
(1986) 07 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 4679 of 1985

Prof. Annaiah Gowda

APPELLANT

Vs

Chancellor, University of Mysore

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Karnataka State Universities Act, 1976 — Section 8, 8 (1)

Citation : (1987) ILR (Kar) 640

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : B.T. Hegde, for P.S. Manjunath, for the Appellant; N. Devadas, HCGP for R-1 and 2 and H.K. Vasudeva Reddy, for R-3, for the Respondent

Judgement

K.A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought for quashing the memo dated 4-1-1985 bearing No.PS.55/A/83 84 along with statement of Article of Charges, produced as Annexure-H, issued by the Divisional Commissioner and Enquiry Authority u/s 8 of the Karnataka State Universities Act, 1976 (hereinafter referred to as the "Act"). He has also sought for quashing the directions issued by the 1st respondent in No DO.G.S.48 MUM/84, dated 12-6-1984 and letter of even number dated 3-7-1984, from the Secretary to the Governor of Karnataka.

2. The petitioner being the Head of the Department of English, was being appointed as Examiner and Chairman of the Board of Examiners in English every year for the Postgraduate examination of the University of Mysore. During the examination held in the academic year 1983, it is alleged that certain Mal-practices are committed by him; therefore, he must be removed from the Chairmanship of the Board of Examiners. A complaint is submitted as per Annexure-K before the Syndicate, the Senate and also before the Chancellor of the University of Mysore, as per Annexure-J. As far as the Syndicate is concerned, it initiated a proceeding in the regard u/s 6(sic) of the Act As it was not in accordance with law, it withdrew that proceeding with liberty to initiate a

fresh proceeding. So far it has not initiated any proceeding. The Chancellor of the University, who is the Governor of Karnataka, has appointed the 2nd respondent as the Enquiry Authority in exercise of his powers u/s 8 of the Act. Pursuant to that the 2nd respondent has issued the impugned memo (Annexure-H) along with statement of Article of Charges. It is the validity of this action of the Chancellor and Annexure-H issued by the 2nd respondent that are challenged in this petition.

3.1 The sole ground on which the memo and statement of Article of Charges are sought to be quashed is that u/s 8 of the Act, the Chancellor has no power to direct an enquiry into the alleged malpractices, whereas it is the Syndicate, as per Statutes framed pursuant to Section 37 (f) of the Act, which is competent to take action in the matter; that the Syndicate though initiated a proceeding it has withdrawn it with liberty to initiate a fresh proceeding and as such, it may initiate a proceeding at any time; therefore, it is submitted that's exercise of power u/s 8 of the Act, by the Chancellor is not warranted.

3.2 ON the contrary, it is the case of the respondents that Section 8 of the Act, clearly empowers the Chancellor to direct an enquiry into the affairs of the University; that conduct of examinations is one of the affairs of the University; that when it is alleged that mal-practice is committed in conducting the examinations by the Chairman or by Examiners, it is required to be enquired into; that in the case of failure of the Syndicate to enquire into it; it is open always to the Chancellor to direct an enquiry to be made in respect of any matter connected with the University.

4. Having regard to the contentions of the parties, the only point that arises for consideration in this case is, whether u/s 8 of the Act, the Chancellor is entitled or has power to direct an enquiry into the mal-practice committed by the Examiner/s or by the Chairman of the Board of Examiners ?

5. Section 8 of the Act, reads thus: "Inspection and control:--

(1) The Chancellor shall, if so desired by the State Government and may, suo motu cause as inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, libraries, museums, work shops and equipment and any institution maintained, administered, recognised or approved by the University and also of the examinations teaching and other work conducted or done by the University and to cause an inspection or inquiry to be made in like manner in respect of any matter connected with the University.

(2) The person or persons directed to make an inspection or inquiry under Sub-section (1) shall have access for that purpose to the concerned institutions and premises and to such accounts or other records as may be necessary.

(3) The said person or persons shall submit a report of the result of the inspection or inquiry to the Chancellor and shall forward a copy thereof to the State Government.

(4) The State Government may address the Vice-Chancellor with reference to any matter referred to in the report indicating its observations and the Vice-Chancellor shall communicate them to the Syndicate for taking necessary action.

