
(2002) 05 JH CK 0006

In the Jharkhand High Court

Case No : LPA No's. 785 of 2001 and 65 and 86 of 2002

Samaresh Singh etc.

APPELLANT

Vs

Syed Azmat Hussain and Others etc.
 Syed Azmat
Hussain Vs Regl. Institute of Technology
 State of
Jharkhand Vs Syed Azmat Hussain and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 2, 70

Regional Institute of Technology Jamshedpur Rules — Rule 15, 16, 18, 19

Citation : (2002) 50 BLJR 1359

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : S.B. Gadodia, R.N. Sahay, S.C.I., M.K. Roy, J.P. Sinha and P. Vidyarthi, J.Cs to S.C.I. in LPA No. 86/02, M.S. Anwar, N. Hoda, Altaf Hussain and Rajesh Kumar, in LPA No. 65/02 and R.K. Verma, for the Appellant; Anil Kumar Sinha R.N. Sahay, SCI and P. Vidyarthi, J.C. to SCI in LPA No. 65/02, M.S. Anwar, N. Hoda and Altaf Hussain, in LPA Nos. 785/01 and 65/02, B. Poddar, AAG, Ruby Parween, Annoo Kumar Mehta and A.K. Mehta and Rajesh Kumar in LPA No. 86/02, for the Respondent

Judgement

Tapen Sen, J.—Syed Azmat Hussain, Respondent No. 1 in LPA No. 785 of 2003 had filed a writ application under Article 226 of the Constitution, being CWJC No. 958 of 2001, inter alia challenging the order passed by the appellant asking him to proceed on leave as also the subsequent order placing him under suspension. In the writ application the very appointment of the appellant as Chairman. Board of Governors of Regional Institute of Technology, Jamshedpur was also challenged. Vide impugned judgment dated 29.11.2001, whereas the learned single Judge set aside the appointment of the appellant as the Chairman. Board of Governors. R.I.T., Jamshedpur, as made by Notification dated 9.1.2001, but he refused to grant any relief in so far as the writ petitioner (Respondent No. 1) was concerned relating to the aforesaid adverse order passed against him by the appellant. While refusing to grant relief to the respondent No. 1, the learned

single Judge was of the view that even though the appointment of the appellant has been declared illegal, all actions taken by him in the capacity of the Chairman, Board of Directors, R.I.T., Jamshedpur, should not be held illegal ipso facto till some specific illegalities were pointed out with respect to such action. Even though the learned single Judge did not mention so, perhaps, he invoked the de facto doctrine and thus did not grant any relief to the respondent No. 1. In so far as the aforesaid grant of relief to respondent No. 1 is concerned. LPA No. 65 of 2002 has been filed by him. In so far as the quashing and setting aside of the appointment, of appellant as the Chairman of the Board of Governors, R.I.T., Jamshedpur is concerned. LPA No, 785 of 2001 has been filed by the said appellant.

2. LPA No. 785 of 2001 was taken up for consideration on 21.12.2001 and while the appeal was admitted, in so far as the interim relief as claimed by the appellant was concerned, the following order was passed :--"Heard the parties with regard to the stay matter. On consideration of all the relevant aspects and specially in the light of the provisions of the Bihar Reorganisation Act, 2000, as well as on consideration of the various clauses of the Articles of Association of the Society and on interpretation of various orders on the subject, we fell that status quo ante as was existing prior to the date of the pronouncement of the judgment under challenge in this appeal is required to be restored, keeping in view the spirit of the Bihar Reorganisation Act, 2000 and the need for maintaining the continuity in the functioning of the Regional Institute of Technology, Jamshedpur, Accordingly, even while we are staying the operation of that portion of the judgment of the learned single Judge as relates to the revocation of the appointment of the appellant as the Chairman of the Board of Governors, R.I.T., Jamshedpur we also direct that status quo ante as was in existence before the pronouncement of this judgment shall be restored."

3. Respondent Nos. 5 and 6 may file counter-affidavits in six weeks from today.

4. Let the matter appear in February. 2002.

5. Feeling aggrieved. Respondent No. 1 has filed the vacation application with respect to the aforesaid order. The State of Bihar being a highly interested party in the out come of this appeal has also filed a vacation application with respect to the aforesaid order dated 21.12.2001.

6. By this common order, therefore, we propose to deal with and dispose of both the vacation applications, as also the other issues involved in these appeals.

