
(1998) 05 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1807 of 1998

Prof. Narendra Kumar Gouraha

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 10, 14, 16(4), 52

Citation : AIR 1999 MP 122 : (1999) 2 JLJ 238 : (1999) 1 MPJR 88 : (2000) 1 MPLJ 192

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : N.K. Gaurha, for the Appellant; S.L. Saxena, R.N. Singh, V.S. Dabir and A.S. Raizada, for the Respondent

Judgement

D.M. Dharmadhikari, J.

Professor Narendra Kumar Gouraha was appointed as Vice-Chancellor of Pt. Ravishanker Vishwavidyalaya, Raipur (hereinafter referred to as "the University" for short). The University is constituted under the provisions of M. P. Vishwavidyalaya Adhiniyam, 1973 (for short, hereinafter referred to as "the Act").

By this petition under Article 226 of the Constitution of India, the petitioner assails three notifications issued on 23rd February, 1997 (Annexures P/1, P/2 and P/3) whereby the State Government by invoking its extraordinary power of emergency u/s 52 of the Act has completely taken over the management and powers of the University and appointed Professor H. R. Singh, respondent No. 4, as Vice-Chancellor of the University. The appointment of another Vice-Chancellor to the University has been made as a consequence ensuing from exercise of power u/s 52(4) of the Act whereby the existing Vice-Chancellor has to vacate his office.

The petitioner himself addressed the Court with sufficient amount of objectivity. Bereft of all unnecessary details on which some time was devoted by the

petitioner in his oral address, the main ground of challenge to the action of the State Government is as follows : According to him, within a short time after his assumption of office of Vice-Chancellor on 19-1-1996, he discovered that there were several financial irregularities committed by Phansi Bhushan Trivedi, respondent No. 5, Registrar of the University. He brought those serious financial irregularities to the notice of the Chancellor by sending him a formal intimation in writing. The Chancellor on the report of the petitioner initiated action u/s 10 of the Act and in order to conduct an enquiry into the finances of the University appointed a one-member enquiry committee of Shri S. G. Limaye, Director, Pension and Employees Welfare Government of M. P. Shri Limaye after holding an enquiry submitted an enquiry report on 28-11-1996 which revealed commission of several serious financial irregularities by respondent No. 5, the then Registrar of the University. According to the petitioner, consequent upon the submission of the report by Shri Limaye, the petitioner received the letter dated 4th February, 1997 addressed to him by the Secretary of the Chancellor to place the report for consequent action before the Executive Council in its meeting to be called on 7-3-1997. The petitioner as Vice-Chancellor immediately thereafter on 12-2-1997 issued a formal notice calling all concerned and fixing 7-3-97 as the date of meeting of the Executive Council.

It is submitted by the petitioner that the respondent No. 5, Registrar of the University, became apprehensive of a serious disciplinary and criminal action against him on the basis of decision of the Executive Council scheduled to meet on 7-3-1997. The respondent No. 5 thereafter made hectic efforts by approaching the influential persons in power in the University and the State. His efforts fructified by promulgation of the impugned notifications on 23-2-97 i.e. a few days before the scheduled date of meeting of the Executive Council.

The contention advanced on behalf of the petitioner is that the impugned action u/s 52 of the Act has been taken by the State Government with an oblique purpose to scuttle the legitimate steps taken by the petitioner as Vice-Chancellor to expose corruption in financial matters committed by respondent No. 5 and to shield the latter.

The State (respondent No. 1) and the Chancellor (respondent No. 2) have supported the impugned action in their returns. In the return submitted by the State Government which was adopted by the Chancellor, several alleged misdeeds and unfair steps taken by the Vice-Chancellor have been tried to be highlighted. It has been submitted that the Vice-Chancellor as head of the institution was acting in a manner not befitting to his high office and, therefore, the drastic action u/s 52 of the Act was warranted by the State.

In the light of return submitted by the respondent-State and the Chancellor, the petitioner has also raised another contention that the powers to be exercised in extreme case of emergency under S. 52 of the Act have been misused with oblique purpose to remove the petitioner from office without affording him any opportunity to meet the charges levelled against him in accordance with the

procedure contained in Section 14(3) and (4) of the Act. Several decisions have been cited by the petitioner in support of his legal contentions but the only relevant decision to be considered for deciding this case is S.R. Bommai and others Vs. Union of India and others etc. etc., .

