

(2009) 05 DEL CK 0026

In the Delhi High Court

Case No : Letters Patent Appeal No. 229 of 2008 and C.M. Application No's. 6984 and 16445 of 2008, 2846 and 3091 of 2009

Professor Ramesh Chandra

APPELLANT

Vs

The University of Delhi and Others

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Delhi University Act, 1922 — Ordinance 11(6)(4), Ordinance 20(6)(4)
English Sale of Goods Act, 1979 — Section 62
Factors (Scotland) Act, 1890 — Section 1

Citation : (2009) 05 DEL CK 0026

Hon'ble Judges : Siddharth Mridul, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R. Venkataraman and Aljo K. Joseph and Neela Gokhale, for the Appellant; V.P. Singh and Mohinder Jit Singh Rupal and Amar Jyoti Srivastava for R-1 and R-2 and Maneesha and Amit Bansal for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present Letters Patent Appeal has been preferred by the Appellant feeling aggrieved and dissatisfied by the judgment and order dated 11th April, 2008 passed by the learned Single Bench in Writ Petition No. 16000/2006 whereby the writ petition filed by the Petitioner/Appellant herein was dismissed on the ground that the various communications, grievances and pleas taken by the Petitioner could well be adjudicated before the Inquiry Officer.

2. The factual matrix as found by the learned Single Bench was as follows:

a. The University of Delhi, under the auspices of the Ministry of Welfare, Government of India, decided to set up Dr. B.R. Ambedkar Biomedical Research Centre (ACBR).

b. The Appellant, who holds the substantive post of Professor in the Department of Chemistry, University of Delhi, was made the Acting Director of ACBR by way of an additional charge which was communicated to him by the Assistant

Registrar (E-NT) of the University vide letter dated 30th May, 1995.

c. The Appellant discharged both his substantive as well as additional duties till 20th September, 1999 on which date he left on deputation to join his new posting as Vice-chancellor of Bundelkhand University, Jhansi, Uttar Pradesh.

d. In pursuance thereof, the Registrar, University of Delhi on 20th September, 1999, notified the appointment of Professor Vani Brahmachari as Acting Director of ACBR during the leave period of the Appellant. It was, however, resolved that the Appellant would continue to provide academic leadership to ACBR.

e. Although the deputation period of the Appellant was scheduled to expire on 31st July, 2005, he was removed from the post of Vice-Chancellor, Bundelkhand University, Jhansi on 16th July, 2005.

f. The Appellant on 18th July, 2005, resumed the duties as professor, Department of Chemistry, University of Delhi. The Deputy Registrar of ACBR, on the same date, issued a notification to the effect that the Appellant had fully resumed his charge as Director of ACBR.

g. Although the University of Delhi allowed the Appellant to resume his substantive duties as Professor in the Department of Chemistry, he was not allowed to join his duties as Acting Director, ACBR.

h. The Executive Council of the University of Delhi, on 17th October, 2005, passed the following three resolutions against the Petitioner:

1. Professor Ramesh Chandra be not allowed to hold any administrative position in Delhi University henceforth.

2. A show cause notice be issued to Professor Ramesh Chandra for - (a) suppressing information with regard to allegations on account of which he was removed from the post of Vice-chancellor of Bundelkhand University at the time of his premature return to Delhi University, and (b) unauthorisedly assuming the office of the Director, Dr. B.R.Ambedkar Centre for Biomedical Research, Delhi University for the period from 18th July, 2005 to 24th July, 2005 in contravention of the statutory provisions of the University; and

3. The decision, if any, taken by at the instance of Professor Ramesh Chandra, while unauthorisedly occupying the post of the Director, Dr. B.R.Ambedkar Centre for Biomedical Research, or thereafter, be treated as null and void.

3. Aggrieved by the decision of the Executive Council dated 17th October, 2005, the Appellant filed a writ petition No. 16000/2006 seeking the following relief:

(a) Issue a writ of Certiorari or any other writ or direction in the nature of Certiorari quashing the resolutions dated 17th October, 2005 passed by the Executive Council, University of Delhi.

(b) Issue a writ of Certiorari or any other writ or direction in the nature of Certiorari quashing all the acts of the University done in pursuance of the

resolutions dated 17th October, 2005.

