

(1999) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 4442 and 4685 of 98

Rama Shankar Mishra and Another

APPELLANT

Vs

Kuladhipati, A.P.S. University and Others

RESPONDENT

Date of Decision : 25-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 361

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 12(1), 13, 13(2), 13(6), 13(7)

Citation : (2000) 1 MPHT 533

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : Rajendra Tiwari and Rajendra Mishra, for the Appellant; R.N. Singh and Arpan Pawar for Respondent No. 1 and K.P. Mishra, for Respondents No. 3, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—In both the writ petitions filed under Article 226 of the Constitution of India, petitioners pray for quashing of the notification dated 19th of August, 1998 issued by the Chancellor of the University whereby in exercise of powers conferred by Section 52 (3) of the M.P. Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as "the Act"), he appointed a committee to recommend a panel of not less than 3 persons for appointment to the office of the Vice-Chancellor of Awadhesh Pratap Singh University. Further prayer made by the petitioners is to quash the order dated 22-09-1998 of the Chancellor of the University, where respondent No. 5 Prof. S.D. Tripathi has been appointed as the Vice-Chancellor of the Awadhesh Pratap Singh Vishwavidyalaya for a term of 4 years from the date he enters upon his office. Further prayer made by the petitioner Professor V.C. Sinha is that the respondents may be restrained from creating any hinderance in performance of his duty as Vice-Chancellor.

2. Shorn of unnecessary details, facts giving rise to the present writ petition are

that the State Government being satisfied that the administration of the Awadhesh Pratap Singh University (hereinafter referred to as "the University") is not being carried out in accordance with the provisions of M.P. Viswavidyalaya Adhiniyam, 1973, it issued notification on 23-02-1997 directing that the provisions of Sections 13, 14, 20 to 25, 40, 47, 48, 54 and 67 shall apply to the University subject to the modification as specified in the Third Schedule of the Act. On 23-02-1997, the Chancellor issued notification appointing petitioner Prof. V.C. Sinha (petitioner in W.P. No. 4685/98) as the Vice-Chancellor of the University, until further orders, in exercise of powers conferred under modified Sections 13 & 14 read with Section 52 (3) of the Act. Further, by notifications dated 20-02-1998 and 25-05-1998 the period of validity of notification issued u/s 52 (1) was extended to 31-05-1998 and, 30th November, 1998 respectively. However, by notification dated 22-09-1998, the operation of notification was directed to come to an end on 22nd September, 1998. Thus the notification issued u/s 52 of the Act remained in operation from 23-02-1997 to 22-09-1998.

3. While the notification u/s 52 of the Act was in operation, the Vice-Chancellor of the respondent-University by letter dated 28th of April, 1998 was informed that the Chancellor of the University proposes to constitute a committee in accordance with Section 13 (2) of the Act for appointment of the Vice-Chancellor and accordingly, he was requested to send one person selected by the Executive Council. The aforesaid communication from the Secretariat of Chancellor was placed for consideration before the Executive Council of the respondent-University in its meeting held on 15-05-1998 and it declined to make any recommendation. Thereafter, on 16-05-1998 again the Secretariat of the Chancellor wrote a Demi Official Letter to the then Vice-Chancellor of the University to convene the meeting of the Executive Council immediately and send the name of the elected person. Aforesaid request of the Chancellor was placed for consideration before the Executive Council of the respondent-University on 10-7-1998 and it declined to send the name requested by the Chancellor. Thereafter by the impugned notification dated 19-08-1998, the Chancellor constituted a Committee to recommend a panel of not less than 3 persons for appointment to the office of Vice-Chancellor. On recommendation of the Committee, by impugned order dated 22-09-1998, respondent No. 4 Prof. Satya Dev Tripathi was appointed as the Vice-Chancellor of the University for a term of 4 years with effect from the day he enters upon his office.

4. It is not in controversy that the notification issued u/s 52 of the Act was in operation from 23-02-1997 and came to an end on 22-09-1998. It is further not in controversy that the Chancellor has constituted the Committee for making recommendation for appointment to the office of Vice-Chancellor on 19-08-1998 i.e., during the period when the notification issued u/s 52 of the Act was in operation. It has been stated by respondent No. 1 in return that earlier on 5 occasions Chancellor has constituted the Committee during the period of operation of notification u/s 52 of the Act.

