

(2020) 01 DEL CK 0284

In the Delhi High Court

Case No : Civil Writ Petition No. 601 Of 2019

Prof. Sachin Maheshwari

APPELLANT

Vs

Netaji Subhas University Of Technology And Ors

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Delhi Netaji Subhas University Of Technology Act, 2017 — Section 46
Bihar State Universities Act, 1976 — Section 10

Citation : (2020) 01 DEL CK 0284

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Tarkeshwar Nath, Mahavir Rawat, Sanjay Jain,Avnish Ahlawat, Yuvraj Sharma, Ashray Behura, Himank Ahuja, Rashmi Chopra, Asiya, Suman Kukrety, Hema Samnotra

Final Decision : Disposed Of

Judgement

G.S. Sistani, J

1. CM.APPL 2762/2019 had been filed by the petitioner seeking the following prayers:

"(a) Restrain the respondent no.2 to discharge his function as Vice-Chancellor of the respondent No.1/University.

(b) Pass any other order that is deemed fit and proper under the facts and circumstances of the case."

2. Since at the stage of preliminary hearing, we were inclined to hear the entire writ petition, the application was not pressed. However because a final hearing has not so far happened, we have taken-up this application for interim relief.

3. Mr. Nath, learned counsel for the petitioner submits that respondent No.2 who has been appointed as the Vice-Chancellor of respondent No.1 suffers from various inherent disqualifications which were not brought to the notice of the

learned Lt. Governor of Delhi who passed the order of appointment dated 26.09.2018. Even otherwise, he should not be allowed to function during the pendency of the writ petition when the matter of his disqualification is being considered.

4. Respondent No.1, Netaji Subhas Institute of Technology ('NSIT') was declared to be deemed University by Notification dated 01.08.2018. Consequently, relying upon Section 46 of the Delhi Netaji Subhas University of Technology Act, 2017 (for short the 'Act'), respondent No.2, who was then functioning as a Director of the institution, was appointed as the first Vice-Chancellor of the University.

5. To appreciate the submission of Mr. Nath, we deem it appropriate to reproduce Section 46 of the Act, which reads as under:

"46. Transitional provisions-Notwithstanding anything contained in the Act and the Statutes: -

(a) The first Vice-Chancellor, the first Registrar and Controller of Finance shall be appointed by the Chancellor, and they shall be governed by the terms and conditions of service specified by the Statutes.

(b) The first Court and the first Board of Management shall be nominated by the Chancellor and shall hold office for a term of three years."

6. Mr. Nath, submits that although the appointment of the first Vice-Chancellor, the first Registrar and Controller of Finance is to be made keeping in mind the transitional provisions, but the power to make such appointment could not have been exercised in an arbitrary manner. In the case of the first Vice-Chancellor, the appointment came to be made whereby only one name was recommended and accepted by the Lt. Governor. At best this provision is to be read with the intent to avoid delay of appointments, advertisement and other lengthy procedures. But even if some elaborate procedures could have been given a go-by, the petitioner contends that respondent No.2 should not have been appointed in the manner he has been appointed.

7. Mr. Nath has placed reliance on a decision rendered by the Apex Court in the case of Ram Tawakya Singh v. State of Bihar and Others reported as (2013) 16 SCC 206, more particularly, paragraphs 38, 39 and 40, in the judgment dealing with the provision of Section 10 of the Bihar State Universities Act which is in pari materia with the provision under reference in these proceedings, the Supreme Court has observed that even where no specific procedure is contemplated, some mechanism must be followed and a panel be prepared of persons of eminence for making appointment to the post of Vice-Chancellor.

8. In our view, this submission of Mr. Nath requires consideration, namely as to whether it is permissible and in public interest that a single name be sent for consideration before the Lt. Governor; or should at least, a pool of names of eligible candidates have been sent for the Lt. Governor to have some options, to compare and choose from; and what should have been the procedure adopted.

9. Mr. Sanjay Jain, learned ASG has produced the original file; and it has been urged by him that the appointment was in accordance with law; and respondent No.2 being a person of eminence who was already heading the same institution, was most suited and was duly appointed.