(c) Issue a writ of mandamus or any other writ, order or direction directing the Respondent-University to continue to implement its own order dated 30th May, 1995 allowing the Appellant to continue to function as Director.

4. Vide the impugned order the learned Single Judge found that the Appellant was not a regular appointee to the post of Acting Director of ACBR as could be inferred from the letter dated 30th May, 1995 which categorically stipulated that the Appellant would continue to be Acting Director of ACBR, till the time a regular appointment was made. It was further found that it was explicit from the letter dated 30th May, 1995 that the Appellant's appointment to the post of Acting Director, ACBR was made by the Vice-chancellor of the University of Delhi.

5. The learned Single Judge also found that the Appellant in pursuance of his deputation as Vice-chancellor, Bundelkhand University, Jhansi, was replaced by Professor Vani Brahmachari by the University of Delhi vide notification dated 20th September, 1999. The learned Single Judge held that the notification dated 20th September, 1999 clearly stipulates that the Appellant had been replaced by Professor Vani Brahmachari and that he was to continue providing academic leadership to ACBR pursuant to his appointment as Vice Chancellor, Bundelkhand University, Jhansi. The learned Single Judge moreover found that the Appellant had not brought on record a single document notified by the University of Delhi to the effect that Professor Vani Brahmachari was to continue Acting as Director of ACBR only until the expiry of the deputation period of the Appellant. The learned Single Judge further found that the catena of resolutions, purportedly, passed by the governing body of ACBR stipulating that the Appellant would continue holding the post of Acting Director ACBR whilst simultaneously holding the post of Vice Chancellor, Bundelkhand University, Jhansi, prima facie appeared to be of doubtful veracity inasmuch as their existence had been out-rightly denied by the Respondents.

6. The learned Single Judge also noted that pursuant to the Appellant's repatriation from Bundelkhand University, Jhansi, a notification dated 18th July, 2005, was issued by the Deputy Registrar of ACBR to the effect that the Appellant had fully resumed charge as Acting Director of ACBR, which resolution was consequently withdrawn on 25th July, 2005, pursuant to the letter dated 19th July, 2005 addressed by the Registrar, University of Delhi to the Deputy Registrar ACBR. It was the finding of the learned Single Judge that prima facie the following consequences were deducible from the withdrawal of the notification dated 18th July, 2005:

(a) Firstly, and perhaps, most importantly, any appointment to the post of Director, ACBR and even termination thereof, was to be made only on the behest of the University of Delhi and not the Governing Body of the ACBR;

(b) Secondly, the decision of the Registrar, University of Delhi to revoke the notification dated 18th July, 2005 clarified that the University of Delhi, vide letter

dated 20th September, 1999 had not in fact contemplated the Appellant to continue holding the charge of Acting Director of ACBR during his tenure as Vice Chancellor of Bundelkhand University, Jhansi;

(c) Thirdly, the resolutions issued by the Governing Body stipulating that the Petitioner was to continue as Director of ACBR, if any, were de hors the notification dated 25th July, 2005, whereby the Governing Body revoked its earlier notification dated 18th July, 2005, since the Governing Body obviously could not have issued the said resolutions once having revoked its notification dated 18th July, 2005.

(d) Fourthly, the Appellant became aware of the Respondents' decision of not allowing him to continue as Acting Director way back on 25th July, 2005 but he did not bring on record a single document to explain why he did not confront the University at that time.

7. The learned Single Judge further held that the submissions of the petitioner imputing mala fides to the Respondents, prima facie, held no water. The learned Single Judge observed that it is trite philosophy that mala fides are easy to allege but difficult to prove and that the Appellant had not brought on record a Single document which would, prima facie, give reason for the Court to believe that the resolutions dated 17th October, 2005 were upshot of the mala fide intention on the part of the Respondents.

8. The learned Single Judge finally observed that it was well settled by a catena of the decisions of the Apex Court that ordinarily no writ could be entertained against a charge-sheet or show cause notice since a mere charge-sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party, unless the same is issued by a person having no jurisdiction to do so. The learned Single Judge, therefore, found no grounds to interfere with the writ petition filed by the Appellant and the same was accordingly dismissed.

9. Mr. R. Venkatramani, learned Senior Advocate appearing on behalf of the Appellant assailed the order of the learned Single Judge on the ground that the impugned decision failed to appreciate that the charges leveled against the Appellant did not constitute a misconduct. The learned Senior Counsel consequently urged that the actions of the Appellant were based on the General Body Resolutions of the ACBR and were thus free from blame.