Shri S. L. Saxena, learned Advocate General appearing for the State, relied on the reasons given in the return submitted by the State and the Chancellor as also the documents annexed to the same. The contention advanced on behalf of the State is that if the material on which the action is founded is relevant, this Court should not go into the sufficiency or otherwise of the same. It is submitted that where an action is taken u/s 52 of the Act, application of principles of natural justice is excluded by the express language of the said provision. It is also submitted that there was no necessity to grant any opportunity of hearing either to the petitioner as Vice-Chancellor or any other authority or Body of the University. Very strong reliance has been placed on the decision of the Supreme Court in the case of Umrao Singh Choudhary (Dr.) v. State of M. P. 1994 M&P LJ 587.

The learned Counsel appearing for the University and the then Registrar, respondent No. 5, have also supported the impugned action on the same grounds as urged before this Court by the learned Advocate-General on behalf of the State.

It is now firmly established from the decision of the Supreme Court in Umrao Singh's case (1994 M&P LJ 587) (supra) that the action u/s 52 of the Act is not a legislative but purely a statutory action which is subject to judicial review. It is also firmly established that the scope of judicial review in such emergency actions is limited to examining by the Court whether there was any material at all, for the action which is relevant and is not tainted by mala fide, perversity or irrational exercise of power.

The main question to be decided by this Court is whether within the permissible limits of judicial review, there existed any relevant material for invoking the extraordinary power by the State u/s 52 of the Act. The second question is whether the State Government can be accused of misusing the provisions of Section 52 with an oblique purpose of avoiding observance of the provisions of Section 14 of the Act against the petitioner and thus achieving his removal from office by an indirect method without affording him any opportunity of meeting the charges levelled against him although they constituted the foundation of the impugned action.

Before considering the merits of the contentions advanced on the facts disclosed by the parties, it is necessary first to examine the relevant provisions of the Act. The relevant provisions for the purpose of this petition are first of all those contained in Section 10 which authorises the Chancellor on his own motion or on a request made by the State Government to cause an inspection and enquiry into several matters including finances of the University. For the above purpose, he

may set up an enquiry committee under Sub-section (2) and obtain the opinion of the Executive Council through the Vice-Chancellor. Sub-section (3) empowers the Chancellor to take consequent action on the advice of the Executive Council on the enquiry report. Section 10, therefore, needs reproduction :--

"10. Inspection in University and College.--(1) The Kuladhipati may, on his own motion, and shall on a request made by the State Government cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, museums, workshops and equipments and of any College or Institution maintained by the University or admitted to its privileges and also of the Examinations, teaching and other work conducted or done by the University and cause an inquiry to be made in like manner in respect of any matter connected with the administration or finance of the University, College or Institutions.

(2) The Kuladhipati shall, in every case, give notice of his intention to cause an inspection or inquiry to be made-

(a) to the University, if such inspection or inquiry is to be made in respect of the University, College or Institution maintained by it;

(b) to the management of the College or Institution if the inspection or inquiry is to be made in respect of a college or institution admitted to the privileges of the University and the University or management, as the case may be, shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(3) Such person shall report to the Kuladhipati the result of such inspection or inquiry and the Kuladhipati shall communicate through the Kulapati to the Executive Council or the said management, as the case may be, his views with reference to the result of such inspection or inquiry and shall after ascertaining the opinion of the Executive Council or the management thereon advise the University or the management upon the action to be taken :

Provided that where an inspection or inquiry is caused on a request from the State Government the Kuladhipati shall take action under this subsection in consultation with the State Government.

(4) The Executive Council or the management as the case may be shall communicate through the Kulapati to the Kuladhipati such action, if any, as it has taken or may propose to take upon the result of such inspection or inquiry and such report shall be submitted within such time as the Kuladhipati may direct.

(5) Where the Executive Council or the management, does not, within a reasonable time, take action to the satisfaction of the Kuladhipati, the Kuladhipati may, after considering any explanation furnished or representation made by the Executive Council or the management, issue in consultation with the State Government, such directions as he may think fit and the Executive

Council or management as the case may be, shall comply therewith."

The other relevant provision is to be found in Section 13 concerning appointment of the Vice-Chancellor. He has to be appointed on the recommendations of a panel of three eminent persons, for a term of four years. u/s 14, the Vice-Chancellor is liable to be removed on proved misconduct after giving him reasonable opportunity to show cause before his removal on the proposed grounds or charges. The relevant provisions of Section 14(3) and (4) read as under:

Emoluments and Conditions of Service of Kulapati terms of office of and vacancy in the office of Kulapati.-

(1) to (2).....

(3) If at any time upon representation made or otherwise and after making such enquiries as may be deemed necessary, it appears to the Kuladhipathi that the Kulapati-- .

