

(2022) 05 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13891 Of 2022

Nitendra Vajpayee

APPELLANT

Vs

State Of M.P

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 246(2)
Madhya Pradesh Vishwavidyalaya. Adhiniyam, 1973 — Section 13, 13(2), 13(2)(i),
13(3), 13(6), 23

Citation : (2022) 05 MP CK 0052

Hon'ble Judges : Vivek Rusia, J; Amar Nath (Kesharwani), J

Bench : Division Bench

Advocate : Sumeet Samvatsar, Pushyamitra Bhargav

Final Decision : Dismissed

Judgement

Vivek Rusia, J

The petitioner has filed this petition as pro bono litigant challenging the constitutional validity of the gazette notification dated 23.01.2020 issued by the respondent no.1 whereby M.P. Vishwavidyalaya (Dwitiya Sanshodhan) Adhiniyam 2019(Act No.6/2020) has been enacted by which in section 13(2)(i) and section 13(3) of M.P. Vishwavidhyala Adhiniyam, 1973 (hereinafter referred as Act of 1973) the word "Executive Council" is substituted by the word "State Government".

1. The petitioner is claiming himself to be an academician in the field of education and a practising advocate. According to him, he is a public-spirited person and interested in the maintenance of high slandered education. According to him by way of the impugned amendment, the university will not be in a position to maintain a high standard in the matter of appointment of a vice chancellor (Kulpati). Section 13 of the Act of 1973 prescribes the procedure of appointment of Kulpati and as per the un-amended provision and UGC regulation of 2010, the committee for appointment of Kulpati consists of one nominated

person elected from the Executive Council, one person nominated by the chairman of the University Grants Commission and one person nominated by the Chancellor (Kuladipati). It is further submitted that the Executive Council is defined under section 23 of the Act of 1973. The Executive Council is nothing but a group of academicians such as Deans, Professors, Principals and Secretaries of the Government of Madhya Pradesh or Higher Education. It is further submitted by the learned counsel Shri Samwaskar that now the state government by way of amendment in section 13(2)(i) and section 13(3) of the Act has replaced the word Executive Council by the word State Government. It means that henceforth the Executive Council of the concerned university will have no say in the matter of selection or appointment of Kulpati. This power has been snatched and taken away by the State Government to defeat the independent power of the Executive Council to work for the betterment of the education in the university. No useful object is sought to be achieved by making such an amendment in section 13 of the Act. It is further submitted that clause 7.3.0 of the UGC Regulation 2010 highlights the importance of the search committee and mandates the inclusion of such members who are persons of eminence in the sphere of higher education. The apprehension of the petitioner that the state government may send representatives without verifying his expertise or experience in the field of education and selection of Kulpati or he may not be an eminence in the sphere of the higher education hence the petitioner has approached this court under such apprehension challenging the constitutional validity of the aforesaid notification.

2. The respondents have filed the return by submitting that the apprehension of the petitioner is baseless and that by way of the impugned amendment the state government has taken away the autonomy of the university in the matter of appointment of Kulpati. It is further submitted that the petitioner has no locus standi to file the writ petition challenging the constitutional validity of the impugned notification as he is nowhere connected with the functioning of the university. The present petitioner appears to be a sponsored litigation on behalf of the persons who are aspirants to become vice-chancellor in Vikram University Ujjain. It is further submitted that the subject of higher education and the university falls at entry no.25 of the list 3 (concurrent list appended to the Schedule VII of the constitution) in terms of Article 246 (2) of the constitution. Therefore, it is well within the competence of jurisdiction of the State Government to legislate on the said subject. The amendment has been made strictly in conformity and consonance with clause 7.3.0 (II) of the UGC Regulation, 2010 which specifically provides that the search committee shall be a team of the person of eminence in the sphere of higher education and shall not be connected in any manner with the university concern or its college, therefore, by way of amendment there will be no member of the search committee who is connected with any manner with the university. Therefore, in order to achieve the aforesaid, the appropriate amendment has been brought to the statute. It is further submitted by the learned Additional Advocate General that the state government is also directly responsible and answerable to the public for the

matter related to the university and the appointment of Kulpati therefore while appointing the member of the search committee the government shall be bound to follow the provisions of 7.3.0 (I) of the UGC Regulation, 2010 that the member of the search committee shall be a person of eminence in a sphere of higher education, therefore, the apprehension of the petitioner is baseless that the government will send his nominee or any person of eminence in the sphere of higher education hence the petition is misconceived and is liable to be dismissed.

We have heard the learned counsel for the parties at length and perused the record of the case.

Section 13 of the Act of 1973 before the amendment is reproduced below:-

13. Appointment of Kulpati.

(1) The Kulpati shall be appointed by the Kuladhipati from a panel of not less than three persons recommended by the Committee constituted under sub-section (2) or sub-section (6) ;

Provided that if the person or persons approved by the Kuladhipati out of those recommended by the committee are not willing to accept the appointment, the Kuladhipati may call for fresh recommendations from such committee :

****** Provided also that the first Kulpati of each University specified in Part II of the Second Schedule shall be appointed by the Kuladhipati after Consultation with the State Government.]