10. It was next argued that since the General Body Resolutions had not been set aside by the Executive Council of the Delhi University, they could not be disregarded.

11. Lastly, it was argued that the decision of the Allahabad High Court in favour of the Appellant had not been considered.

12. Per contra, it was argued by Mr. V.P. Singh, learned Senior Advocate, appearing on behalf of the Delhi University that the power to appoint a Director

to ACBR was vested in the Executive Council of the Delhi University under Ordinance XX Clause 6, Sub-clause 4 of the Delhi University Act and that the Appellant had been appointed as Acting Director by the Vice Chancellor of the Delhi University.

13. It was next urged on behalf of the Respondents that the Appellant had no lien, as the post of Director, ACBR, was only an Acting assignment. It was also urged that when the Appellant had proceeded to Bundelkhand University as Vice Chancellor, Professor Vani Brahmachari had been appointed as Acting Director vide communication dated 20th September, 1999 and later on Daman Saluja had been appointed as Acting Director with effect from 2nd January, 2006 to replace Vani Brahmachari, and that the Appellant had not challenged the said appointments made in his stead.

14. Further, it was submitted on behalf of the Respondents that no jurisdictional error had been demonstrated while seeking quashing of the resolution dated 17th October, 2005.

15. It was lastly urged on behalf of the Respondent-University that the Appellant had been served with a memorandum for suppressing the reasons for his premature removal as Vice Chancellor, Bundelkhand University, Jhansi and that the said action amounted to misconduct punishable under Ordinance XI, Clause VI of the Delhi University Act.

16. Before adverting to the rival submissions made on behalf of the parties it is necessary to extract the letters dated 30th May, 1995 and 20th September, 1999 whereby the Appellant had been appointed as Acting Director of ACBR, and had been replaced by Professor Vani Brahmachari on his proceeding on deputation as Vice Chancellor, Bundelkhand University respectively.

No. Estab. III/BRAC/95/1936 Delhi, the 30th May, 1995. Dr. Ramesh Chandra, Research Scientist (Professor), Department of Chemistry, University of Delhi, Delhi - 110 007 Dear Sir,

I am directed to inform you that the Vice Chancellor has been pleased to decide that you will act as the Director of Dr. B.R.Ambedkar Centre for Bio-medical Research, University of Delhi with immediate effect till regular appointment of a Director is made by the University.

Yours faithfully,

Assistant Registrar (E-NT)

Copy for information to: 1. The Dean, Faculty of Science, University of Delhi, Delhi. 2. The Chairman, Board of Research Studies, Faculty of Science, University of Delhi, Delhi-7. 3. The Head of the Department of Chemistry, University of Delhi, Delhi. 4. The Assistant Registrar, A/CS-I), University of Delhi, Delhi.

Assistant Registrar (E-NT)

No. Estab.(T)/V/99/ACCR/35652 Delhi, the 20th September, 1995. NOTIFICATION

The Vice-Chancellor has been pleased to appoint Prof. Vani Brahmachari as officiating Director (Hony.) of the Dr. B.R.Ambedkar Centre for Bio-Medical Research during leave period of Prof. Ramesh Chandra, who has joined as Vice-Chancellor of Bundelkhand University, Jhansi. He will however continue to provide academic Leadership.

(K.K. PANDA) REGISTRAR Prof. Vani Brahmachari, Dr. B.R. Ambedkar Centre for Biomedical Research, University of Delhi, DELHI - 110 007.

Copy to: 1. The Director, University of Delhi, Delhi - 7. 2. The Finance Officer, University of Delhi, Delhi -7. 3. The Joint Finance Officer, University of Delhi, Delhi -7. 4. The Joint Registrar, University of Delhi, Delhi -7. 5. The Director, B.R. Ambedkar Centre for Biomedical Research, University of Delhi, Delhi - 7.

17. Before proceeding further it would be appropriate to consider the referred portions of the judicial pronouncements relied upon by the parties in support of their respective contentions.

18. Learned Counsel for the Appellant relied on the following judgments:

1. In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., the Supreme Court observed that:

What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct.