5. It is relevant here to state that in the return filed by respondent No. 1, a preliminary objection has been raised that u/s 12(1) of the Act, the Governor of Madhya Pradesh, is the Chancellor of the University and in view of Article 361 of the Constitution of India, Governor shall not be answerable to any Court, he ought not to have been impleaded as a party. However, in fairness to Shri R.N. Singh appearing on behalf of respondent No. 1 at the time of hearing, he did not press this preliminary objection. The Chancellor while exercising the power under the Act, constituting the Committee or appointing Vice-Chancellor does not exercise legislature power and his action is statutory in nature which is subject to judicial review and while exercising such power he cannot seek protection under Article 361 of the Constitution of India. Preliminary objection though raised, but not pressed, stands overruled.

6. Shri Rajendra Tiwari appearing on behalf of the petitioners submits that during operation of notification u/s 52 of the Act, provisions of unmodified Sections 13 & 14 of the Acts are obliterated and stand modified and substituted by Section 14 as mentioned in Third Schedule of the Act. Mr. Tiwari points out that by virtue of Section 14 of the Act as modified by the Third Schedule, provisions of unmodified Sections 13 & 14 cease to exist and in that view of the matter, Chancellor is left with no power to appoint the Committee under unmodified Section 13 (2) or 13 (6) of the Act. He submits that the aforesaid Legislative intent is writ large from the fact that Section 52 (5) of the Act, in no uncertain terms provided that before the expiration of period of operation of the notification u/s 52 of the Act or immediately as early as practicable, thereafter Chancellor shall take steps to constitute the Executive Council and Academic Council in accordance with the provisions of the Act, as unmodified but no such provision exists for constitution of Committee for appointment of Vice-Chancellor during the period of operation of notification u/s 52 (1) of the Act. He submits that had the Legislature intended giving power to the Chancellor to constitute the Committee under unmodified Sections 13 (2) or 13 (6) for making recommendation for appointment to the office of Vice-Chancellor during the operation of notification, it in the same manner as that of taking steps to constitute the Court, Executive Council and Academic Council, ought to have specifically provided for the same. According to Shri Tiwari, there is salutary purpose behind this i.e., after coming into the force of the notification u/s 52 of the Act, a skeleton Executive Council is constituted under modified Section 23 of the Third Schedule of the Act and Legislature did not intend giving skeleton Executive Council to select and nominate a person in the committee empowered to make recommendation for appointment to the office of Vice-Chancellor.

7. Mr. R.N. Singh, however, appearing on behalf of respondent No. 1 submits that after coming into the force of the notification u/s 52 (1) of the Act, provisions of unmodified Sections 13 and 14 are not totally arrested and the same do exist in the statute book and apply to the University subject to the modification as specified in the Third Schedule. He submits that unmodified Sections 13 & 14 of the Act stand modified by Section 14 of the Third Schedule to the extent it has

provided for appointment of the Vice-Chancellor by Chancellor in consultation with the State Government. He submits that modified Section 14 of the Third Schedule of the Act would only operate in the field of appointment of Vice-Chancellor in consultation with the State Government and his removal and besides aforesaid during the operation of notification u/s 52 (1) of the Act, provisions other than aforesaid as contemplated under unmodified Sections 13 & 14 of the Act shall remain intact. He submits that in case the provisions of Sections 13 & 14 are held not to be existing in the statute book for any purpose, in that case, Vice-Chancellor appointed during the subsistence of notification u/s 52 (1) of the Act shall not be entitled to any emoluments as provided under the statute because of non-existence of unmodified Section 14 of the Act which inter alia provides for the emoluments and other terms and conditions of the service, in accordance with the statute.

8. Mr. R.N. Singh, further submits that the Vice-Chancellor appointed under modified Section 14 of the Act holds office during the period of operation of notification u/s 52 (1) of the Act, as provided u/s 52 (3) of the Act and in case it is held that the Chancellor is denuded of the power to appoint Committee for appointment to the office of Vice-Chancellor, during the operation of notification, the provision of Section 52 (3) of the Act becomes nugatory and cannot be applied in any case. He submits that proviso to Section 52 (3) of the Act although contemplates of continuance of Vice Chancellor after expiration of the period of operation of the notification, but according to his submission in case it is held that process of appointment i.e., constitution of the Committee, is not permissible during the period of operation of notification u/s 52 (1) of the Act, in no circumstances, provision of Section 52 (3) of the Act can ever play.