(i) has made default in performing any duty imposed on him, by or under this Act, or

(ii) has acted in a manner prejudicial to the interest of the University; or

(iii) is incapable of managing the affairs of the University the Kuladhipathi may, notwithstanding the fact that the terms of office of the Kulapati has not expired, by an order in writing stating the reasons therein, require the Kulapati to relinquish his office as from such date as may be specified in the order.

(4) No order under Sub-section (3) shall be passed unless the particulars of the grounds on which such action is proposed to be taken are communicated to the Kulapati and he is given a reasonable opportunity of showing cause against the proposed order."

The other relevant provision is Section 16 concerning the appointment and duties of the Registrar. Sub-section (4) of Section 16 of the Act provides :

"(4) Subject to the powers of the Executive Council the Registrar shall unless otherwise provided in the Statutes be responsible for seeing that all moneys are expended for the purpose for which they are granted or allotted."

The provisions contained in Section 52 on which the impugned actions are based also need reproduction in relevant parts which are as under

"52. Power of State Government to apply Act in modified form with a view to provide for better administration of University in certain circumstances.-- (1) If the State Government on receipt of a report or otherwise, is satisfied that a situation has arisen in which the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interests of the University and it is expedient in the interest of the University so to do, it may by notification, for reasons to be mentioned therein, direct that the

provisions of Sections 13, 14, 20 to 25, 40, 47, 48, 54 and 68 shall, as from the date specified in the notification (hereinafter in this section referred to as the appointed date), apply to the university subject to the modifications specified in the Third Schedule.

(2) The notification issued under Sub-section (1) (hereinafter referred to as the notification) shall remain in operation for a period of one year from the appointed date and the State Government, may from time to time, extend the period by such further period as it may think fit so however that the total period of operation of the notification does not exceed three years.

(3) The Kuladhipati shall simultaneously with the issue of the notification, appoint the Kulapati under Sections 13 and 14 as modified and the Kulapati so appointed shall hold office during the period of operation of the notification;

Provided that the Kulapati may, notwithstanding the expiration of the period of operation of the notification, continue to hold office thereafter until his successor enters upon office but this period shall not exceed one year.

(4) As from the appointed date, the following consequences shall ensue, namely :--

(i) during the period of operation of the notification this Act shall have effect subject to the modifications specified in the Third Schedule;

(ii) the Kulapati, holding office immediately before the appointed date, shall notwithstanding that his term of office has not expired, vacate his office;

(iii) every person holding office as a member of the Court, the Executive Council or the Academic Council, as the case may be, immediately before the appointed date shall cease to hold that office;

(iv) the student representatives of the University on the student consultative committee under Clause (i) of Sub-section (i) of Section 54 immediately before the appointed date shall cease to be members of the said committee;

(v) until the Court, Executive Council or Academic Council, as the case may be, is reconstituted in accordance with the provisions as modified, the Kulapati appointed under Sections 13 and 14 as modified shall exercise the powers and perform duties conferred or imposed by or under this Act, on the Court, the Executive Council or Academic Council :

Provided that the Kuladhipati may, if he considers it necessary so to do, appoint a committee consisting of an educationist, an administrative expert and a financial expert to assist the Kulapati so appointed in exercise of such powers and performance of such duties."

After examining the relevant provisions of the Act, it is necessary to examine the undisputed events leading to the drastic impugned action u/s 52 of the Act.

As is acknowledged by the Chancellor in his order dated 1-10-1996 passed u/s

10(1) of the Act directing inspection and enquiry into the finances of the University, the petitioner as Vice-Chancellor had personally apprised the Chancellor on 23-2-1996 that contrary to the established Financial Practice, during September 1995 to January 1996, prior to his assumption of office, huge advances to the tune of Rs. 9,50,817/- were given to six persons. It is on the above personal appraisal by the Vice-Chancellor that the Chancellor on 1-10-1996 passed the order u/s 10(1) of the Act and set up a one-member enquiry committee of Shri M.G. Umaye. After conducting the enquiry, Shri Limaye submitted his report on 28-11-96. In the said Limaye report, certain financial irregularities, not specifically by name on the part of the petitioner but on the part of the Deputy Registrar (Exams) and the Registrar, were noticed. The report does not specifically point out any irregularities committed singly or jointly by the petitioner after his assumption of office as Vice-Chancellor. After the receipt of the enquiry report of Shri Limaye, on 4th of February, 1997, by letter Annexure-P/19, the Secretary on behalf of Chancellor wrote a letter to the petitioner intimating in the following language that "the Kuladhipati is, prima facie, in broad agreement with the findings given in the Report, and has directed that opinion of the Executive Council on the conclusions of the Report be expeditiously obtained as per provisions of Section 10(3), M. P. Vishwavidyalaya Adhiniyam." By the said letter sent by the Secretary on behalf of the Chancellor, the petitioner as Vice-Chancellor was desired to obtain the opinion of the Executive Council and send the same to the Chancellor by the end of February, 1997. On the said communication received from the office of the Chancellor, the petitioner forthwith on 12-2-97 issued a pre-requisite advance notice for calling meeting of the Executive Council on 7-3-97.

