has raised the following contentions:

(a) On a perusal of the hand written letter by the Vice-Chancellor of the University it is manifest that he has initiated an action against the Appellant though such an action is impermissible if the definition of the Executive Council as engrafted u/s 4(v), the powers of the University as envisaged under Sub-section (xii) of Section 6 and Section 24(xxx) of the Madhya Pradesh University Act, 1973 are read in a conjoint and purposive manner.

(b) The power vests with the Executive Council and the same can be delegated to the Vice-Chancellor if an appropriate regulation has been made by the University, as is envisaged under Sub-section (XLV) of Section 24 of the Act. In the case at hand no regulation has been made delegating the power in favour of the authority and hence, the Vice-Chancellor could not have initiated the action.

(c) In the absence of any regulation the Vice-Chancellor, by no other manner, could have exercised the power because if a statute requires a particular act to be done in a specific or specified manner, it has to be done in that manner or not at all.

(d) The Executive Council has been authorised to withdraw the academic distinction in the manner prescribed by the statute and in the case at hand no statute has been framed by the University to withdraw the distinction of the present nature.

(e) In the absence of statutes the power, even if it is assumed, is to be exercisable by the Executive Council it has to be guided by the doctrine of natural justice with all its subtlet attributes more so, when there is no express provision or inferable implication that the said principle is ostracised.

(f) If initiation of the action by the Vice-Chancellor is held to be ultra vires the subsequent actions cannot be ratified by the Executive Council and assuming the doctrine of ratification would come into play, that cannot cover the entire field.

(g) The Executive Council has failed to appreciate that the writ Petitioner has obtained the degree of Ph.D. in the year 1987 and, therefore, it was not apropos to open the same on the basis of a frivolous complaint after long lapse of time.

(h) The order passed by the Executive Council is cryptic and is bereft of reason and it has sprung into life without affording an opportunity of being heard to the

Appellant and, therefore, it has to pave the path of extinction.

(i) The approach of the learned Single Judge to the entire controversy is erroneous and, therefore, the order deserves to be set aside. Though the Appellant has made a restricted prayer but if the factual assertions and the grounds urged are appreciated in proper perspective, it would be quite clear that the Appellant, in essentiality, has sought for setting aside the order passed by the learned Single Judge and the writ Court which includes the forum hearing intra-Court appeal has the authority to mould the relief, for exercising jurisdiction under Article 226 and 227 of the Constitution of India it is to be seen that justice is done and not throttled by any kind of ultra technical measure.

5. Mr. Rajendra Tiwari, learned senior counsel appearing for the Respondent, resisting the aforesaid submissions has canvassed the following proponentments:

(i) The Vice-Chancellor has not taken action as urged by the Appellant but has only initiated an action to put in before the Executive Council which has the authority in law to take action.

(ii) If the entire process of taking action is understood in proper perspective there cannot be any iota of doubt that the Vice-Chancellor in his wisdom has taken recourse to Section 15 of the Act and regard being had to the situation thought it apt and apposite to get an opinion from the Vice-Chancellor of Madras University on the thesis before putting it for consideration before the Executive Council which is in fitness of things. The question of delegation of power to the Vice-Chancellor does not arise as he himself has not taken the decision but the decision has been taken by the Executive Council.

(iii) The submission that if the initiation is bad, the subsequent ratification does not save the same as such a concept of ratification does not cover the entire field.

(iv) The contention that the doctrine of delay and laches gets attracted is sans substratum as in the field of academic if something comes to the notice of the authority concerned it should be curved appropriately deal for the reason in such a field of leniency of any nature has no allowance or permissibility.

(v) The stand that there has been violation of principles of natural justice has been adequately dealt with by the learned Single Judge and, therefore, the order passed by him cannot be regarded to be vulnerable in law.