9. Section 52 of the Act reads as follows :--

"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, 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 interest 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 to 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 Kulpati under Sections 13 and 14 as modified and the Kulpati so appointed shall hold office during the period of operation of the notification :

Provided that the Kulpati 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 Kulpati, 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 of 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 (1) 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 Kulpati appointed under Sections 13 and 14 as modified shall exercise the powers and perform the duties conferred or imposed by or under this Act, on the Court, the Executive Council or Academic Council :

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

(5) Before the expiration of the period of operation of the notification or immediately as early as practicable thereafter, the Kulpati shall take steps to constitute the Court, Executive Council and Academic Council in accordance with the provisions of the Act, as unmodified and the Court, Executive Council and Academic Council as so constituted shall begin to function on the date immediately following the date of expiry if the period of operation of the notification of the date on which the respective bodies are so constituted whichever is later :

Provided that if the Court, Executive Council and Academic Council are not constituted before the expiration of the period of operation of the notification, the Kulpati shall on such expiration, exercise the powers of each of these authorities subject to prior approval of the Kuladhipati till the Court, Executive Council or Academic Council, as the case may be, is so constituted."

Sections 13 and 14 of the Act, read as follows :-

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

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

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

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

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

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

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

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

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

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

(7) If the committee constituted under Sub-section (6) fails to submit the panel within the period specified therein the Kuladhipati may appoint any person whom he deems fit, to be the Kulpati. Section 14. Emoluments and Conditions of

service of Kulpati, terms of office of and vacancy in the office of Kulpati:-- (1) The Kulpati shall be a whole time salaried officer of the University and his emoluments and other terms and conditions of service shall be prescribed by the Statutes.

(2) The Kulpati shall hold office for a term of four years and shall not be eligible for appointment for more than two terms :

Provided that notwithstanding the expiry of his term he shall continue to hold office until his successor is appointed and enters upon his office but this period shall not in any case exceed six months.

(2-A) The person holding office of the Kulpati in any University immediately before the commencement of the M.P. Vishwavidyalaya (Sanshodhan) Adhiniyam, 1988, shall continue to hold his office till the expiry of his term of office notwithstanding anything contained in the first proviso to Sub-section (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 Kuladhipati that the Kulpati--

(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 interests of the University; or

(iii) is incapable of managing the affairs of the University the Kuladhipati may, notwithstanding the fact that the terms of office of the Kulpati has not expired by an order in writing stating the reasons therein, require the Kulpati 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 Kulpati and he is given a reasonable opportunity of showing cause against the proposed order.

(5) As from the date specified in the order under Sub-section (3), the Kulpati shall be deemed to have relinquished the office and the office of the Kulpati shall fall vacant.

(6) In the event of the occurrence of any vacancy including a temporary vacancy in the office of the Kulpati by reason of his death, resignation, leave, illness or otherwise, the rector and if no rector has been appointed or if the rector is not available, the Dean of any faculty or the senior most Professor of University teaching department nominated by the Kuladhipati for that purpose shall act as the Kulpati untill the date on which the Kulpati appointed under Sub-section (1) or Sub-section (7) of Section 13, enters or re-enters, as the case may be, upon his office :

Provided that the arrangement contemplated in this sub-section shall not

continue for a period of more than six months.

Clause 1 of the Third Schedule reads as follows :

1. Sections 13 and 14 :-- For Sections 13 and 14 substitute :

"14. The Kulpati:-- Kulpati shall be appointed by the Kuladhipati in consultation with the State Government and may be removed by the Kuladhipati in the like manner."

10. A plain reading of Section 52 (1) of the Act, inter alia makes it clear that in case the State Govt., 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 interest of the University, it may by notification 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 apply to the University subject to the modifications specified to the Third Schedule. Further Section 52 (4) (i) of the Act in no uncertain terms provides that during the operation of the notification, provisions of the Act shall have effect subject to the modification specified in the Third Schedule.

