
(2007) 04 AHC CK 0204
In the Allahabad High Court

Manoj Kumar Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 30

University Grants Commission Act, 1956 — Section 12, 2, 23, 3, 5

Citation : (2007) 4 ADJ 286 : (2007) 7 AWC 7640 : (2007) 3 UPLBEC 101

Hon'ble Judges : V.C. Misra, J;Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The petitioner is an employee of the Allahabad Agricultural Institute Deemed University. From the Constitution of the said institute it appears that the same is a Christian University of Rural Life. According to the petitioner, the institute has been declared as Deemed University under the provisions of Section 3 of the University Grants Commission Act, 1956 (hereinafter called as "Act, 1956) vide notification dated 15th March, 2000. There is a Vice-Chancellor with full time salary to be appointed by the President from the panel of three names suggested by a search committee The committee comprises nominee of the President of the institute, nominee of the State Government and nominee of Chairman of the University.

2. The necessary bye-laws say that tenure of the Vice-Chancellor to hold the office is for a period of five years and he shall not be eligible for re-employment. However, the Vice-Chancellor can continue with the office not more than the period of six months beyond the stipulated period. From the other records we find that a Vice-Chancellor shall retire during the tenure of his office in the institution if he completes the age of 65 years.

3. Further according to the petitioner, the present Vice-Chancellor is perpetuating his continuation in the post despite expiry of the tenure without any authority of law. Union of India is not constituting any search committee for appointment of a

now Vice-Chancellor in arbitrary manner. Salary for the post of Vice- Chancellor is funded by the State Government illegally although the term has expired.

4. From the Annexure-4 to the writ petition, being Article XIX of Memorandum Association as submitted by the institute to the University Grants Commission (hereinafter in short called as "UGC"), it appears as follows:

Ordinarily the Vice Chancellor shall superannuate at the age prescribed for teaching staff from time to time, but the Board of Directors may extend his appointment for a maximum period of five more years or up to 65 years of age which ever is higher.

5. It also appears from Annexure-6 to the writ petition that a letter was written by the authority under the UGC to the Chancellor of the Institute/ University that even though the University is minority institution, such status does not give it right to surpass the authority of the statutory bodies including that of UGC. The University is still not a registered society as is the primary requirement as per the guidelines. The memorandum of association and rules are also not in conformity with the model prescribed by the UGC. The UGC has already pointed out these discrepancies to the Institute with a request to set them right. But no compliance has been reported so far. On 27th September, 2005 a letter was written by an authority of the UGC to the Vice-Chancellor on a clarification sought by a Member of Parliament and to request him to inform UGC regarding constitution of such committee for selection of next Vice-Chancellor of the said university.

6. However, from the record it appears that on 07th October, 2005 clarification has been made by the Registrar of the University to the Secretary, UGC making detailed discussion about the state of affairs, from which various important informations came out. It appears that the memorandum and articles of association of the Board of Directors of the Allahabad Agricultural Institute and Constitution of the University were accepted by the UGC/Ministry of Human Resources Development prior to declaring the Institute as Deemed University. it was specifically stated in the Constitution that the post of Director/ Principal shall be upgraded as Vice-Chancellor till his superannuation. Secondly, appointment of the Vice-Chancellor was previously challenged in a writ petition, being Writ Petition No. 44533 of 2002, Ram Narain Pande v. Rajendra B. Lal and Ors. before this High Court, which was dismissed by a Division Bench on 21st October, 2002. The order was challenged before the Supreme Court when the writ petition was dismissed by saying that the same is entirely misconceived. It was stated therein that issuance of writ of quo warranto being proceedings in rem, the matter with regard to appointment of Vice-Chancellor has attained finality. It was said that the tenure of the present Vice-Chancellor is alleged to have expired on 15th March, 2005. The guidelines have been framed in the year 2002 much after the Allahabad Agricultural Institute was declared as Deemed University. The guidelines are wholly non-statutory in character and do not bear any statutory insignia. Further these guidelines have retrospective effect and are, accordingly,

not applicable to Allahabad Agricultural Institute-Deemed University.

