

(2008) 09 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2209 of 2003

K.S. Gaharwar

APPELLANT

Vs

Barkatullah Vishwavidyalaya

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Madhya Pradesh Universities Act, 1973 — Section 6

Citation : (2009) 1 MPLJ 143

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : R.N. Singh and A.J. Pawar, for the Appellant; Mahendra Pateria for Respondents, Rajendra Tiwari and P.K. Kaurav for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

Short facts leading to the petition are that the petitioner submitted his research thesis on "THE EFFECT OF THE LATEX OF OPUNTIA COECINELIFERA ON THE FETILITY OF FEMALE ALBINO RAT WITH SPECIAL REFERENCE TO UTERINE MAST CELLS" in the Barkatullah Vishwavidyalaya Bhopal in the year 1987, which was duly accepted and the Degree of Ph.D. (Doctor of Philosophy) was awarded to him in the same year. At the time of awarding such Degree of Ph.D., its matter was governed by the provisions of Ordinance No. 14 of the respondent University which is on record as Annx. P/4. As regards petitioner's service career, it may be noted that, he was promoted to the post of Deputy Registrar of respondent University on 28-3-1991. He was, thereafter, sent on deputation to University Grant Commission (hereinafter referred to as "UGC for brevity) as Joint Secretary and was made In-charge of State of Madhya Pradesh and Rajasthan. Period of deputation was extended upto 30-6-2000. During this period, he was promoted to the post of Registrar vide Annx. P/7 dated 1-6-2000. In the same year, his name came up for consideration for appointment to the office of Vice Chancellor of respondent University by a Committee headed by retired Hon'ble

Chief Justice Shri B.M. Lal and nominee of UGC and Executive Council constituted for this purpose by the Chancellor. His name was allegedly recommended and included in the panel submitted by the Committee to the Vice Chancellor. Petitioner was not appointed on the said post on account of expiry of the period of deputation. He was again posted as Registrar of the respondent University vide Annx.P/8 dated 10-7-2000. Ultimately, the petitioner was transferred on deputation to Higher Education Department vide Annx.P/11 dated 19-3-2001 where he joined as Additional Secretary.

There were complaints made to the Hon'ble Governor of the State that the petitioner obtained the Degree of Ph.D. in illegal and fraudulent manner. He had allegedly copied certain pages of his thesis from the thesis of his guide Dr. Norton. Additional Secretary of the Hon'ble Governor requisitioned the report of the Vice Chancellor of respondent University vide Annx.P/10 dated 19-9-2000. Copies of complaints were sent to the petitioner, who sent his reply as contained in Annx.P/12 dated 13-3-2001. Ultimately, the thesis of the petitioner was sent for verification through two experts who gave their opinion that certain pages in the thesis of the petitioner were copied substantially from the thesis of Dr. Norton. Matter was directed to be placed before the Executive Council of the respondent University to take a decision in the matter. The Executive Council took a decision on 16-4-2003 as revealed in Annx.P/16 that the thesis of the petitioner is to be resubmitted after removal of the copied portion and two chapters (copied chapters) would be rewritten taking into account the literature available till date under a new supervisor. Hence, this petition has been preferred for quashment of the impugned decision taken by the Executive Council against the petitioner vide Annx.P/16.

Respondent submitted its return stating therein that the petitioner was found to have copied two chapters in his thesis from the thesis of his guide Dr. Norton. Accordingly, the Executive Council of the University has taken a decision that the thesis may be resubmitted after rewriting the said two chapters in place of the copied portion under his new supervisor. It is stated in the return with elaboration that there were specific complaint as revealed in Annx.R/3 dated 20-7-2002 that the petitioner had copied substantially (98%) from page 5 to page 35 in Chapter 2 & 3 of his guide Dr. Norton. Thesis of the petitioner as well as that of Dr. Norton were sent to two examiners along with the alleged report vide letter dated 25-2-2003. The two examiners, namely, Professor T. Subramoniam and Professor M. Arumagam, both from the Department of Zoology, Madras University, opined that as per Chapter-III the histological description of the female reproductive tract, several portions were copied directly from Dr. Norton's thesis without referring to Dr. Norton's work. In continuation of their report, the said two professors further submitted conclusions on 11-3-2003 recommending thereby that the thesis of the petitioner is to be resubmitted after removal of the copied portion and the said portion would be rewritten taking into account the literature available till date, under a new supervisor. This supplementary report though is undated carries on it the seal of