11. In view of the aforesaid provisions, I have no manner of doubt that merely by issuance of notification, Sections 13 and 14 are not totally obliterated from the statute book. The provisions in my considered opinion, exist subject to the modification as specified in the Third Schedule. Modified Section 14 of the Third Schedule retains the power of Chancellor to make appointment, but instead of detailed procedure as provided under unmodified Section 13 of the Act, it confers power of appointment to the Chancellor in consultation with the State Govt., during the operation of notification u/s 52 (1) of the Act. In my opinion, so long as the notification u/s 52 (1) of the Act is in operation, appointment is required to be made by Chancellor in consultation with the State Government as modified u/s 14 of the Third Schedule of the Act. Modified Section 14 of the Third Schedule of the Act has not covered the other fields as provided under unmodified Sections 13 and 14 of the Act. Sections 52 (1) and 52 (4) (i) of the Act have specifically provided for application of Sections 13 and 14 of the Act during operation of the notification subject to the modification as specified in the Third Schedule. Therefore, in my opinion, unmodified Sections 13 and 14 of the Act shall be sub-servient to modified Section 14 of the Third Schedule of the Act only in the field in which modified Section 14 of Third Schedule of the Act operates.

12. The expression "subject to" as used in Sections 52 (1) and 52 (4) (i) of the Act convey the idea that provisions of unmodified Sections 13 and 14 of the Act yield to modified Section 14 of the Act only to the extent which is covered under the later. Provision of modified Section 14 of Third Schedule of the Act does not cover the field relating to the appointment of Committee. Hence, provisions of unmodified Section 13 (2) and (6) of the Act, do exist and operate during the subsistence of notification u/s 52 (1) of the Act. Accordingly, in my opinion,

Chancellor did not commit any illegality in appointing a committee for appointment to the office of Vice-Chancellor.

13. There is yet another reason to arrive at this conclusion. u/s 52 (3) of the Act, a person appointed as Vice-Chancellor during the period of operation of the notification, holds office during the period of operation of the notification and although the proviso to the aforesaid section does contemplate of continuance in the office until the successor enters upon the office, but in case it is held that the Chancellor cannot take steps in constituting the Committee for appointment of Vice-Chancellor during the period of operation of notification u/s 52 (1) of the Act, then in no case, the main provision of Section 52 (3) of the Act can have any role. Proviso in an enactment, it is well settled, is added to qualify or create an exception to main enactment. Any other construction would render the entire Section 52 (3) of the Act otiose. It is well settled that Courts while constructing the provisions of statute has to avoid the same. In view of what has been stated above, it has to be necessarily held that during subsistence of the notification u/s 52 (1) of the Act, the provisions of unmodified Sections 13 (2) and 13 (6) of the Act are not obliterated from the statute book and the Chancellor is not denuded of the power to constitute Committee as provided under the aforesaid provisions.

14. Here, I must answer an ancillary submission of Shri Tiwari. He contends that Section 52 (5) of the Act has specifically given liberty to the Chancellor to take steps to constitute the Court, Executive Council and Academic Council before the expiration of period of operation of the notification and in absence of any such provision as regards the Constitution of Committee to make recommendation for appointment to the office of Vice-Chancellor, it is writ large that the Legislature did not intend giving power to the Chancellor to constitute committee during the period of operation of notification. It is relevant here to state that the aforesaid provision has been enacted giving discretion to the Chancellor to take steps to constitute various bodies before the expiration of operation of the notification as in absence thereof the Vice-Chancellor is required to exercise the powers of each of the authorities until they are reconstituted u/s 52 (4) (v) of the Act. Here, in the present case, by operation of notification u/s 52 (1) of the Act, the applicability of unmodified Sections 13 and 14 stand modified only to the extent it is covered u/s 14 of the Act. The use of expression "subject to" in Sections 52 (1) & 52 (4) (i) of the Act makes the legislative intent clear and unambiguous. This being the position, I do not find any substance in this submission of Shri Tiwari.

15. Shri Tiwari lastly contends that the Legislature purposely did not permit the Chancellor to appoint committee so as to enable it to make appointment to the office of Vice-Chancellor as during the period of operation of notification Executive Council, as provided under unmodified Section 23 of the Act, is substituted by a skeleton Executive Council as modified by Section 23 of the Act and power to elect and nominate person in the Committee empowered to make recommendation for appointment of Vice-Chancellor to such skeleton committee

was not considered fit. This, in my opinion, shall have no bearing in considering the scope and ambit of unmodified Sections 13 and 14 of the Act as according to Section 4 (i), Executive Council means the Executive Council of the University which is provided under unmodified Section 23 or may be under modified Section 23 of the Act.

16. All the submissions made on behalf of the petitioners having no substance, I do not find any merit in the writ petitions and they are dismissed accordingly. In the facts and circumstances of the case, there shall be no order as to cost.