As is now disclosed from the copies of documents filed with the return, prior to the issuance of letter dated 4th February, 1997 by the Chancellor through his Secretary to the Vice-Chancellor to complete formalities for proposing action u/s 10(3) of the Act through the Executive Council after obtaining its opinion, the Chancellor on 11th January, 1997 had written 3 letter to the Chief Minister, Shri Digvijay Singh, of the State. Without going into the correctness of the allegations made by the petitioner about the letter dated 11-1-1997 from the Chancellor to the Chief Minister, that the said letter was subsequently obtained, it is relevant to reproduce the contents of the said letter as it furnished the main ground for action u/s 52 of the Act. The relevant portion of the letter reads thus:

"Prof. N.K. Gauraha had, soon after assuming charge as Kulapati, Pt. Ravi Shanker Vishwavidyalaya Raipur, personally apprised me on 23rd February, '86, about six persons having been given huge advances to the tune of Rs. 9.51 lakhs by his predecessor in the name of revaluation work relating to Annual Examinations of 1995. He was requested to send a detailed report in the matter and to take speedy action for adjustment/recovery of advances. Surprisingly, however, he did not send any satisfactory reply for nearly seven months. As a result, I had to order a statutory enquiry into the matter u/s 10(1) of the M. P. Vishwavidyalaya Adhiniyam, and to appoint an outside person Shri M. G. Limaye,

Director, Pension and Employee Welfare, Madhya Pradesh to conduct the enquiry. A copy of my relevant order dated 1-10-96 is enclosed.

Shri Limaye submitted his report to me at the end of November, '96. The report reveals, inter alia, that the unfortunate practice of sanctioning of large advances, which Prof. Gouraha himself had brought to light, continued unchecked during his own tenure also, and the figure of unadjusted advances pertaining to his tenure, at the time of submission of Shri Limaye's report, stood at Rs. 25.3 lakhs of which Rs. 4.56 lakhs was over three months old. Also, advances had been given for such, prima facie, nebulous or unnecessary purposes as "Confidential Work", "Buildings", etc.

While I would be taking further action on the report received from Shri Limaye in accordance with the provisions of the M. P. Vishwavidyalaya Adhiniyam, I am enclosing its copy, in the light of our discussion yesterday, for appropriate action at the Government level also."

It is on the above letter sent by the Chancellor to the Chief Minister that the State was activated resulting into the drastic action of issuance of the impugned notifications u/s 52 of the Act on 23rd of February, 1997.

The State Government has supported its action on the basis of the contents of the Limaye report and the correspondence exchanged between the Chancellor, the Vice-Chancellor and the Chief Minister, mentioned above. That apart, action in the Court of law has been supported by the State by stating in the return that a fact finding enquiry through the I.G. Police and the audit party revealed several financial irregularities personally committed by the Vice-Chancellor. It is also alleged that the petitioner is guilty of corrupt practices inasmuch as not only that he had drawn false T.A. Bills but had demanded commission from the contractors entrusted with University work. It is alleged that the petitioner was responsible in giving some higher marks to several students beyond his authority and guilty of nefarious practices unbecoming of a high office like Vice-Chancellor.

The return submitted by the State, read as a whole and in detail would make it evident that there has been no allegation of large scale maladministration on the part of any other authorities and functionaries of the University. The allegations are only against the misdeeds and acts of corruption of the petitioner as Vice-Chancellor. For example, the gist of allegations from the return are as under ;

"The petitioner, who was holding the office of Vice-Chancellor, had no moral or ethic. He prepared false T. A. bills, made overwriting and received false T. A. from the University. These facts are apparent if one examines the T. A. Bills annex with the return, as Annexure R-6. In this T. A. Bill, Shri S. R. Shrivastava, co-ordinator of the Refresher Course, has verified "that travelled by car upto Bilaspur and from Bilaspur in IIInd class Ordinary" Claims restricted to entitlement. In the T.A. bill, he has shown his departure from Sagar on 1-1-96, arrival at Raipur on 15-1-1996, departure time 6.00 p.m., arrival at Raipur 11.00 a.m. Earlier, it was written Sagar to Raipur and mode of journey by car. It was

struck off and it was written "Sagar to Raipur by IInd AC Sleeper, distance 640 kms, purpose of journey -- lecturers refresher course. The petitioner claimed Rs. 13607/- as fare of AC-II both ways. The petitioner, further claimed Rs. 120/- as incidental expenses plus Rs. 280/- D.A., total Rs. 1760/- . According to verification, the travel from Sagar to Bilaspur was by car. The question arises whether the petitioner travelled from Sagar to Raipur in Hnd AC Sleeper or travelled by car upto Bilaspur.