7. As against a preliminary objection about the locus standi of the petitioner, who happened to be an employee of University working as a Clerk at the Central Library of the University, Mr. Rakesh Pande, learned Counsel appearing for the writ petitioner, cited certain judgments in support of his contentions. From paragraph-5 of the five Judges' Bench judgment of the Supreme Court reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, it appears that Article 226 of the Constitution of India confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. From paragraph-7 of a five Judges' Bench judgment of the Supreme Court reported in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, we find as follows:

(7) As Halsbury has observed:

An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds, the same said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public office against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court,

inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

8. From paragraph-28 of the Full Bench judgment of the Punjab and Haryana High Court as reported in Balbir Singh Grewal and Another Vs. G.D. Tapase and Others, it appears that the same was cited to bring factual aspect nearer to this case. It appears that the petitioner therein is an educationist and thus has interest in the universities and other educational institutions in the State. They, therefore, feel concerned if the appointment of the Vice-Chancellor of a University in the state has not been made properly. In coming to conclusion, the Court had relied upon the ratio of the judgment of the Supreme Court reported in S.P. Gupta Vs. President of India and Others, In dealing with such judgment the Court held that in such cases a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission. Learned Counsel ultimately contended that rule of locus standi is diluted when writ is in the nature of quo warranto. It is not water tight compartment.

9. Mr. Ravi Kant, learned Senior Counsel appearing in support of the contesting University, contended before this Court that the writ of quo warranto is by nature public interest litigation. He has heavily relied upon a judgment of the Supreme Court reported in B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, to establish various aspects. A petition praying for a writ of quo warranto being in the nature of public interest litigation is not maintainable at the instance of a person, who is not unbiased. Writ of quo warranto does not lie if the alleged violation is not of a statutory provision. High Court is not called upon to exercise certiorari jurisdiction. An appointment can not be challenged by one, who is himself not qualified to be appointed. In this case, there is no statutory violation, therefore, writ of quo warranto does not lie. The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest to the public or even of their own to protect. Evaluation of comparative merits of the candidates can not be gone into a public interest litigation, and only in a proceeding initiated by an aggrieved person it may be open to be considered. Memorandum running counter to the statutory provisions are ineffective and in any event can not be enforced in a quo warranto proceedings. Writ of quo warranto can not be issued unless there is clear violation of law.

10. Learned Counsel further contended that the tenure of service of the Vice-Chancellor is alleged to have completed by 14th March, 2005, therefore, what is the necessity of filing this writ petition on 23rd November, 2006 after about one

and half years from such date is quite unknown. Annexure-2 to the writ petition, whereunder the tenure of Vice-Chancellor has been shown, is a proposal, which has no statutory force to have to be enforced in the eye of law.

11. In the aforesaid judgment, cited by him, ratio of other cited judgments being : AIR2001SC3435 B.R. Kapur v. State of T.N. and Anr. Ghulam Qadir Vs. Special Tribunal and Others, 2003 (4) SCC 712 High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. and Dr. B. Singh Vs. Union of India (UOI) and Others, have been considered. Upon considering the case of B.R. Kapur (supra) in paragraph-92 of B. Srinivasa Reddy (supra), the Supreme Court distinguished such judgment by saying that such judgment is wholly inapplicable to this case inasmuch as the issue therein did not pertain to the appointment under Service Rules. In the said case, no question relating to issuance of writ of quo warranto pertaining to service jurisprudence was involved. There is no legal postulation in such judgment which seeks to restrain any interested party from challenging a judgment. Again in paragraph-54 of B. Srinivasa Reddy (supra) the judgment of Ghulam Qadir (supra) was considered. From the quoted portion of the judgment of Ghulam Qadir (supra) it appears that the Supreme Court held that in a case of writ petition before the High Court orthodox rule of interpretation regarding the locus standi of a person to reach the Court at a stage should be liberally considered, but then such judgment held that if a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be Slaving source in some statutory provision, the petition filed by such a person can not be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property. The Supreme Court in me judgment under consideration discussed the aforesaid referred judgment and said that it is settled law that writ of quo warranto does not lie if the violaition is not of a statutory nature.

12. Therefore, from the aforesaid interpretation we have come to know that writ of quo warranto will lie only when there is violation of any statutory provision. The same can not be challenged by a person not qualified for the post. Such person or persons are said to be strangers to the cause. In dealing with the judgment of High Court of Gujarat and another (supra) in paragraph-57 of B. Srinivasa Reddy (supra) again the Supreme Court said that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. In paragraph-52 of the aforesaid judgment while dealing the judgment of Dr. B. Singh (supra) the Court has adopted the view by saying the relevant quoted portion from Dr. B. Singh (sup. a) in the case of B. Srinivasa Reddy (supra) as follows, which will give indication that what are to be criteria for the purpose of bringing a writ of quo warranto:

The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being vague and indefinite. The information should show gravity and

seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest to the public or even of their own to protect.