10. At this stage, the question which arises for our consideration is as to whether respondent No.2 should be allowed to continue in the position till the writ petition is heard and finally decided.

11. Mr. Nath, has strongly urged before us that the appointment of respondent No.2 suffers from the following disqualifications:

(i) He was restricted from discharging all educational works of the U.P. Technical University for three years by the Executive Council of the University for increasing marks of one student.

(ii) A case was registered by the CBI against him;

(iii) A show-cause notice was issued to him by the Executive Council of the University;

(iv) He was debarred by the All India Council for Technical Education (AICTE);

(v) He was guilty of plagiarism;

(vi) His appointment was contrary to the appointment of UGC Guidelines of 2018; and

(vii) His appointment as Director of respondent No.1 University had been set-aside by a Single Judge of this Court by order dated 11.12.2017 in a writ proceeding.

12. In support of his contentions, Mr. Nath, has relied upon some material, including the order of Allahabad High Court in W.P.(C). No.24529/2011 titled Prof. J.P. Saini v. Union of India and Others dated 12.05.2011 to submit that a CBI case was pending against respondent No.2. An Office Memorandum dated 23.04.2013 with the name of respondent No.2 was also issued to remove him from the approved panel of experts formed by AICTE and a show-cause notice was issued to him.

13. Mr. Nath, has also placed reliance on the judgment in the case of Centre for Public Interest Litigation and Another v. Union of India and Another reported as (2005) 8 SCC 202, more particularly on paragraphs 16, 18, 19 and 20, which we reproduce below:

"16. The basic question is whether the appointment of respondent No.3 as Chief Secretary is proper.

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18. The argument presently advanced is that since respondent No.3 has been

continuing in the post for five months, no orders should be passed regarding her appointment till the Commission gives its report. Had this consideration weighed with the State Government when it made the appointment there may not have been any difficulty. It could have, considering the importance of the post, awaited the report of the Commission headed by Mr. Justice K.T. Thomas. It is not the case of respondent No.2-the State of U.P. that no other officer is suitable to hold that post or that the services of respondent No.3 are so indispensable that none but she should be appointed as the Chief Secretary. This is purely a case of justifying an action. Linked with it is the question of transparency in action. It is true that the allegations against respondent No.3 have to be established. It is often said that justice should not only be done but it should appear to have been done. Lord Denning in *Metropolitan Properties Ltd. v. Lannon* (1968) 3 All E.R. 304 said "justice must be rooted in confidence; and confidence is destroyed when right minded people go away thinking: "The Judge is biased". The logic is equally applicable to Governmental action and Government. The State Government could have avoided the washing of dirty linen which as contended by learned counsel for respondent Nos. 2 and 3 is the sole object of the writ petition.

19. We do not think it necessary to delve into the question of maintainability of the writ petition as the same, as noted at the threshold appears to be an offshoot of the earlier petition.

20. The time has come when the postings of officers holding sensitive posts should be done in transparent manner giving no scope for any grievance. It is true that grievances can be made or allegations can be levelled for ulterior motive or with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post, very often at the behest of persons angling for the post. In the peculiar background facts it was really desirable for the State Government to steer clear of controversy and not to post respondent No.3 as the Chief Secretary. By doing it, it has unnecessarily created further complications and invited criticism. We, therefore, direct the State Government to transfer the respondent No.3 to some other post in the cadre/grade to which she belonged. The question of her suitability to be included in the cadre/grade, shall be examined in the writ petition itself. For the present, we do not express any opinion on that issue. The necessary steps for effectuating our order shall be taken within seven days. We make it clear that we have not expressed any opinion on the merits of the allegations as the matter is pending before the High Court and Justice Thomas Commission."

14. Reliance is also placed by Mr. Nath on the judgment by Karnataka High Court titled *P.M. Parameshwarmurthy v. State of Karnataka* [W.P.No.4340/2012] decided on 21.11.2012.