The petitioner has no powers to award extra marks and the matter could only be considered by the Executive Council.

From the facts narrated above, it is clear that the petitioner, claimed false amount through T. A. Bills, by committing forgery. The petitioner directed the authorities of the University to accept mark-sheet which was in excess of 10 marks, personally approached the Oswal Data Processors, Indore, to do something unfair. The petitioner, demanded commission from the contractors, by involving the name of the Chancellor. All these activities were unfair, not becoming on the part of a Vice-Chancellor and it became necessary for the State Government to take recourse to Section 52 of Vishwavidyalaya Adhiniyam, 1973.

The petitioner, also committed financial irregularities when he was in the office for the period 19-1-1996 to 1-2-1997. The advances to the tune of Rs. 25,30,212/- which were given to different persons for different purposes. The above amount has not yet been adjusted.

It would be relevant to mention here that the petitioner himself wrote to Kuladhipati that advances to the tune of Rs.9.51 lakhs have not been adjusted by his predecessor. The Kuladhipati appointed a committee, called Limaye committee to make enquiry and suggest measures. Copy of the letter is annexed herewith as Annexure R-13. The Committee, about the conduct of petitioner's predecessor, pointed out a number of irregularities but the same irregularities about which a report was made by the petitioner were committed by him deliberately against the financial rules, audit rules, just to make unfair money.

The petitioner is himself responsible for payment of so many bills. From the facts narrated above, it is clear that petitioner himself was interested in bogus bills, claimed false T.A./D.A. etc. The petitioner may be writing so many letters but those letters are irrelevant so far the decision of this case is concerned. The facts narrated above, relating to the conduct of the petitioner himself, persuaded the State Government and Kuladhipati, to exercise its powers u/s 52 of the Act. The answering respondent did not act only on the reports but directed an enquiry in all the complaints and when the Enquiry. Officer found a prima facie case against the petitioner, the answering respondent then and then alone took steps to take action u/s 52 of the Act. The petitioner has stated a number of things to show his

competence and merits. Self pledge is no recommendations. The conduct of the petitioner, as disclosed in the foregoing paragraphs, proves beyond doubt that petitioner has very poor conduct and was not fit to hold the office of the Vice-Chancellor."

22, After high-lighting the above alleged illegalities and acts of misconduct of the petitioner, in paragraph 47 of the return it is stated that "the action was taken on the basis of the enquiry report coupled with concrete facts." In paragraph 55 of the return it is stated as under :

"The person like the petitioner, if allowed to continue as Vice-Chancellor, even after the discovery of so many acts of omission and commission, that would be a bad day for the State and society at large."

In paragraph 15 of the return the action u/s 52 of the Act has been supported by stating thus :

"The facts stated above, came to the notice of the State Government. The State Government, gave a thoughtful consideration and was satisfied that a situation has arisen in which the administration of the University, can not be carried out without detriment to the interest of the University and in accordance with the provisions of the Act...."

On the facts as mentioned above, this Court has to judge whether the impugned action u/s 52 is sustainable on the basis thereof. As has been mentioned above, soon after assuming office, the petitioner within a short period reported the matter of financial irregularities committed by the respondent No. 5 i.e. the Registrar. On his report, the Chancellor set up an enquiry to be conducted by Shri Limaye u/s 10 of the Act. Shri Limaye conducted the enquiry and submitted a report on the financial irregularities noticed by him. The petitioner's role was almost negligible because most of the irregularities pertained to period prior to assumption of office by him. The Limaye report was sent by the Chancellor to the petitioner as Vice-Chancellor for placing it for opinion of the Executive Council and for consequential action in terms of Section 10(3) of the Act. The petitioner as Vice-Chancellor, on the directions of the Chancellor and on the basis of the Limaye report, called the meeting of the Executive Council on 7-3-1997. Accepting that the Chancellor, before writing to the Vice-Chancellor for seeking opinion of the Executive Council in accordance, with Section 10(3) of the Act, had sent letter dated 11th January, 1997 to the Chief Minister reporting the action taken by the former on the Limaye report, and expecting appropriate action also at the Government level, the said letter of the Chancellor cannot be taken as recommendation of the Chancellor to the State Government for invoking the extreme power u/s 52 of the Act to remove all authorities, bodies and functionaries of the University and to assume full management and powers of the University and appoint another Vice-Chancellor.