(2) The Kuladhipati shall appoint a committee consisting of the following persons, namely :-

- (i) one person elected by the Executive Council;
- (ii) one person nominated by the Chairman of the University Grants Commission;
- (iii) one person nominated by the Kuladhipati.

The Kuladhipati shall appoint one of the three persons to be the Chairman of the Committee.

(3) For constituting the committee under sub-section

(2), the Kuladhipati shall, six months before the expiry of the term of the Kulpati, call upon the Executive Council and the Chairman of the University Grants Commission to choose their nominees and if any or both of them fail to do so within one month of the receipt of the Kuladhipati's communication in this regard, the Kuladhipati may, further nominate any one or both the persons, as the case may be.

(4) No person who is connected with the University or any College shall be elected or nominated on the committee under sub-section (2).

(5) The committee shall submit the panel within six weeks from the date of its constitution or such further time not exceeding four weeks as may be extended by the Kuladhipati.

(6) If for any reasons the committee constituted under sub-section (2) fails to submit the panel within the period specified in sub-section (5), the Kuladhipati shall constitute another committee consisting of three persons, not connected with the University or any College, one of whom shall be designated as the Chairman. The committee so constituted shall submit a panel of three persons within a period of six weeks or such shorter period as may be specified from the date of its constitution.

(7) If the committee constituted under sub-section (6) fails to submit the panel within the period specified therein the Kuladhipati may appoint any person whom he deems fit, to be the Kulpati.

Section 23 of the Act of 1973 which defines the Executive Council is as under:-

Executive Council:-

(1) The Executive Council shall be the Executive Body of the University and shall consist of the following persons, namely:-

(i) the Kulpati;

***(i-a) the Rector;

(ii) four Deans of Faculties nominated by the Kuladhipati;

(iii) three persons elected by single transferable vote by the Court from among its members;

(iv) two Professors of the University Teaching Departments or Schools of Studies to be nominated by the Kuladhipati by rotation according to seniority;

(v) four Principals of affiliated colleges atleast two of whom shall be from colleges belonging to the State Government, to be nominated by the Kuladhipati by rotation according to seniority;

(vi) the Secretary to Government of Madhya Pradesh Higher Education Department or his nominee not below the rank of Deputy Secretary;

(vii) the Secretary to Government of Madhya Pradesh, Finance Department or his nominee not below the rank of Deputy Secretary;

(viii) six persons nominated by the Kuladhipati amongst whom one each shall be a person belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, out of these six persons two shall be women.

(2) Members of the Executive Council other than ex-officio members shall hold office for a period of three years :

Provided that a member of the Executive Council elected under item (iii) of sub-section (1) shall cease to hold office as such member if he ceases to be a member of the Court.

(3) Seven members of the Executive Council shall form a quorum:

Provided that no quorum shall be necessary for adjourned meeting.

By way of amendment, the word Executive Council in section 13(2)(i) and Section 13(3) of the Act of 1973 has been substituted by the word by State Government meaning thereby in the search committee appointed by Kuladipati there shall be one member by a state government, one person nominated by the chairman of UGC and the one person nominated by the Kuladipati. The role of the committee is only to search and recommend the name of suitable persons for appointment to the post of Kulpati and thereafter, the power lies with the Kuladipati to appoint a Kulpati from the panel of not less than three persons recommended by the committee constituted under sub-section 2 or sub-section 6 of section 13 of the Act. Therefore the decision of the search committee is not the final and the role of the search committee is limited. The power is still vested with the Kuladipati in respect of the appointment of Kulpati. As contended by the learned Additional Advocate General that as per the clause 7.3.0 of the UGC Regulation 2010 member of the search committee shall be a person of eminence in the sphere of higher education and shall not be connected in any manner with the university concern or its college, therefore, by sending the nominee the State Government will take care of the clause of 7.3.0 (II) of the UGC Regulation 2010 which is reproduced below:

7.3.0 VICE CHANCELLOR:-

i. Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/ or academic administrative organization.

ii. The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public Notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administration governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities the following shall be the constitution of the search committee.

(a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.

(b) a nominee of the Chairman, University Grants Commission.

(c) a nominee of the Syndicate/ Executive Council/ Board of Management of the University.

The competence of the state government in respect of the amendment of the Act of 1973 is not in dispute and is also not under-challenged. Hence, the apprehension of the petitioner is baseless. We have no reason to believe that while appointing a person to be a member of a search committee under the amended section of 13(2)(i) and sub-section (3) of the Act of 1973 by the State Government he shall not be a person of eminence in the sphere of higher education. Under un-amended provision the nominee of by the Executive Council of the concerned University was bound to be connected in any manner with such University or its colleges, hence the State Government has made amendment in the statute to achieve complete independence of search committee and to avoid scope biases and favouritism as per 7.3.0 (II) of the UGC Regulation 2010. Now while preparing the panel, the search committee would give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance.

In view of the above discussion, the petition sans merit and substance hence accordingly dismissed with a cost of Rs. 10,000/- to be deposited in the CCD of the State.