11-3-2003. Finally, it is submitted that the Executive Council has taken a proper decision since the petitioner is found to have copied from the thesis of his guide Dr. Norton, while submitting his own thesis for Ph.D. This was duly detected and the decision vide Annx.P/16 has been rightly taken by the Executive Council.

Heard the arguments of Shri R.N. Singh, learned Senior counsel for the petitioner and Shri Mahendra Pateria, learned Advocate for respondent University, which have been considered in the light of pleadings and material on record and the legal provisions governing the situation.

Shri R.N. Singh, learned Senior Advocate contended that the Degree of Ph.D. was conferred in the year 1987 which cannot be disturbed after such a long span of time. Once the thesis of Ph.D. is submitted, examined and accepted, the student (petitioner) cannot be asked to resubmit the thesis after rewriting the allegedly copied two chapters. This according to him is beyond the powers of the Executive Council. This apart, he contended that the decision of the Executive Council to the impugned extent has been taken without affording an opportunity of hearing to the petitioner. Thus, there being flagrant violation of principles of natural justice, the impugned order is not sustainable in law.

Shri Mahendra Pateria, learned counsel for the respondent countered the said submissions by contending that the petitioner is found to have copied two Chapters in his thesis of Ph.D from the thesis of his guide Dr. Norton. This being so, the Executive Council is well justified in taking a decision after duly comparing and verifying the copied portion of the thesis of petitioner.

Section 6 of the Madhya Pradesh University Act, 1973 (hereinafter referred to as "the Adhiniyam" for brevity), lays down the Powers of University. Clause 11 and 12 of section 6 empower it to confer degrees as well as to withdraw the degrees, which read as under :-

(11). to confer degrees and other academic distinctions on persons who have carried on research under conditions laid down in the Ordinances; (12). to withdraw degrees, diplomas, certificates and other academic distinctions for good and sufficient reasons.

Thus, undoubtedly, the respondent University has a power to confer the degrees of Ph.D. and to withdraw it as well for good and sufficient reasons.

Section 24 of the said Adhiniyam lays down the powers and duties of the Executive Council. The Executive Council shall have the relevant following powers and perform the following duties, namely :-

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

Shri R. N. Singh, learned Senior Advocate contended that no manner for withdrawal of the Degree of Ph.D.. is prescribed in the Statute, therefore, the Ph.D. awarded to the petitioner in the year 1987 cannot be withdrawn. Moreover,

there is no provision empowering the Executive Council or the respondent University to ask a student to rewrite any chapter contained in his thesis of Ph.D. after the acceptance of the thesis and conferral of the Degree of Ph.D. Impugned decision does not amount to withdrawal of the Degree of Ph.D and the same being beyond the powers vested in the Executive Council is not sustainable in law.

Shri Mahendra Pateria, learned counsel admitted that the manner for withdrawal is not provided in the Statutes. He further admitted that the manner for withdrawal is also not provided in the Adhiniyam or the Ordinances issued thereunder.

It is a trite law that whenever a manner is prescribed in a Statute, the same is to be strictly adhered to. Any action without following in the prescribed manner will not be sustainable law. However, it is not a legal proposition that, if, a manner for performing an act is not provided at all, the same cannot be performed despite empowerment for the same under the substantive provision. Clause (12) of section 6 empowers the University to withdraw degree of Ph.D. for good and sufficient reasons. Similarly, clause (xxx) of section 24 empowers the Executive Council to withdraw the Degree of Ph.D. Thus, un-disputably, there is a substantive provision in the Adhiniyam for withdrawal of the Degree of Ph.D. This substantive provision cannot be made redundant, merely, on account of absence of the prescribed manner. The authorities duly empowered under law are well within their powers to exercise the said powers in a reasonable and rational manner which is not prohibited by law, I may profitably refer to the Supreme Court decision in the case of *The Dargah Committee, Ajmer Vs. State of Rajasthan*, wherein it has been observed "if the rules are not prescribed then all that can be said is that there is no form prescribed for issuing a demand notice; that does not mean that the statutory power conferred on the Committee by section 222 (1) to make a demand is unenforceable".-