The provisions contained in Section 52 of the Act are akin and comparable to emergency provisions contained in Article 356 of the Constitution which empower

the President of India to impose his rule on the Government of a State by dissolving the elected body and assuming all functions of the Government by the President. Provision u/s 52 has been made to meet an emergent situation which cannot other-wise be remedied by other provisions of the Act. It is a drastic action justified only in extremely extraordinary circumstances. It is to be taken as a last resort when all other efforts on the part of the Government fail to remove the alleged mal-administration in the University. Resort to provisions of Section 52 is not contemplated by the Act as a remedial measure against particular conduct or misconduct of few functionaries, high or low, in the University. As has been narrated above, the events go to show that the Vice-Chancellor had been taking all necessary actions, which in fact formed basis for Limaye report, for fixing the responsibility of alleged erring officials of the University concerning financial irregularities. Opinion of the Executive Council was sought for the purpose and apparently there was no allegations against the Executive Council. The State has not been able to justify as to why action u/s 52 was necessitated when on the advice of the Chancellor the Vice-Chancellor had already called the meeting of the Executive Council on 7-3-1997.

As has been held in the cases of *S.R. Bommai and others Vs. Union of India and others etc. etc.*, and *Umrao Singh Chaudhary, (1994 M&P LJ 587)* (supra) of the Supreme Court, this Court can go only into the question of existence of any material warranting the impugned action, but it cannot go into the sufficiency or insufficiency of the same. This Court, however, is competent to find out whether the facts and material on the basis of which the impugned drastic action had been taken is relevant for the purpose of exercise of power by the State. As pointed out above, in the report of Limaye there was no specific allegation of commission of financial irregularities by the petitioner as Vice-Chancellor. The Registrar alone was answerable so far as finances and advances were concerned, in terms of Section 16(4) of the Act. There is sufficient force in the submission made by the petitioner that the impugned action was taken before the scheduled date for meeting of the Executive Council to scuttle or frustrate the further probe into the financial irregularities enquired into and reported by Shri Limaye. The financial irregularities found and reported by Shri Limaye were so serious that they required further probe or scrutiny by the Executive Council and consequent action by it. The Executive Council is a larger supreme executive body of the University consisting of important representatives of academicians within and outside the University including the Government. It would have been possible for the Government to have waited for the opinion of the Executive Council for which the meeting was already scheduled in near future. The State has utterly failed to justify taking of the impugned drastic action of wiping out all functionaries of the University only on the basis of a letter written by the Chancellor to the Chief Minister concerning the report of Shri Limaye. Even the Chancellor had not given opinion to the State Government that action u/s 52 was warranted. He did express the necessity of some appropriate action at the Government level, but it could not reasonably be read as suggesting the extreme emergent action u/s 52

of the Act.

The Chancellor has been made party to the petition as respondent No. 2. He has submitted a return. He has merely adopted the stand and averments taken by the State in its return. The affidavit has been sworn by the officer-in-charge on behalf of the Chancellor. The Governor acting as Chancellor can claim no immunity or privilege conferred on him qua Governor under the Constitution. In his separate return filed, the Chancellor has not disclosed whether he had expressed any opinion desiring action on the part of the State against the University u/s 52 of the Act. The letter written by him to the Chief Minister on 11-1-1997 cannot, therefore, be read as a report by him on the overall mal-functionings of the University and suggesting an action by the State u/s 52 of the Act. It is true that u/s 52, the State Government can invoke its emergency provisions against the University "either on the receipt of a report or otherwise". There was no particular report of the Chancellor for taking action u/s 52 of the Act. So far as any other information or report falling in expression "otherwise" is concerned, in the return submitted by the State individual acts and omissions of the petitioner as Vice-Chancellor have been mentioned as the main basis for the impugned action.