6. To appreciate the rival submissions raised at the Bar, it is necessary to refer to certain provisions of the Act. Section 4 of the Act deals with the dictionary facet. u/s 4(v) defines "Executive Council" to mean the Executive Council of the University and u/s 4(vi) defines "Kulpati" to mean Kulpati of the University. Section 6 of the Act deals with the powers of the University. The said provision commences with subject to the provisions of the Act the University has the powers enumerated therein. Sub-section (9) of the said section empowers the University to institute degrees, diplomas, certificates and other academic distinctions. Sub-Section 6(10) empowers the University subject to certain

conditions to grant diplomas or certificates and confer degrees and other academic distinctions on the basis of examinations, evaluation or any other method of testing. Sub-sections (11) and (12) which deals with conferral of degrees and other academic distinctions and withdrawal of the same read as under:

6. Powers of University.-

6.(11) to confer degrees and other academic distinctions on persons who have carried on research under conditions laid down in the Ordinances;

6.(12) to withdraw degrees, diplomas, certificates and other academic distinctions on approved persons in the manner prescribed in the Statutes.

7. At this juncture, it is apposite to note Section 5 provides incorporation of University. On a scanning of the said provision it is luminous that the Chancellor, Vice-Chancellor of the University, members of the Court and the Executive Council as defined u/s 4(xxx) constitute a University and the University so constituted is a body corporate by the name of respective university. Section 23 deals with the constitution of the Executive Council. Section 24 provides for the powers and duties of the Executive Council. The said power is subject to the provisions of the Act, Statutes, Ordinances of the Regulations made thereunder. Learned senior counsel for both the sides have invited our attention to Section 24(xxx). It reads as under:

24. Powers and duties of Executive Council.-

(xxx) to confer or withdraw degrees, diplomas, certificates and other academic distinctions in the manner prescribed by the Statutes.

8. Ordinance No. 14 of the Respondent University refers to Doctor of Philosophy. Clause 25 of the said Ordinance reads as under:

25. On detection of any irregularity the University shall take suitable steps to withdraw the degree as per provisions of Section 6(12) of the Adhiniyam.

9. On a bare reading of the aforesaid provisions, there can be no scintilla of doubt that the University has the authority to withdraw a degree or any other academic distinctions for good and sufficient reasons. Submission of Mr. Ravish Agrawal, in essentiality, is that if the provisions of the Statutes and Ordinance are understood in proper perspective, the power has been vested with the University and as the University vested the power with the Executive Council, the Vice-Chancellor could not have taken any action whatsoever. The learned senior counsel would further contend that when the Chancellor had directed to place the matter before the Executive Council, the Vice-Chancellor should not have exhibited anxiety and sent the thesis of the Petitioner to Madras University for independent opinion. Per contra, submits Mr. Tiwari, learned senior counsel appearing for the University that the Vice-Chancellor has not usurped any power but has only taken the preliminary action prior to putting the matter before the

Executive Council. It is highlighted by him that when an action is tested on the statutory backdrop, the provisions of the statutes are to be scrutinised and not the direction which are in the realm of periphery. In this context, he has commended us to Section 15 of the Act which deals with the powers and duties of the Vice-Chancellor. He has laid immense emphasis on Sub-section (4) of the said section. It reads as under:

15. Powers and duties to Kulpati.-- (4) If in the opinion of the Kulpati any emergency has arisen which requires immediate action to be taken, the Kulpati shall take such action as he deems necessary and shall at the earliest opportunity thereafter report his action to such officer, authority, committee or other body as would have in the ordinary course dealt with the matter:

Provided that the action taken by the Kulpati shall not commit the University to any recurring expenditure for a period of more than three months:

Provided further that where any such action taken by the Kulpati affects any person in the service of the University such person shall be entitled to prefer, within thirty days from the date on which such action is communicated to him, an appeal to the Executive Council:

Provided also that the power shall not extend to matters regarding amendment in the Ordinances, Statutes, Regulations or any matter relating to appointments.

10. In this context, it would not be inapposite to refer to Sub-section (5) which is as follows:

(5) On receipt of a report under Sub-section (4) if the authority, Committee or body concerned does not approve of the action taken by the Kulpati it shall refer the matter to the Kuladhipati whose decision thereon shall be final.