13. It is to be remembered in this context that on the self-same point a writ petition was previously dismissed by a Division Bench of this Court and following the same the Supreme Court has already taken the view that such type of writ petition is misconceived in nature. The entire situation has been explained by the appropriate authority of the University to the appropriate authority of the UGC. Now the ball is in the court of UGC to take an appropriate step on the basis of the explanation. How the present petitioner being a Clerk at the Central Library of the University can become unbiased interested about continuance of the present incumbent in the office of the Vice-Chancellor and how it affects his interest, is totally unknown to this Court. He has acted as an interloper.

14. The following references are in connection with the public interest litigation but by nature there is hardly difference between writ of quo warranto and public interest litigation. In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, the earlier two judgments reported in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, and *Janata Dal Vs. H.S. Chowdhary and Others*, were considered and it was held that a person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. Without prejudice to the earlier submissions, Mr. Ravi Kant, learned Senior Counsel, in the light of the judgment reported in *Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another*, which also considered the earlier ratio of the Supreme Court judgment reported in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, contended that it is also to be seen by the Court as to whether the University can be said to be State or other authorities in the Court of law since the same is a minority institution, which is to be governed by its own Constitution, Bye-laws, Rules and Regulations in connection thereto. However, according to us, it is an incidental question to the present discussion. In *R and M Trust Vs. Koramangala Residents Vigilance Group and Others*, the Supreme Court considered the locus standi and delay. The Supreme Court held that this sacrosanct jurisdiction of public interest

litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. Delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. The Supreme Court can not disturb the third-party interest accrued on account of delay. Even otherwise also why should the Supreme Court come to the rescue of a person who is not vigilant of his rights? Locus in such public interest litigation is a very relevant factor and the Court should always inquire into the locus of person before entertaining such petition.

15. Gurpal Singh Vs. State of Punjab and Others, also followed the ratio of Dr. B. Singh (supra). In Kushum Lata Vs. Union of India (UOI) and Others, the Supreme Court also discouraged the maintainability of the public interest litigation from the point of locus standi. In Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others, per majority it was held that public interest litigations are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal battle.

16. Factually if this case is seen, it will be understood that the alleged expiry of tenure of service was likely to happen on 14th March, 2005 and the writ petition is filed only on 23rd November, 2006. Therefore, we can not preclude ourselves from thinking that there might be unscrupulous activity behind the veil. In Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, a question arose before the Supreme Court whether the Board of Control for Cricket in India (BCCI) is the State or not, where per majority it was held that it is not the State. In holding the same, the Supreme Court held the following:

- (1) The Board is not created by a statute.
- (2) No part of the share capital of the Board is held by the Government.
- (3) Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.
- (4) The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.
- (5) There is no existence of a deep or pervasive State control. The control, if any, is only regulatory in nature as applicable to other similar bodies, but the control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
- (6) The Board is not created by transfer of a government-owned corporation. It is an autonomous body.

17. Possibly the learned Counsel intended to argue the incidental question of maintainability of the writ petition apart from question of locus standi.

18. In this context, we have gone through the Constitution of the Allahabad

Agricultural Institute-Deemed University. It appears from such Constitution that the State Government of Uttar Pradesh issued an Order No. 4894 15-80 (11) dated 12th September, 1980 recognizing the Allahabad Agricultural Institute as a Christian Minority Institution within the meaning of Article 30(1) of the Constitution of India. It is further available that by an Order dated 04th January, 1990 in a Civil Misc. Writ Petition No. 7665 of 1979 a Division Bench of the High Court decided that the institution is a minority institution. By an order dated 07th December, 1991 a five Judges Bench of the Supreme Court in Civil Appeal of AAI No. 1831-41 of 1989, and Civil Appeal No. 1786 and 2829 of 1989 held modifying the judgment of the High Court by saying that the institution is minority professional institute. It will prefer candidates belonging to Christian community in conformity with the University standards. The admission of the Christian candidates should not exceed fifty percent of the annual admission, and remaining fifty percent purely on merits. However, the question which has been raised about the minority and applicability of the writ jurisdiction in the case of the minority, is also secondary to the question of locus standi, which is to be considered by this Court primarily.