Contention of learned Senior Advocate Shri R.N. Singh that power under Clause (xxx) of section 24 cannot be exercised in the absence of a prescribed manner, is misconceived in view of the Full Bench decision of this Court in the case of *Sudhir Kumar Mishra v. Municipal Corporation, Jabalpur*, 1978 MPU 9. I may successfully quote paragraph 7 of the said decision as follows:

7. Shri Mukherji appearing on behalf of respondent No. 1 Municipal Corporation, argued that no rules prescribing the mode of consultation with the State Public Service Commission having been framed, the second and third provisos to sub-section (1) of section 58 have not yet come into operation. It is not possible to accept this contention. The provision for consultation so made in section 58(1) is complete in itself and capable of operation without the aid of any further rules to bridge the gap. For this reason, there is no need or room to take the view that unless rules are framed specifying the details of the mode of consultation till then this provision cannot operate. The words "in the manner prescribed" occurring in the second proviso only mean that if and when rules are framed laying down the details of procedure for consultation, they will be followed. Till then the

consultation with the Commission will be made in a reasonable manner thought fit by the Corporation. Nothing more was required to be prescribed by the law when it laid down the need of consultation with the Commission as a necessary requirement of a valid appointment u/s 58(1). It is not shown to us as to how the consultation with the State Public Service Commission cannot be made without rules being framed regulating the details of procedure and what is that thing, if any, that remains to be laid down to enable an effective consultation with the Commission.

In the light of the aforesaid, this Court is of the opinion that the powers under clause (xxx) of section 24 are indeed exercisable by the Executive Council of the respondent-University.

Shri R. N. Singh, learned Senior Advocate/ further contended that the impugned direction for rewriting certain pages after removal of the alleged copied portion does not amount to withdrawal of Ph.D and is beyond the powers conferred by virtue of Clause (xxx) of section 24. This, too, did not impress this Court because the impugned decision is clearly a step towards withdrawal of Degree of Ph.D. If a student does not resubmit the thesis after rewriting the copied chapters, the Executive Council of respondent University would be well competent to take a further decision regarding withdrawal of the Degree of Ph.D. This being so, a direction/order in the impugned nature is implicitly covered by the power of withdrawal and it cannot be said that the impugned decision is beyond the scope of powers of withdrawal conferred by virtue of Clause (xxx) supra.

Next contention of learned counsel for the petitioner is that the Executive Council has taken up the issue against the petitioner without inclusion of the item pertaining to it in the agenda. His submission will not detain this Court any more for the reason that it has been clearly mentioned in Annx.P/16 that the relevant item was taken up for consideration after seeking the permission from Chairman of the Executive Council. It has been further contended that the examiners were not appointed for verification of petitioner's thesis in accordance with section 24 of the Adhiniyam. This is equally misconceived because a provision has been made for appointment of examiners for the purposes of Ph.D. in Ordinance No. 14 which is not shown to have been violated.

Ordinance No. 14 deals with the Degree of Doctor of Philosophy. It clearly provides that 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. Although, the Degree of Ph.D. was awarded in the year 1987 to the petitioner, complaint was made in the year 2000 that certain chapters of the thesis of the petitioner were copied from the thesis of his own guide, namely, Dr. Norton. This was found to be correct. Surprisingly, the petitioner has nowhere averred in the writ petition that he had not copied the said two chapters from the thesis of Dr. Norton. There is no specific averment in the writ petition or on record in any manner that alleged two chapters were not copied from the thesis of Dr. Norton or they did not tally substantially with the contents of Dr. Norton's

thesis. The averments are only to the extent of mere denial of allegations. Even before this Court, it was not specifically contended that the said two chapters do not tally with the thesis work of Dr. Norton.