11. In this regard we may refer with profit to the decision rendered by a two Judge Bench of the apex Court in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, . Mr. Ravish Agrawal, learned senior counsel for the Appellant has placed immense emphasis on the said decision to highlight that the action which is ab initio void cannot be ratified. In the aforesaid decision the Respondent was proceeded against in a departmental proceeding and eventually his services were terminated. The order of dismissal was challenged before the High Court under Article 226 of the Constitution of India on the ground that the action taken by the Vice-Chancellor was without any authority of law inasmuch as the Vice-Chancellor had taken the decision to dismiss the Respondent-employee and the said action was rectified by the Executive Council. It is worth noting the High Court while dealing with the said facet and the order of the Executive Council had opined that the acts done by the Vice-Chancellor remain the acts without any authority or powers and that defects cannot be cured by the subsequent resolution. In the said context their Lordships referred to various provisions of Marathwada University Act, 1974, duties of the Vice-Chancellor, role of the Vice-Chancellor in a University and concept of power of delegation, law of agency,

decision rendered in *Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI)*, , and the observation made by Denning, L.J. in *Barnard v. National Dock Labour Board* 1915 All ER 1118 and 1119, and eventually expressed the view as follows:

30. These observations again are of little assistance to us since we have already held that there was no prior delegation of power to the Vice-Chancellor to take disciplinary action against the Respondent. There was no subsequent delegation either. Therefore, neither the action taken by the Vice-Chancellor, nor the ratification by the Executive Council could be sustained.

12. Mr. Rajendra Tiwari, learned Counsel for the Respondent per contra, has commended us to the decision rendered in *Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others*, , wherein a three Judge Bench was dealing with the role of the Vice-Chancellor in the context of the N.T.R. University of Health Sciences Act, 1986. In that context their Lordships scanned the provisions contained in Section 12(2) read with Section 12(3) of the Act and referred to the decision of the High Court which has expressed the view as follows:

8. The Division Bench of the High Court has set aside the judgment of the learned Single Judge on the ground that the Vice- Chancellor of the University had no power to order re-verification of the answer scripts. Section 12(2) of the Act reads as under:

The Vice-Chancellor shall be the Principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

Sub-section (3) of Section 12 provides that the Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under the Act and shall report to such authority the action taken by him on such matter. The proviso to Sub-section (3) stipulates that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Chancellor whose decision thereon shall be final.

Thereafter their Lordships opined thus:

9. A conjoint and meaningful reading of the provisions of Section 12(2) of the Act with Section 12(3) of the Act makes it evident that the Vice-Chancellor has power to take appropriate action relating to the affairs of the University, which includes conduct of examination also. The Vice-Chancellor is the conscious keeper of the University. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. Section 30 of the Act

confers power on the Executive Council to make statutes. In exercise of that power, the Executive Council has framed the Statutes of University. Clause 1 of the Statutes deals with the status of the Vice-Chancellor and his powers and duties. Sub-clause (3) of Clause 1 of the Statutes provides that it shall be the duty of the Vice-Chancellor to see that the provisions of this Act, the Statutes, Ordinances and Regulations are duly observed and he may exercise all powers necessary for this purpose. Thus, the express powers include among Ors. , the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. The wordings of Sub-clause (3) of Clause 1 of the Statute shows that a residuary power which is required to be exercised, in order to see that the provisions of the Act, the Statutes, Ordinances and Regulations observed, is vested in the Vice-Chancellor. The Vice-Chancellor has right to regulate the work and conduct of officers and other employees of the University. He has also emergency powers to deal with any untoward situation. The power conferred u/s 12(2) and 12(3) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. However, he must report to the concerned authority or body, who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carried with him certain implied powers. It is the magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil he has to act firmly and promptly to put down indiscipline and malpractice. As per the Statutes of university, the Vice-Chancellor is whole time officer of the university and by virtue of his office, is a Member and Chairman of the Executive Council and of the Academic Council. He has power to convene meetings of the Executive Council and the Academic Council.