7. The R.I.T., Jamshedpur, is one of the several Regional Engineering Colleges set up and operating in the country, all under the joint venture agreements between the Central Government and the concerned State Governments (wherever these are located). These institutions, wherever these are located, are registered as Societies under the Societies Registration Act having their Memorandum of Association, Articles and the Rules. Since R.I.T., Jamshedpur, has also admittedly been registered as a Society under the Societies Registration Act. it also has its

Memorandum. Articles and Rules.

8. The main and primary dispute which formed the groundmen of the controversy between the parties in the present litigation, revolves around the meaning of the expression "State Government". Whereas the appellant and all the other parties in this case connected with him claim that since R.I.T., Jamshedpur is located in a territory now forming part of Jharkhand State. Government of Jharkhand is the joint venture partner of R.I.T., Jamshedpur, Respondent No. 1, the State of Bihar and all others connected with them in this litigation claim that as per the Memorandum of Association, Articles. Rules and all related Bye-laws and Regulations on the subject, State of Bihar continues to be the joint venture partner along with the Central Government.

9. By virtue of Section 3 of the Bihar Reorganisation Act, 2000, State of Jharkhand came into being. This new State was carved out from the territories of the "existing State of Bihar". as has been defined in Section 2(c) of the 2000 Act. Bihar Reorganization Act. 2000 is totally and absolutely silent in so far as the ownership, management or control over R.I.T., Jamshedpur is concerned, except as is mentioned in Schedule Xth of this Act. which has to be read with Section 70 of the Act. Entry 12 in Schedule Xth relates to R.I.T., Jamshedpur. Section 70 of the 2000 Act reads thus :--

"70. Continuance of facilities in certain State institutions.--(1) The Government of State of Bihar or Jharkhand. as the case may be. shall in respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments before the 1st Day of December, 2001 or if no agreement is reached by the said date, as may be fixed by order of the Central Government.

(2) The Central Government may at any time before the 1st day of December, 2001 by notification in the Official Gazette, specify in the Tenth Schedule any other institution existing on the appointed day in the States of Bihar and Jharkhand and on the issue of such notification, the Schedule shall be deemed to be amended by the inclusion of the said institution therein."

10. The appellant places reliance upon Section 70 of the Act and says that by virtue of Entry 12 in Schedule Xth, and by operation of law (because of separation of Jharkhand State from the existing State of Bihar) Government of Jharkhand should now be considered as the joint venture partner of R.I.T., Jamshedpur along with the Central Government, in place of "existing State of Bihar" (as was in existence prior to 15.11.2000, the "appointed day" as prescribed under the 2000 Act). As against the aforesaid legal submission, Mr. A. Allam, learned counsel appearing for the State of Bihar, submits that the R.I.T., Jamshedpur is a Society registered under the Societies Registration Act and

irrespective of the fact that through the operation of 2000 Act, the physical location of the Institution may now be in a place presently being part of Jharkhand State, but as per the Memorandum of Association, Articles. Rules. Regulations and Bye-laws the State of Bihar continues to be the joint venture partner along with the Central Government. Mr. Allam has placed heavy reliance upon a letter dated 20.3.20002 from the Central Government addressed to the Government of Jharkhand, copy whereof has been filed as Annexure 4 to the Memo of Appeal. According to Mr. Allam, the contents of this letter support his submission that unless and until the Society is duly reconstituted and unless and until the reconstituted Society registers itself newly in the State of Jharkhand, the Society as was earlier constituted would continue to function and because of its Memorandum of Association. Articles, Rules etc. the State of Bihar would continue to be the joint venture partner of this Institution. It is of course the admitted case of the parties that despite the aforesaid communication dated 20.3.2001 having been received by the Government of Jharkhand, more than a year earlier, the Government of Jharkhand has not taken any step so far as in furtherance of the said communication in as much as admittedly it has so far not taken any step either for reconstitution of the Society or in getting any such reconstituted Society registered anew in the State of Jharkhand.

11. The vital and core issue, therefore, which may fall for determination in this appeal is as to whether the State of Jharkhand has become the joint venture partner, or the State of Bihar continues to be the joint venture partner of the R.I.T., Jamshedpur. As has been noticed by us, the learned single Judge was of the view that the State of Bihar continues to be joint venture partner of the R.I.T., Jamshedpur.