2. In Union of India (UOI) and Others Vs. J. Ahmed, , the Supreme Court observed as follows:

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, , in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In Govinda Menon Vs. Union of India (UOI), , the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as Constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani Vs. Air France Calcutta, , wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to

the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabin man signals in a train on the same track where there is a stationary train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see *Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd.* (1978) 19 G.L.R. 108 at 120]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

3. In *Panjak Bhargava and another Vs. Mohinder Nath and another*, , the Supreme Court stated that:

Suffice it to say that in a collateral challenge the exercise is not the invalidation of a decision, but only to ascertain whether the decision "exists" in law at all and to rely upon incidents and effect of its "non-existence". The authority of decided cases is to the effect that the permission granted must be presumed to be valid till set aside. Doctrine of collateral challenge will not apply to a decision which is valid ex-hypothesi and which has some presumptive existence, validity and effect in law. Such a decision can be invalidated by the right person in right proceedings brought at the right time. It is only a nullity stemming from lack of inherent jurisdiction or a proceeding that wears the brand of invalidity on its forehead that might afford a defence even against enforcement.

4. In *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, , the Supreme Court referred to:

Black on judgments where it is said:

A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no mere usurper but holds it under colour of lawful authority. And there can be no question that judgments rendered and

other acts performed by such a person who is ineligible to a judgeship but who has nevertheless been duly appointed, and who exercises the power and duties of the office is a de facto judge, and his acts are valid until he is properly removed.

5. In 69 L.Ed.1011, *United States v. Elmo R. Royer* it was observed:

To constitute an office de-facto it was not a necessary pre-requisite that there should have been an attempted exercise of competent or prima facie power of appointment or election.

6. In *State of Punjab v. V.K. Khanna and Ors.* AIR (2001) SCC 343, the Supreme Court said:

...33. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or malafide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law Courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias - What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticized the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

7. In *Delhi Development Authority v. H.C. Khurana* 1993 (2) SLR 509 the Supreme Court stated:

the question now, is: what is the stage, when it can be said, that "a decision has been taken to initiate disciplinary proceedings"? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of a charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the inquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the Government Servant; the charge-sheet is then served to him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, the enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the Government Servant exonerated; but if the charges are proved, the penalty follows.

19. Mr. V.P. Singh, Sr. Advocate, relied on the following decisions:

1. In *M.V. Janardhan Reddy Vs. Vijaya Bank and Others*, , where the Supreme Court observed that:

It is true that the Recovery Officer confirmed the sale in favour of the appellant. But as we have already noted, in view of the condition imposed by the Company Court, the Recovery Officer did not have the power to confirm sale. An order passed by an officer having no authority of law has no effect. It neither creates any right in favour of a party for whom such order is made nor imposes any obligation on the opposite party against whom it was passed.

2. In *S.S. and Company Vs. Orissa Mining Corporation Limited*, , the Supreme Court stated that:

33. We are in complete agreement with the view taken by the High Court. As a matter of fact, for rejecting the allegation that the impugned amendment was introduced in Clause 8(i) of the NIT at the instance of the Managing Director, without obtaining prior approval of the Board of Directors we need not even go to the rebuttal- affidavit filed by the Addl. General Manager. The Board of Directors is the apex policy-making body. It may lay down broad guidelines but it is impossible to conceive that all the NITs (over a hundred in number) issued by the Corporation for different purposes every year should come before it for consideration and approval of their respective clauses or any amendment proposed in any clause in any of the NITs. (We fail to see any good reason why the matter should not be finalized by the Managing Director or, depending upon the nature of the contract, even at some lower level).

34. The normal work of any organization or government department would be seriously hampered if every tendering party would claim the right to raise objection that one or the other clause in a NIT or any amendment introduced in

any of its clauses did not have the prior sanction of the highest policy-making body of the organization. In this case particularly there is no occasion to go into that question as there is neither any material to suggest, even remotely, that the Managing Director harboured any malice against the appellant nor is the Managing Director made a party to this case in his personal capacity.

3. In *Triveni Shankar Saxena Vs. State of U.P. and others*, the Supreme Court stated that:

17. We shall now examine what the word "lien" means. The word "lien" originally means "binding" from the Latin *ligamen*. Its lexical meaning is "right to retain". The word "lien" is now variously described and used under different context such as "contractual lien", "equitable lien", "specific lien", "general lien", "partners lien", etc. In *Halsbury's Laws of England*, (Fourth Edition, Volume 28 at page 221, para 502) it is stated:

In its primary or legal sense "lien" means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied.