From the scheme of the Act and the provisions contained in Section 14, quoted above, it is to be noticed that there are two distinct actions contemplated one against the misdeeds and mis-conduct of the Vice-Chancellor for his removal and the other of invoking emergency provisions u/s 52 against the University as a whole. Material which may be relevant for taking action against the Vice-Chancellor u/s 14 cannot be utilised without compliance of the provisions of the said section for basing action against the University as a whole u/s 52 of the Act. In the case of Umrao Singh Chouhan (supra), the Division Bench decision reported in Dr. Umrao Singh Choudhary Vs. State of M.P. and Another, , to the extent it holds that action u/s 52 of the Act taken by the State is legislative in character has not been approved by the Supreme Court in its decision affirming the ultimate conclusion of the Division Bench in dismissing the petition. In the Supreme Court decision in Umrao Singh Chouhan's case 1994 Jab LJ 587, the following observations need be noted :--

"Obviously for this reason, to satisfy ourselves whether the notification is founded upon any record and whether the reasons given in support thereof, are relevant to the issue, the record was summoned, and has been made available to us. The note placed before the Governor also was placed. It is an elaborate not, pregnant with material details touching the mal-administration of the University. From the record we have seen the Government considered the above material and the Governor after due satisfaction had exercised the power u/s 52(1). Though the High Court held that the action u/s 52 is legislative action, it is obviously illegal in the light of the decision of this Court in S. R. Bommai v. Union of India wherein this Court considered the presidential proclamation under Article 356 and held that the action is not beyond the ken of judicial review. The action

u/s 52 is only statutory action, but subject to judicial review. However, the Court would not sit in appeal over the opinion of the State Government. The statute gives power to the State Government. The Governor exercised his power with the aid and advice of the Council of Ministers in issuing the notification u/s 52. Therefore, though it was a statutory notification, the condition precedent is that the satisfaction of the State Government i.e. the Governor with the aid and advice of the Council of Ministers is or the situation mentioned in Section 52(1) and for reasons to be recorded therein, for better administration of the University, the Government was satisfied that a situation had arisen in which the administration of the University could not be carried on in accordance with the provisions of the Adhiniyam and for better administration whereof and to prevent the detriment to the interest of the University, the State Government issued the notification "for the reasons mentioned therein" and directed that the provisions mentioned therein under Sections 13 and 14 shall not apply. When those facts are present and the State Government were satisfied of the situation contemplated u/s 52(1), though the Court may differ from that formation of satisfaction when the Court is called upon in an appeal against the said satisfaction and may come to a different conclusion, we would not be justified to differ from the conclusion in our judicial review under Article 136 or of the High Court under Article 226 of the Constitution, Though the Academic Council etc, had been dissolved, the correctness thereof is not the subject matter of this special leave petition. We are not called upon to enter into that question. Therefore, from the records we are satisfied that the State Government were justified in issuing the notification u/s 52(1) of the Adhiniyam."

(Underlining for emphasis) 28. Power u/s 14 has been conferred for the purpose of removal of the Vice-Chancellor on proved misconduct but after giving him full opportunity of hearing. The removal of a Vice-Chancellor which can be made only after following principles of natural justice u/s 14 of the Act cannot be achieved by resort to the emergency provisions u/s 52 against the whole University of which Vice-Chancellor is one of the officers. Where the State Government as a repository of power u/s 52 of the Act, exercise that power for a purpose alien to that for which it was granted it would be misuse of that power for an oblique or collateral purpose. If the purpose for which the power can legitimately be exercised are specified by statute and those purposes are construed as being exhaustive, an exercise of that power in order to achieve a different and collateral object will be pronounced as invalid. (See Halsbury's Laws of England, Vol. 1, IV Edn., para 60). All statutory powers must be exercised in good faith and for the purpose for which they were granted. The repository of power must have regard to relevant considerations and not allow itself to be influenced by irrelevant considerations. It must act fairly and reasonably.

In the instant case, the Limaye report has very little to say against the actions of the petitioner as the Vice-Chancellor after assumption by him of his office. The Vice-Chancellor himself had initiated action in the matter of financial irregularities and had called a meeting to probe into the same through the