(5) The Syndicate shall communicate to the State Government through the Vice-Chancellor such action, if any, at it has taken or proposes to take.

(6) Where the Syndicate does not within a reasonable time, take action to the satisfaction of the State Government, or fails to take any action the State Government may, require the Vice-Chancellor to issue such directions as are necessary and the Syndicate shall be bound to comply with the same.

(7) The Syndicate shall furnish return statements, accounts of other particulars relating to the administration of the University as the State Government may, from time to time, require.

(8) Notwithstanding anything in the preceding sub-section the State Government may, by order published in, the Official Gazette, annul any proceedings of the University which, in its opinion is not in conformity with this Act, the Statutes or the ordinances :

Provided that before making any such order the State Government shall call upon the University to show cause why such an order should not be made and if any cause is shown within a reasonable time, shall consider the same.

(9) Every order passed under Sub-section (8) shall, as soon as may be, be laid before both Houses of the State Legislature."

6.1 Sri B T. Hegde, Learned Counsel appearing for the petitioner, submits that the first portion of Sub-section (1) of Section 8 of the Act, only provides for inspection; that it is only the latter portion of sub section (3) that provides for both inspection or inquiry, but it is only with reference to the matter connected with the University and not with reference to matters connected with the examinations. Learned Counsel for the petitioner further argues, relying upon the definition of the word "University" as contained in subsection (9) of Section 2 of the Act, and also constitution of the University as provided in Sub-section (2) of Section 3 of the Act, and submits that it is not permissible for the Chancellor to order an inquiry into the matters relating to the examinations of the University much less the mal practices alleged to have been committed therein. It is not possible to read Sub-section (1) of Section 8 of the Act, in two portions. In fact, it does not contain two portions or parts. The entire Sub-section (1) of Section 8 of the Act read as a whole makes it clear that the Chancellor has power to cause an inspection or inquiry to be made by such person or persons as he may direct, of the University, its buildings, laboratories, libraries, museums, workshops and equipment and any institution maintained, administered, recognised or approved by the University and also of the examinations, teaching and other work conducted or done by the University. In addition to this, Sub-section (1) of Section 8 of the Act, further provides that an inspection or Inquiry can be caused

to be made by the Chancellor in respect of any matter connected with the University. Thus Sub-section (1) of Section 8 of the Act, is very widely worded and it includes all the matters connected with the University, which naturally takes into its fold an inquiry to be caused into the mal-practices alleged to have been committed by the examiners or the Chairman of the Board of Examination in relation to the examinations.

6.2 It is also very relevant to notice that Section 8 of the Act, has not made or kept any distinction between inspection" and "inquiry". This is clear on a reading of subsections (1) to (6) thereof. As per Sub-section (2), a person directed to make an inspection or inquiry shall have access for that purpose to the concerned institutions, premises and to such accounts or other records as may be necessary. Thus, in Sub-section (2), no distinction is kept between an "inspection" and "inquiry". Sub-section (3) thereof directs submission of report by the person who is directed to make an inspection or inquiry to the Chancellor, of the result of the inspection or inquiry and also forward a copy thereof to the State Government. Thus, in either case, a report has to be submitted by the person who is directed to make an inspection or inquiry. As per Sub-section (4) on receipt of a copy of the report, the State Government has to convey its observations to the Vice-Chancellor with reference to any matter referred to in the report. The Vice-Chancellor in turn has to communicate them to the Syndicate for taking necessary action. As per Sub-section (5), the Syndicate is required to communicate to the State Government through the Vice Chancellor the action, if any, it has taken or proposes to take. Sub-section (6) further empowers the State Government, in case the Syndicate does not within a reasonable time take action to the satisfaction of the State Government or fails to take action, to require the Vice Chancellor to issue such directions as are necessary. In such an event, the Syndicate is bound to comply with the same. For our purpose, it is not necessary to refer to Sub-section (7) to (9) of Section 8 of the Act. Thus, whether it is inspection or inquiry, a report has to be submitted as noticed above, and further action on the report whether made as a result of inspection or inquiry, has to be taken as per Sub-sections (3) to (6) in the same manner.