18. In *Stroud's Judicial Dictionary*, (5th Edition, Volume 3 at page 1465) the following passage is found:

Lien. (1) A lien-(without effecting a transference of the property in a thing)-is the right to retain possession of a thing until a claim be satisfied; and it is either particular or general. So, as regards Scotland, "lien" is defined as including "the right of retention" [Sale of Goods Act 1893 (c. 71), Section 62], or it "shall mean and include right of retention" [Factors (Scotland) Act, 1890 (c. 40), Section 1]; *Great Eastern Railway Co. v. Lord's Trustees* (1909) A.C. 109.

19. In *Words and Phrases*, Permanent Edition, Vol. 25 the definition of word "lien" when used to explain the equitable lien, is given thus:

A "lien" from a legal standpoint, embodies the idea of a deed or bond, and necessarily implies that there is something in existence to which it attaches.

24. A learned Single Judge of the Allahabad High Court in *M.P. Tewari v. Union of India* 1974 All LJ 427 following the dictum laid down in the above *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others*, and distinguishing the decision of this Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , has observed that "a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier", with which view we are in agreement.

20. In the present case, it is seen that the ACBR was set up by the University of Delhi. Under the provisions of Sub-clause 4 of Clause 6 of Ordinance XX of the Delhi University Act, 1922 the appointment of the Director of ACBR could only be made by the Executive Council. The appointment of the Appellant as Acting Director was made by the Vice-Chancellor vide communication dated the 30th

May, 1995. Thereafter, when the appellant proceeded on deputation as Vice-Chancellor, Bundelkhand University, Jhansi, the Vice-chancellor vide communication dated 20th September, 1999 was pleased to appoint Prof. Vani Brahmachari as officiating Director of ACBR in place of the Appellant.

21. The Appellant has not questioned the authority or competence of the Vice-Chancellor to do so at any stage. Therefore, it does not lie in his mouth now to urge that the Governing Body of ACBR had the power or authority to appoint or continue him as the Acting Director of the ACBR. Even otherwise it is seen that vide notification dated 25th July, 2005, the earlier notification dated 18th July, 2005, permitting the Appellant to join back as full time Director, was withdrawn by the ACBR itself, on a communication in this behalf by the Delhi University. Therefore, the issue whether or not the Appellant could continue holding charge as Acting Director of ACBR was to be decided by the Executive Council or Vice-Chancellor of the University of Delhi and not the Governing Body of the ACBR. It is equally clear that the Governing Body of the ACBR could not continue the Appellant as Acting Director of ACBR contrary to the decision in this behalf of the Delhi University.

22. The above cited Ordinance XX makes it evidently clear that the Governing Body of the ACBR was to function and manage its affairs under the control and supervision of the Executive Council of the University of Delhi and not in opposition to it.

23. In this view of the matter, we agree with the conclusions deduced by the learned Single Judge from the withdrawal of the notification dated 18th July, 2005, to the effect that (i) firstly, and perhaps most importantly, any appointment to the post of Director, ACBR, and even termination thereof, was to be done at the instance of the University of Delhi and not the Governing Body of ACBR; (ii) secondly, the decision of the Registrar, University of Delhi to revoke the notification dated 18th July, 2005 clarified that the University of Delhi, vide letter dated 20th September, 1999, had never contemplated the appellant to continue holding the charge of Acting Director of ACBR during his tenure as Vice-Chancellor of Bundelkhand University, Jhansi; (iii) thirdly, the resolutions issued by the Governing Body, ACBR, stipulating that the appellant was to continue as Director of ACBR, if any, were de hors the notification dated 25th July, 2005 whereby the Governing Body revoked its earlier notification dated 18th July, 2005. The Governing Body once having revoked its notification dated 18th July, 2005, obviously could not have issued the said Resolutions; and (iv) fourthly, the appellant was aware of the Respondents' decision of not allowing him to continue as Acting Director, ACBR as far back as on 25th July, 2005, but he never confronted the University of Delhi in this respect at that time.