12. In the interim order dated 21.12.2001, for sake of continuity and to avoid any undue interference in the functioning of the Institution, the Division Bench had allowed the appellant to continue to function as the Chairman and had ordered for the restoration of status quo ante so as to ensure continuity in all respects. In the vacation application and the supplementary affidavit filed, it has been submitted that after the Division Bench had passed the aforesaid order on 21.12.2001 the appellant started functioning in a manner which was totally and patently against and de hors the Memorandum of Association, Articles. Rules, Regulations and the principles of fair play, objectivity, equity etc.

13. We list hereinbelow some of the admitted facts which constitute the gravamen of aforesaid accusations against the appellant. These are :--

1. Following the suspension of Respondent No. 1, disciplinary proceedings against him were on and admittedly these are continuing even uptill date. Undisputedly the proceedings have not so far been concluded. Despite this. Office Order No. R.I.T. (P)-54/2002, dated 1.3.2002 was passed by the appellant terminating the service of Respondent No. 1. The text of this order reads thus :--

"The entire discipline in the campus has been broken by you and you have been

held the real schemer for disturbance in the recent days. Hence, your services in the institute is hereby terminated. You are required to be out of R.I.T., Jamshedpur campus within 48 hours from the time of issue of this order."

It is the admitted case of the appellant as well as every body else that the passing of this order was not preceded by any notice to respondent No. 1, holding of any inquiry whatsoever or affording any opportunity to respondent No. 1 in any manner. This has been actually, specifically and expressly admitted by the appellant as well as the R.I.T. in the affidavits filed by them in this Court. What the appellant has to say with respect to this order is contained in his affidavit. We reproduce the same, which reads thus :--

"10. That the statements made in paragraph 6 of the application, under reply, are denied and disputed. It is denied that only to feed fat his grudge and personal bias against the respondent No. 1, the order of termination/dismissal was passed against the respondent No. 1. It is stated that the respondent No. 1, in aid and assistance of anti-social elements numbering about 30 to 40 armed with lethal weapons, gheraod the official residence of the Principal and started brick-batting. The incidence had taken such a dimension that immediate action was required to be taken and, accordingly, a 5 men committee was constituted to enquire into the matter comprehensively. While making the enquiry, a number of independent persons, including students; teachers and other categories of employees, were examined who gave their written informations to the Committee. Based upon the said informations, the Committee made certain recommendations. Taking into consideration all aspects of the matter, the appellant was constrained to pass necessary orders leading to the issuance of the order as contained in Annexure A to the application under reply."

What the R.I.T., Jamshedpur through the affidavit of Sri M.M. Prasad, Professor-Incharge (Legal) has to say with respect to this aspect is found in the following part of the affidavit :--

"11. That the statements made in paragraph 6 are denied and disputed. It is stated that respondent No. 1 has been issued a memorandum of charges vide office order No. RIT (P)-132/2001, dated 27.4.2001 and departmental enquiry in relation to the said charge-sheet is still under progress and same has yet not been finalised. It is denied that the said departmental enquiry has ended in the termination/dismissal of the respondent No. 1. It is denied that the order dated 1.3.2002 as contained in Annexure A to the application under reply is the final order passed on the charge-sheet dated 27.4.2001. It is stated that Annexure A has been issued in relation to an incident which took place in the R.I.T. campus in which the respondent No. 1 was instrumental in leading a mob to the residence of the Principal, Regional Institute of Technology, Jamshedpur. The matter was brought to the notice of the Chairman, Board of Governors for consideration only in relation to the said misconduct, indiscipline who directed for passing the order which has been communicated vide letter dated 1.3.2002. It is further stated that against the said order dated 1.3.2002 as contained in

Annexure A of the affidavit under reply, the respondent No. 1 has already filed a writ application before this Hon"ble Court being W.P. (S) No. 1790 of 2002, in which notices have been issued to the respective parties to file counter affidavit and the date of hearing of the said application has been fixed for 9.5.2002.

So far as the allegation relating to appointments are concerned, the same are denied and disputed. It is stated that all appointments made recently have been made legally, validly and properly. It is stated that the legality and validity of the appointment of the respondent No. 1 as Registrar, Regional Institute of Technology, Jamshedpur, is also under challenge before this Hon"ble Court and the same is subjudice before this Hon"ble Court,"

II. Post of Principal. R.I.T., Jamshedpur has been lying vacant for a long time. The incumbent Principal Dr. R. Yadav had to superannuate on 18.6.2001. On 9.4.2001 the Central Government had sent a communication for filling up this post. Dr. Janak Prasad Singh, Professor of Applied Mechanics Department. R.I.T., Jamshedpur was appointed on regular substantive basis on this post (Principal, R.I.T., Jamshedpur} vide order No. RIT (E)/631/2002, dated 5.3.2002 passed by the appellant 9.4.2001 is the date of communication of the letter from the Central Government and 5.3.2002 is the date of appointment of Dr. J.P. Singh as the Principal. "Eleven months" is the intervening period between these two events.