6.3 It is also contended that power to cause inspection to be made only relates to University as defined in Clause (9) of Section 2 of the Act. which in turn means the University established and incorporated u/s 3 of the Act; therefore, it is further contended that power to cause inquiry is only confined to the matters contemplated in Sub-section (2) of Section 3 of the Act. It is not possible to appreciate this contention. The word "University" used in Sub-section (1) of Section 8 of the Act, no doubt has to be understood as defined in Clause (9) of Section 2 of the Act. So read it only means that Section 8 of the Act, covers all the Universities established u/s 3 of the Act. Therefore, the Chancellor being one for all the Universities, established u/s 3 of the Act, he can exercise his power u/s 8(1) of the Act, in respect of any matter connected with the University or Universities. The details given in Sub-section (1) of Sections of the Act, in

relation to power of inspection or inquiry caused to be made are only illustrative and they are not exhaustive. Therefore, the power to cause inspection or inquiry to be made relates not only to matters which are stated in Sub-section (1) of Section 8 of the Act, but also to any other matter connected with the University. Examination is one of the matters with which the University is vitally connected. Therefore, an inspection or inquiry can be caused to be made for the purpose of taking action in the matter, if the results of inspection or inquiry reveal any irregularity or illegality or mal-practice committed in connection with the examinations

6.4 Even otherwise, the power of inspection does include the power to cause an inquiry to be made and an action to be taken in accordance with the results of the inquiry, as otherwise the power of inspection has no meaning and has no effect. Power of inspection is not ornamental. If the contention of the petitioner is accepted that power to cause an inspection to be made does not include the power to cause an inquiry to be made in order to take action as per the results of the enquiry, it will be nothing but rendering nugatory the power of inspection. The Act empowers the Head of the University - Chancellor, to cause an inspection to be made by such person or persons as may be directed by him. It is not possible to hold that such power is conceded to the Chancellor without any object. It is intended to set right or cause them to be set right the illegalities, irregularities, in relation to any matter connected with the University which have not been set right by the authorities who are subordinate to the Chancellor. Therefore, I am of the view that Sub-section (1) of Section 8 of the Act, clearly empowers the Chancellor to cause an inquiry to be made into the malpractice committed by the Examiners or Chairman of the Board of Examinations in the conduct of the examinations or in the valuation of the Examination papers, in short, in respect of all the matters connected with the examinations.

6.5 This power of the Chancellor does not in any way interfere with the power of the Syndicate. No, doubt, as per Section 37(f) of the Act, the Statutes or Ordinances may provide for conduct of examinations including the term of office and the duties of examining bodies, examiners and moderators Pursuant to that it is submitted that the Statutes are framed and under the Statutes, it is the Syndicate which has to exercise the power. Of course, no such statutes are placed before me. However, a hand book titled "Instructions to Examiners", 1970 Edition, published by the University of Mysore, is brought to my notice, which contains the penalties to be imposed on the examiners in respect of certain irregularities or illegalities committed by them. These penalties are provided on pages 18, 19 and 20 of the afore-said Hand-book of Instructions to Examiners. It is also not disputed in this case that the Syndicate has not yet initiated any proceeding in the matter. Thus, there is no question of two enquiries being pursued against the petitioner. Now, the Chancellor has directed an inquiry. A report as to the results of the inquiry is required to be forwarded to the Government. Thereafter, further actions and proceedings have to take place as per Sub-section (3) to (6) of Section 8 of the Act. This aspect of the matter has

already been adverted to in the preceding para (6.2). Thus, ultimately, it is the Syndicate that has to take action that being so, the exercise of power by the Chancellor u/s 8 of the Act, to cause an enquiry to be made into the affairs of the Examinations, does not in any way interfere with the power: of the Syndicate. Ultimately, it is the Syndicate which has; to take action. It is only when the Syndicate fails to take action or the action taken by the Syndicate is not to the satisfaction of the State Government, the State Government is empowered to require the Vice-Chancellor to issue such directions as are necessary, which shall have to be complied with by the Syndicate. Thus, I am of the view that the action taken by the Chancellor is well within his power and as such, it does not call for Interference.

7. For the reasons stated above, the Writ Petition fails and the same is dismissed.