19. Mr. Ashok Mehta, learned Counsel appearing for the UGC, has contended before this Court that as per the Act, 1956, the authority under it is empowered to take an appropriate action at an appropriate situation and nobody else. Section 2(f) of such Act is as follows:

(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

In connection thereto, Section 6 of Act, 1956 is important to be quoted hereunder:

6. (1) A person appointed as Chairman, Vice-Chairman or other member after the commencement of the University Grants Commission (Amendment) Act, 1985 shall, unless he sooner becomes disqualified for continuing as such under the rules that may be made under this Act,-

(a) in the case of Chairman, hold office for a term of five years or until he attains the age of sixty-five years, whichever is earlier;

(b) in the case of Vice-Chairman, hold office for a term of three years or until he attains the age of sixty-five years, whichever is earlier;

(c) in the case of any other member, hold office for a term of three years:

Provided that--

(i) a person who has held office as Chairman or Vice-Chairman shall be eligible for further appointment as Chairman, Vice-Chairman or other member, and

(ii) a person who had held office as any other member shall be eligible for further

appointment as Chairman, Vice-Chairman or other member:

Provided further that a person who has held office for two terms, in any capacity, whether as Chairman, Vice-Chairman or other member [excluding a member referred to in Clause (a) of Sub-section (3) of Section 5], shall not be eligible for any further appointment as Chairman, Vice-Chairman or other member.

(2) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by the Central Government.

(3) If a casual vacancy occurs in the office of Chairman, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, the Vice-Chairman holding office as such for the time being shall, withstanding anything containing in Sub-section (2) of Section 5, act as the Chairman and shall, unless any other person is appointed earlier as the Chairman, hold the office of the Chairman for the remainder of the term of office of the person in whose place he is to so act:

Provided that where no Vice-Chairman is holding office at the time, when the vacancy in the office of the Chairman occurs, the Central Government shall, notwithstanding anything contained in Sub-section (2) of Section 5, appoint any other member to act as the Chairman and the person so appointed shall not hold the office of the Chairman for a period exceeding six months.

(4) If a casual vacancy occurs in the office of the Vice-Chairman or any other member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the member so appointed shall hold office for a term of three years.

(5) The office of the Chairman and the Vice-Chairman shall be whole-time and salaried and subject thereto, the terms and conditions of service of the Chairman, Vice-Chairman and other members shall be such as may be prescribed.

20. Section 12 of Act, 1956 prescribes functions of the Commission, which includes recommendation to a University, measures necessary for improvement of the University education and advise the University upon the action to be taken for the purpose of implementing such recommendation. Clause (j) of Section 12 speaks to perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions. As per Section 23, no institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever.

21. In reply, Mr. Pande contended before this Court that by virtue of the

notification issued by the Government of India the Allahabad Agricultural Institute becomes Deemed University with effect from 15th March, 2000 and as per the letter of the appropriate authority of the State dated 13th November, 2001 the post of Director became Vice-Chancellor and his salary has been fixed under the letter. According to him, the office of the University by and large is a public office and although the Constitution, Bye-laws, etc. may not have statutory force but have binding force.

22. We are of the view that both the annexures, being Annexures-1 and 3 above, speak about information of the Union of India and the State with regard to the decision by the UGC. The Government is only communicator of the same for the purpose of declaration and keeping a parity of salary. It has been specified that the necessary increment will not be separately given from the public exchequer but whatever grants are given to the institute, from there it will be adjusted. Hence, it is doubtful to hold that the salary of the Vice-Chancellor would be paid from the public exchequer directly.

23. From the totality of the aforesaid discussions the following conclusions can be drawn:

- (a) Locus standi of the petitioner is doubtful.
- (b) Credentials of the petitioner are not at par with an educationist.
- (c) Petitioner's approach can not be seem to be unbiased.
- (d) The petitioner himself is not qualified to be appointed on such post.
- (e) The petitioner is a stranger having no right to such post.
- (f) Admittedly there is no statutory violation, which can be challenged.
- (g) Writ Court should be slow to pronounce upon the matter.
- (h) Writ of quo warranto can not be issued unless there is a clear violation of law.
- (i) Writ of quo warranto pertaining to service jurisprudence can not be held to be maintainable.
- (j) The petitioner can not be said to be vigilant litigant.
- (k) Continuance of the present incumbent as Vice-Chancellor of the Institution as de facto or de jure, is within the domain of the appropriate authority including U.G.C for their determination.
- (l) Writ Court is not made to intervene with the internal management of the minority institution only on any binding force not having statutory force.
- (m) This writ petition is a successive writ petition on the self same cause when not only the earlier has been dismissed by this High Court but also by the Supreme Court holding that the writ petition is misconceived in nature.

24. In totality, we do not find any merit to pass an affirmative order in favour of the petitioner. Hence, the writ petition is dismissed.

25. However, no order is passed as to costs.