Rules of R.I.T., Jamshedpur provide that the RIT shall be governed by a Board of Governors. The provision regarding the composition of the Board has been prescribed in Rule 6. The Chairman of the Board is required to be appointed by the State Government in consultation with the Central Government. In addition to the Chairman, the Board would have, amongst others, three members to be nominated by the State Government. As per Rule 16, the Board shall meet once in every three months. Rule 15 deals with the powers and functions of the Board. Clause (ix) of Rule 15 relates to the appointment and control of the staff. It reads thus :--

"(ix) To appoint and control such staff as may be required for the efficient management of the affairs, of the Institute and to regulate their recruitment and conditions of service."

Rule 19(i) deals with the appointment of the Principal. It reads thus :--

"19. Principal--In future the principal shall be appointed by the Board with the approval of the Central and the State Governments."

Rule 18 relates to the Chairman of the Board. It reads thus :--

"18. Chairman.-- (i) It shall be the duty of the Chairman to see that the decisions taken by the Board are implemented.

(ii) The Chairman shall exercise such other powers as may be delegated to him by the Board."

Since the issue relating to the delegation of powers cropped up during the course of hearing and reference was made to communication of 1.12.1984 relating to the delegation of powers, we may notice that also at this stage. A communication dated 1.12.1984 suggests that in para "82" the Board of Governors had delegated its power to the Chairman by passing resolution to the following effect :--

"The Board resolved that in case of Urgency the Chairman shall exercise all powers vested in the Board subject to the condition that the decisions taken by him are reported to the Board in the next meeting."

In the face of the aforesaid rule position, let us see what happened to the appointment procedure for Principal's post. Right from the day the appellant assumed the charge of the office of Chairman (consequent upon his appointment by the Government of Jharkhand); which was almost a year back, no meeting of the Board has been called so far. Even though the Government of Jharkhand was showing hurry and its anxiety to elevate the appellant on the post of Chairman, did appoint him on such post, it did not think proper to appoint its nominee members as the Members of the Board as was the requirement under the R.I.T. Rules since the Government of Jharkhand considered that the Jharkhand State, and not the State of Bihar was the joint venture partner, till date the Government of Jharkhand has not appointed its nominee members to the Board. In last three days of the proceedings we had been requesting Mr. B. Poddar, learned Additional Advocate General, to convey to us the response of the Government of Jharkhand on this issue, but all that has been done is the filing of an affidavit in which it is stated that this might be reported in a week's time. The fact remains that the Government of Jharkhand did not appoint its nominee members to the Board and let the appellant alone function as the Chairman of the Board. Notwithstanding all these, the fact also remains that ever since his appointment as the Chairman and the assumption of the charge of this Office, not one meeting of the Board has been called or held so far, despite a mandatory requirement that the meetings of the Board must be held once in three months. Now If no meeting of the Board was ever held or called, how did the appointment procedure for Principal's post start ? This question assumes importance because as per the rules only the Board is the competent authority to appoint the Principal. The answer to this question is very simple, The appellant did every thing himself to appoint the Principal of the Institution. He issued the advertisement; he constituted the Selection Committee; he selected the appellant, he appointed him, he did every thing else in furtherance thereof. No reference to the Board; no reference to even the State Government or the Central Government despite a clear stipulation in the rules that the Principal would be appointed with the approval of the State Government and the Central Government.

Mr. Anil Kumar Sinha, learned senior counsel appearing for the Principal, submitted that the stipulation regarding the approval of the State and the Central Governments should also be meant to include ex post facto approval. We

do not agree with this submission because the expression used is "the approval of the Central and the State Government". The stipulation clearly means that it has to be a prior approval, and not the post facto approval.