15. On the other hand Ms. Chopra, learned counsel appearing for respondent No.2 submits that the allegations made and contentions raised against respondent No.2 are unfounded, baseless and are required to be rejected.

Counsel explains that respondent No.2 did not increase the marks of any candidate, although he awarded grade 'B' instead of grade 'D' by inadvertence. However, by an order dated 12.05.2009 his explanation was accepted, a copy whereof has been placed on record at page 556. Thus, this matter cannot be taken as the reason for his disqualification. Regarding registration of a CBI case against respondent No.2, Ms. Chopra submits that the case was registered against the Director of AICTE and Respondent No.2, along with other members of the team. Ms. Chopra submits that as a matter of fact the CBI did not proceed against respondent No.2 and only recommended disciplinary action against him, pursuant to which a show-cause notice was issued; a reply was filed; and the explanation was accepted laying the matter to rest. Even the accused persons in the CBI case stand acquitted by an order dated 06.01.2016, a copy of which has been handed-over in court and counsel has been directed to have the same placed on record. As far as the show-cause notice issued by the Executive Council is concerned, a censure was issued which was challenged by filing a writ petition; in which the court has stayed the order of censure. Further, as far as debarment by AICTE is concerned, Ms. Chopra submits that respondent No.2 was not informed of the same; and it was only after the filing of the writ petition that respondent No.2 wrote to the AICTE; and she has placed reliance on the reply dated 28.02.2019 received by the AICTE. Ms. Chopra submits that despite the so-called debarment, the AICTE continued to appoint respondent No.2 in various departments and as such the debarment was not acted upon. Reliance is placed on the document at page 708. Ms. Chopra contends that the allegations of being guilty of plagiarism cannot be urged for the reason that the works were neither stolen nor copied, and in the work of respondent No.2 due reference and credit was given to the work of which extracts were quoted; and moreover, the person whose work was used has not made any grievance. Regarding the plea of the appointment being contrary to the UGC Guidelines of 2018, counsel for respondent No. 2 submits that the guidelines would not apply as respondent No.1 is not an aided institution.

16. We have heard the learned counsels for the parties and have considered their submissions.

17. As we have stated in paragraphs 4 and 5 foregoing, the substantive ground raised by counsel for the petitioner is the issue under Section 46 of the Act, which requires consideration; and would be examined at the time of final hearing of the writ petition. However, at present we are not hearing the petition on merits but are only considering the application for grant of interim relief.

18. We find that the various allegations made by the petitioner have been satisfactorily responded to by Ms. Chopra, learned counsel for respondent No.2, by placing reliance on several documents placed on record. It has been clarified that the AICTE debarment of 03 years was restricted. Further, as far as the CBI case is concerned, the case was registered by the CBI against the Director of AICTE and respondent No.2 along with other members of the team; but the CBI

only recommended disciplinary action against respondent No.2. Pursuant to that a show-cause notice was issued and an order of censure was passed. The order of censure has been challenged by filing a writ petition; and the order of censure has been stayed by this court. As far as the allegation of plagiarism is concerned, a satisfactory response has been given by Ms. Chopra that there is no complaint received against respondent No.2 by the author/owner of the work. With regard to debarment by AICTE, respondent No.2 has despite such debarment been appointed by AICTE in various departments. While the issue of the appointment of respondent No.2 on an interpretation of Section 46 is yet to be considered at the time of final hearing of the writ petition, at this stage, on a prima-facie examination of the matter, we are not inclined to grant any relief to the petitioner.

19. We are also of the view that the decision in Centre for Public Interest Litigation and Another (supra) relied upon by the counsel for the petitioner would not apply to the facts of the present case since the allegations made against respondent No.2 appear, at least prima facie to be unfounded.

20. However, we make it clear that the observations made in this order are only a tentative view; and would not be taken to be conclusive insofar as the merits of the case are concerned, which are to be decided upon final hearing of the writ petition.

21. CM.APPL 2762/2019 is accordingly disposed of.

W.P.(C) 601/2019

22. Admit.

23. Respondents are granted opportunity to file counter affidavits, if required.

24. List on 17.04.2020.