Executive Council. The contents of the return reproduced above clearly go to show that the action was directed against the Vice-Chancellor for his alleged personal acts of omissions and commissions. The petitioner in his oral address as also in rejoinder submitted by him has tried to meet each and every charge against him of drawing false T.A: Bills, giving excess marks to students and permitting drawal of funds. It is not necessary to go into the details of his defences. In short, the petitioner's stand against these allegations is that T. A. Bills were submitted and drawn on the basis of entitlement for reimbursement equivalent to railway fare irrespective of mode of transport availed. With regard to grant of marks, the reply is that the decision was taken through a results committee of which he is ex officio member. With regard to the police investigation and affidavits of contractors, it is clear that at no stage the petitioner was involved in the enquiry so as to enable him to explain his conduct. These were some of the allegations personally made against the petitioner which would have required a show cause notice and grant opportunity of meeting the same to the petitioner. The petitioner was never given any such opportunity at any stage. The enquiry through police was made behind his back. The return of the State creates an impression that the whole action was directed against the Vice-Chancellor and not against any other officer or authority of the University. This Court cannot desist from observing that the State Government in making such scathing and defamatory remarks against the personal conduct of the Vice-Chancellor was expected to act fairly by giving him an opportunity to explain the same before the drastic action u/s 52 was taken to remove him from office on allegations of his personal misconduct. The office of Vice-Chancellor is one of high prestige and dignity. It is expected of the State Government to maintain the same and not to involve such a high dignitary in police investigations on the complaints made against him which could be found to be false and mischievous. A minimal act of fairness on the part of the State is expected for maintaining the dignity of the high office of Vice-Chancellor. The police investigation should not have been ordered against the petitioner without disclosing to him the foundation or reason for directing such investigation. The complaints or material obtained against him should have been disclosed to him so as to give him an opportunity to explain. It is desirable in public interest to protect the autonomy of the University as envisaged by the provisions of the Act. The University as the seat of learning and an independent academic body has to be kept insulated from unhealthy political influences. In the above respect, the petitioner has levelled several allegations against the then Registrar of the University, respondent No. 5. It has been alleged that the Registrar was instrumental in involving the petitioner in police investigations to create a false ground for invoking the provisions of Section 52 of the Act through the State Government. It is said that the Registrar has achieved the issuance of the order u/s 52 with a purpose to bring the petitioner and the University disrepute and the shield himself, as he had sufficient approach with the high-ups in the Government. This Court does not consider it necessary for the purpose of deciding this case to go into the allegations made by the petitioner against the respondent No. 5.

From the records disclosed and the facts revealed by the State Government, if at all any action was warranted, it was u/s 10 of the Act which was already under way and in fact was nearing completion had the Executive Council been allowed to meet on the scheduled date for deciding upon the future course of action on the basis of Limaye report against the officers found responsible for the alleged financial misdeeds. The other permissible course of action could be against the Vice-Chancellor u/s 14 of the Act by his removal from the office for alleged specific acts of misconduct committed by him. That action against the Vice-Chancellor could, however, be taken only after giving him due opportunity of show cause as laid down in Section 14 of the Act.

Facts and material which are relevant for taking action u/s 10 or 14 of the Act cannot be utilised obliquely to obviate or by-pass observance of formalities contained therein by resorting to extraordinary emergency power u/s 52 of the Act. Exercise of such emergency power at the instance of the State Government is a serious inroad on the independence of the University and has in fact been counter-productive in demoralising the various officers and functionaries of the University. Permitting misuse of extraordinary power u/s 52 of the Act in the manner as has been done in this case would defeat the purpose for which such power has been conferred and would thus harm the cause of education and public interest. It would deter competent academicians from accepting assignments and posts in the University and thus seriously harm the cause of higher education.

For the aforesaid reasons, the impugned action u/s 52 of the Act taken by the State Government cannot be upheld. The petition is hereby allowed and the impugned notifications issued u/s 52 of the Act (Annexures-P/1, P/2 and P/3 dated 23-2-1997) are hereby quashed. In consequence thereof, the petitioner's appointment as Vice-Chancellor and appointment of other authorities and bodies of the University shall stand revived with all consequential beneficial effects, monetary and otherwise. The appointment of Professor H. R. Singh, respondent No. 4, as Vice-Chancellor of the University in place of the petitioner shall stand set aside. As held by the Supreme Court in S.R. Bommai and others Vs. Union of India and others etc. etc., , the quashing of the impugned notifications u/s 52 of the Act would not invalidate the actions taken between the issuance of the notifications on 23-2-97 and the passing of this order by this Court quashing the same.

It is made clear that the success of this petition would not in any manner prejudice the contemplated action, if any, of the State Government against the University and the petitioner under Sections 10 and 14 of the Act.

The petitioner was suddenly removed from the office of Vice-Chancellor. It has been revealed to him only from the contents of the return submitted by the State in this case that several allegations of misconduct against him were the foundation of the impugned action. He had thus to suffer humiliation without any opportunity of hearing. Initially he was represented by lawyers and must have

incurred expenditure in litigating for his rights. He himself argued the case, but in the circumstances mentioned above, he is entitled to get costs of this petition which is roughly estimated and quantified at Rs. 5000/- (Rupees Five thousand). The costs shall be paid to him by the respondent No. 1, State of M. P. alone.