III. In the vacating application and the supplementary affidavit, it was also urged that various other appointments were also made by the appellant all by himself and without any reference to the Board. In pursuance to our order, the Assistant Registrar (E), R.I.T., Jamshedpur, has filed his affidavit on 2.5.2002, para 4 whereof gives the list of the appointments made after our order dated 21.12.2001. The said para reads thus :--

"4. That I say and submit that after 21.12.2001 apart from Dr. J.P. Singh, Principal the following appointments have been made in R.I.T., Jamshedpur :

1. Dr. Diwakar Tiwary as Assistant Professor (Chemistry) vide order No. RIT (9E)-701/2002, dated 16.3.2002.

2. Dr. Anand Kumar Choudhary Assistant Professor (Chemistry) vide order No. RIT (E)-700/2002, dated 16.3.2002.

3. Shri Naresh Baitha, Lecturer in Mechanical Engineering vide order No. RIT (E)-704/2002, dated 16.3.2002.

4. Shri Ganesh Lakra, Lecturer in Mechanical Engineering vide order No. RIT (E)-703/2002, dated 16,3.2002.

5. Shri Bimal Kumar Mahto, Dy. Registrar (Accounts) vide order No. RIT (E)-698/2002, dated 16.3.2002.

6. Shri Prem Kumar, Assistant Proctor vide order No. RIT (E)-697/2002, dated 16.3.2002.

7. Shri Sumant Kumar, Foreman (Electrical) Workshop vide order No. RIT (E)-699/2002, dated 16.3.2002.

This affidavit also clearly admits that the appointments were made by the appellant himself alone without any reference to the Board or to any other authority.

14. The aforesaid narrative clearly suggests that the appellant indulged in activities which were outside his domain and he exercised power which did not vest in him. He misused and abused the privilege granted to him by the order of this Court passed on 21.12.2001. This Court had passed the aforesaid order in the spirit of, arid keeping in view the paramount interest of continuity of the functioning of the Institution. Misinterpreting the aforesaid spirit of the said order, the appellant went over board and bypassed all the norms of fair play by making appointments in an illegal manner. He exercised powers which did not vest in him at all. Actually we have no hesitation in saying and holding that he abused his power and bypassed the Rules and Regulations of the Society and went on making appointment after appointment without following the procedure

prescribed by law.

15. At this stage we may also like to deal with the submission that the appellant as Chairman of the Board had been delegated the power by the Board. The delegation resolution has been noticed in the earlier part of this judgment. In our considered view, the aforesaid delegation would have no relevance in the facts of the present case and that in any event. The delegation by its very operative limitation would not be held applicable to the facts of the present case. First and foremost, the delegation was almost 20 years back and that too by a Board and to a Chairman which were different entities. The long gap of 20 years by itself was enough to nullify such a delegation. Coupled with this, the delegation having come from a Board whose status stood altered and the delegate also being a person who underwent change.

16. Secondly as the delegation resolution clearly suggests, the powers of the Board was delegated to the Chairman only in case of urgency. What is "urgency" may differ from case to case since "urgency" is a relative term. But viewed from any perspective. 11 months" period cannot be termed as being "urgent" or falling in the pale of "urgency". As we have noticed, the Principal's post fell vacant in April, 2001. It was filled up in March, 2002, full 11 months later. Leisurely the appellant took steps in filling up this post. This could not be called as "urgent". "Urgent" means something to immediately tide over an unforeseen fact situation. It does not mean tilling up a post of Principal on regular substantive basis.

17. The third element, against the appellant invoking the delegation is that the delegation resolution dose provide that the decisions taken by him, based on the "urgency" element were to be reported to the Board in the next meeting. What to talk of reporting any decision to the Board, he never called the Board meeting.

18. On the issue relating to the status of the State of Bihar vis-a-vis the State of Jharkhand qua the joint venture partnership of the Institution, debatable questions arise in the appeal. The learned single Judge found that the Government of Jharkhand does not have any jurisdiction or authority. The learned single Judge also accordingly found that because of this, the Government of Jharkhand had no power to appoint the appellant as the Chairman of the Institution. This issue is also highly debatable. It requires consideration and examination. Coupled with this, there is the above referred misuse and abuse of powers by the appellant. The aforesaid narrative clearly suggests that, apart from any other consideration, the appellant is not a person, who can be trusted with exercising the powers of the Chairman of the R.I.T., Jamshedpur, an Institution of National importance where thousands of students are undertaking studies in various engineering courses.