Last contention of Shri R.N. Singh, learned Senior-Advocate has definitely substance that the impugned decision has been taken in violation of principles of natural justice. It may be seen that the Degree of Ph.D. was awarded long back in the year 1987 in due manner. After conferral of such degree, definitely, a right did accrue in favour of the petitioner who acquired the status of Ph.D. holder. Neither the respondent-University nor the Executive Council did issue any show cause notice to the petitioner to explain about the allegations with regard to copying from the thesis of Dr. Norton.

Shri Mahendra Pateria, learned counsel for the respondents drew attention of this Court to Annx.P/12 which is a reply by the petitioner with regard to complaints. It may be seen that Annx.P/12 was sent by the petitioner in response to a letter received by him from Hon'ble Governor of the State of Madhya Pradesh. Respondent University or the Executive Council did not serve the petitioner with any notice inviting thereby his explanation about the allegation or for the proposed impugned action. Impugned action may, obviously, have an ill-consequence of withdrawing the Degree of Ph.D. Petitioner who acquired the Degree of Ph.D. in the year 1987 cannot be legally deprived of the same without granting opportunity of hearing.

Apex Court in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, has clearly observed that it is well settled that no order to the detriment of a person can be passed without complying with the rules of natural justice. Requirement of fairness in administrative action was considered by the Apex Court in the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, wherein observation to the following effect has been made :-

An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice." In paragraph 22, it has been further observed :- "An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim audi alteram partem. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. " Discussion on the point is summed up by the Apex Court as under :- "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.

On the aforesaid parameters, it is concluded that the impugned order contained in Annx.P/16 is bad in law and, accordingly, unsustainable in the absence of a notice to show cause having been served by the respondent University or its Executive Council with regard to the allegation about copying by the petitioner in his Ph.D. thesis.

Apart from the aforesaid, it may be seen that the Executive Council does not seem to have taken a decision vide Annx.P/16 by applying its own mind. The two examiners who were asked to make verification of the complaint about copying from the thesis of Dr. Norton have recommended the punishment vide letter dated 11-3-2003 in the following language :

(1) Thesis of Mr. K. S. Gaharwar is to be resubmitted after removal of the copied portions and these two matters should be rewritten taking into account the literature available till date, under a new supervisor.

(2) The guide Dr. Norton shall be banned from taking new student of Ph.D. guidance for next three years.

These two recommendations are reproduced verbatim in Annx.P/16 which reflects non-application of mind by the Executive Council. Duty of the two examiners was to give their findings about the similarity/identity of the alleged copied portion in the subject thesis with that of Dr. Norton's thesis. It was none of their business to recommend/suggest "the punishment/action against the petitioner. Executive Council which is invested with a power to take decision is obliged to take it in an independent manner according to its own wisdom without getting guided by any outside authority about nature on quantum of punishment. In the present case, the Executive Council has virtually reproduced in verbatim the action proposed by the two examiners of Madras University and is, thus found to have not exercised its discretion/wisdom at all. It is again a trite law that when an authority is invested with a power to take decision, such decision shall not be affected by any outside agency.

I may successfully refer to the Supreme Court decision in the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, wherein it has been observed that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with instructions of another authority, then it will be a case of failure to exercise discretion altogether. In view of the aforesaid, the exercise of power against the petitioner vide Annx.P/16 is found to be on the basis of external dictation made by two examiners of Madras University which amounts to failure to exercise the discretion altogether by the respondent University or its Executive Council. Therefore, also the same is not sustainable in law.

In the result, the writ petition succeeds and is, hereby, allowed merely to the extent of setting aside the decision about the petitioner contained in Annx.P/16 for the reasons stated hereinabove. However, since certain pages of thesis of the petitioner are found to have substantially been copied from the thesis of Dr. Norton and certain pages are further found to have been fully copied by the independent examiners, this Court is of the opinion that the respondent University and Executive Council shall have liberty to take up the matter afresh in accordance with law. They would be empowered to take appropriate action in the matter after following the principles of natural justice and granting reasonable opportunity of hearing to the petitioner.

No order as to costs.