24. The submissions made by the appellant to the effect that there can be no collateral challenge to Governing Body Resolutions or that the Governing Body or the Appellant had de facto authority to enable the Appellant to continue to function as Director, ACBR, hold no water. The rulings relied upon by the

appellant in the context of the facts and circumstances of those particular cases, cannot be engrafted on the present case in a blanket manner. It is also to be emphasized that it is well established that if a statute empowers a specific body to exercise power, it must be exercised by that body alone and no other body can usurp or exercise that power without the authority of law.

25. The appellant has next contended that the decision of the Allahabad High Court has not been considered in the impugned judgment. In this behalf it is observed that it is not the case of the Respondents that the conduct of the Appellant needs to be enquired into for the purported charges based on which the latter was prematurely removed as Vice-chancellor, Bundelkhand University, Jhansi. The show cause notice issued to the Appellant by the Respondent herein is with respect to the concealment by the Appellant of the factum of his being removed from the post of Vice-chancellor at the time of seeking to rejoin the University of Delhi as Professor in the Department of Chemistry. In this behalf it is relevant to consider the communication dated 18th July, 2005 whereby the Appellant sought to rejoin his duties with the University of Delhi. In the said communication the Appellant wrote that "After completing my tenure as the Vice-chancellor, Bundelkhand University, Jhansi, for almost six years, I have returned back and hereby report my duties as the Professor, Department of Chemistry, University of Delhi today i.e. 18th July, 2005 (Forenoon)." What the Respondent seeks to inquire into is the conduct of the Appellant whereby the latter sought to rejoin his substantive post as Professor in the Department of Chemistry, by conveying a misleading impression that the latter was joining back after completing his tenure as Vice-chancellor, Bundelkhand University, Jhansi, whilst suppressing the factum of his removal from the post on charges of abuse of power before completion of his tenure. The decision of the Allahabad High Court absolved him of the charges on which the Appellant had been removed from Bundelkhand University, Jhansi. By any stretch of the expression, the said decision cannot and did not absolve the Appellant from the factum of not having disclosed to the Respondents at the time of rejoining that the Appellant had been removed from the post of Vice-chancellor prematurely and thereafter rejoined his substantive post as Professor in the Department of Chemistry. Prima facie the concealment by the Appellant of the factum of his removal at the time of rejoining the Respondent is the issue in the show cause notice and not the decision of the Allahabad High Court which is on an entirely different footing. Therefore, the decision of the Allahabad High Court cannot in any manner be said to completely absolve the Appellant from all blame, including from the factum of having suppressed his removal upon his premature return from Bundelkhand University, Jhansi. Thus this argument on the part of the Appellant is untenable and holds no water.

26. Lastly, the appellant has assailed the impugned order on the ground that it failed to consider that no misconduct had been made out against the appellant. In this behalf, it is suffice to say that the Memorandum dated 2nd November, 2005 clearly spells out the case of the University of Delhi against the Appellant

and the same is the subject matter of an inquiry pending against the petitioner. However, without prejudicing in any manner the conduct of the said inquiry against the appellant, prima facie it appears that the University of Delhi does have just grounds for conducting an inquiry into the acts complained of in the Memorandum dated 2nd November, 2005. The alleged usurpation of the post of Director ACBR and the concealment of factum of removal as Vice-chancellor, Bundelkhand University, Jhansi in our opinion constitute prima facie reason to enquire into the conduct of the Appellant. In this respect we also find considerable force in the submission made on behalf of the respondent that the Appellant did not have any lien on the post of Acting Director, ACBR, since it was merely an acting assignment which came to an end on the appointment of Professor Vani Brahmachari vide notification dated 20th September, 1999, and the subsequent appointment by the Respondents of Daman Saluja as Acting Director in the place of Vani Brahmachari, which appointments have never been challenged by the Appellant herein in any proceeding.

27. Furthermore, no grounds have been set out by the Appellant for seeking the quashing of the resolution dated 17th October, 2005 and there is nothing urged on behalf of the Appellant to show whether there was any jurisdictional error on the part of the Respondents in either passing the resolution dated the 17th October, 2005 or the steps that have been taken thereafter by the University of Delhi. On the contrary as is evident from Clause 6 of the Annexure to Ordinance XI, the University of Delhi was duly empowered to take action in this behalf against the Appellant.

28. For the foregoing reasons, we find no infirmity in the impugned order. Consequently the appeal is without any merit and is hereby dismissed. No costs.