13. On a perusal of the aforesaid decision it is luminescent that the power of the Vice-Chancellor should not be normally understood. This is so because the Vice-Chancellor is conscious keeper of the university and the principal executive and academic officer of the university. He has been vested with the powers of overall administration in certain circumstances. The decision in Marathwada University (supra), was rendered in different context. In the said decision the facts were quite different. The Vice-Chancellor has taken the ultimate decision himself. It was only ratified by the Executive Council. In Sahiti and Ors. (supra), the Vice-Chancellor had immediately constituted the committee for revaluation and the matter was considered by the Executive Council and the Executive Council had approved the action taken by the Vice-Chancellor.

14. In the case at hand, as we perceive the Vice-Chancellor has really not taken any final decision u/s 15(4) What he has done, keeping in view the power conferred on him under Sub-section (2) he thought it act to call for a report and that has been done after also calling for an explanation from the Appellant. We are inclined to think the distinction between the action taken and to obtain a

preliminary report to put up before the authority i.e. the Executive Council to take action. This is in accord with the conjoint reading of the Sub-section (2) and Sub-section (4) of Section 15. It will not be apropos to state that he could not have called for a report for the other University. It is not an opinion given by the Vice-Chancellor. In his own wisdom he thought it proper that the matter before the Executive Council to call a report from an independent agency. It was open to the Executive Council to accept the report or to reject it. Thus, the preliminary steps taken by the Vice-Chancellor prior to putting the matter before Executive Council really cannot be found fault with.

15. We will be failing in our duty if we do not take note of two citations commended upon us by Mr. Ravish Agrawal, learned senior counsel. Learned senior counsel has invited our attention to the decision rendered in *R.G. Anand Vs. Delux Films and Others*, , especially paragraphs 34, 36, 45, 46 and 47. The learned senior counsel has also drawn our inspiration from the decision rendered in *Eastern Book Company and Others Vs. D.B. Modak and Another*, , especially paragraphs 44, 45, 46, 55, 56 and 57. They really dealt with the concept of plagiarism and copyright. Be it placed on record, though we had called for the thesis papers, a part of it. We do not have adverted to the said arena for the Simon pure reason, we are absolutely conscious that the decision rests with the Executive Council and the subject has its own technicalities and we are not expert That is not the duty of Court at this juncture.

16. The next submission of the learned senior counsel is that the learned Single Judge in paragraph 22 of the order has expressed the opinion with regard to copying by the Appellant from the thesis of Dr. S.R Norton in our considered opinion, such view was totally unwarranted. When the learned Single Judge has opined that the Executive Council has not applied its independent mind and in a mechanical manner accepted the recommendations such an opinion should not have been given.

17. In view of our foregoing analysis, we proceed to refer to our conclusions in seriatim:

(i) Calling for the report by the Vice-Chancellor of the Respondent University from the Vice-Chancellor of Madras University is in the realm of preliminary steps to put the matter before the Executive Council since he has not expressed any opinion on the same.

(ii) The preliminary steps cannot be regarded as an action taken u/s 15(4) of the Act.

(iii) The Executive Council has the power to withdraw the degree as per the prescription made under Ordinance No. 14.

(iv) The Executive Council is at liberty to treat the steps taken by the Vice-Chancellor as preliminary steps and may proceed, as advised.

(v) The report obtained by the Vice-Chancellor from the Madras University is not

binding on the Executive Council of the Respondent University and it has the discretion to adopt its own procedure as per law.

(vi) The Executive Council, if decides to proceed further, shall afford an opportunity of hearing to the Appellant who would be at liberty to contend apart from other aspects that such an action is defeated by doctrine of delay and laches.

(vii) The Executive Council should bear in mind that the role ascribed to it under the Act is sacrosanct and hence, act with utmost objectivity and sacred responsibility.

(viii) This Court has not expressed any opinion on the thesis written by the Appellant.

(ix) The observations made by the learned Single Judge in paragraph 22 of the order impugned as regards the thesis of the Appellant as well as that of Dr. S.P Norton, being unwarranted, is quashed.

18. Consequently, the writ appeal is allowed to the extent indicated hereinabove. There shall be no order as to costs.