19. On 30.4.2002 we had issued a show cause notice to the person, who was appointed as the Principal by the appellant, In answer to that notice Shri J.P. Singh has filed his affidavit. Detailed arguments on his behalf were addressed by

Shri Anil Kumar Sinha, learned senior counsel. We are saying so because we wish to place it on record that we have afforded every possible opportunity to Sri J.P. Singh to justify his appointment. Mr. J.P. Singh apart, in his affidavit, the Assistant Registrar (Establishment) R.I.T., Jamshedpur Sri Ram Pravesh Prasad, has given the names of seven persons who have been appointed by the appellant. Since we have not issued any notices to these seven persons nor have we afforded any opportunity of hearing to them, we do not wish to pass any order adversely against them affecting their aforesaid appointments. Any observations which we have made in this order relating to their appointments should be construed provisional and tentative and being subject to all submissions which they would like to make in due course. In the light of the aforesaid observations, we pass order as below mentioned :--

(i) Because of the aforesaid complex and debatable issues involved and relating to the joint ventureship of the R.I.T., Jamshedpur and the mishandling of the Institution with relation to the affairs of the Institution, we direct that the management and control of the Institution in all respect shall forthwith and with immediate effect stand vested in the Central Government. The Ministry of Human Resources Development, Government of India is accordingly directed to take over immediate control of the management with respect to all affairs of this Institution with immediate effect. The Government of Jharkhand with immediate effect shall cease to have any control or any joint ventureship status with respect to R.I.T., Jamshedpur until further orders of this Court.

(ii) The appellant Sri Samresh Singh, Minister, Science and Technology, Government of Jharkhand, shall forthwith and with immediate effect cease to be the Chairman, Board of Governors, R.I.T., Jamshedpur. In what manner and how does the Central Government exercise its control over R.I.T., Jamshedpur and manage its affairs will be for the Central Government to decide. Because of the peculiar situation now having arisen, we leave it open to the Central Government to either follow the procedure prescribed in the Rules (such as Board of Governors and the Chairman etc.) or to tide over the interregnum, by making transitory provisions with respect to such control and management of the Institution.

(iii) Because in our considered opinion, the communication of this order to the Central Government and the implementation of the direction herein contained by the Central Government may take some time and functioning of the Institution at the same time cannot be allowed to suffer even for a day, we direct the Chief Secretary, Government of Jharkhand to co-ordinate with the Central Government immediately. The Chief Secretary till such time as the Central Government makes proper arrangements, shall look after the routine affairs and the functioning of the Institution. He may take such steps as he thinks appropriate for the routine functioning of the Institution.

(iv) Shri J.P. Singh shall cease to hold the post of Principal, R.I.T., Jamshedpur, because his appointment has been made illegally and in violation of the rules.

The order appointing him as the Principal shall thus be kept in abeyance until further orders of this Court. The seniormost teacher in R.I.T., Jamshedpur, shall immediately take over as the acting Principal of the R.I.T., Jamshedpur. This is, however, subject to any order that the Central Government may pass with respect to this issue later on.

(v) Let a notice be issued to the seven persons mentioned in para 4 of the affidavit of Sri Ram Pravesh Prasad, Assistant Registrar (Establishment) R.I.T., Jamshedpur, to show cause and explain as to why this Court should not examine the validity of their appointment and pass appropriate consequential orders accordingly.

We direct respondent No. 1 to serve notices upon these seven persons and file affidavit of service by the next date.

(vi) The de facto doctrine cannot possibly be invoked and applied to this case. Apparently, therefore, in our prima facie opinion, the learned single Judge appears to have erred in, on the one hand holding the appellant's appointment as illegal and on the other hand not granting relief to respondent No. 1. In the case of B.R. Kapur v. State of Tamil Nadu and Anr., reported in their Lordships of the Supreme Court have held that the de facto doctrine is invoked and applied in a case to avoid confusion and uncertainty or to avoid hardship and injustice to the persons who have acted on a certain basis. This doctrine is founded on good sense, sound policy and practical experience. It is now well established in common law that mostly de facto doctrine is invoked with respect to sovereign functions. Examined from any angle, the de facto doctrine cannot be invoked and applied in the present case. If at all, the contrary is the situation in the present case because an usurper of an office, an illegal appointee himself, appears to have passed an illegal order against respondent No. 1. We accordingly therefore direct that the suspension order against respondent No. 1 shall cease to operate with immediate effect. The disciplinary proceeding, however, shall continue against him and be taken to its logical conclusion in accordance with law and on its merits. Admittedly, because the termination order dated 1.3.2002 was also passed patently illegally, we direct that its operation shall stay in the meanwhile.

20. We have taken note of Mr. M.S. Anwar's submission that a writ petition, being W.P. (S) No. 1790 of 2002 against the aforesaid termination order filed by respondent No. 1 in this case is pending in this Court.

21. We also leave the issue of the pendency of the disciplinary proceedings against respondent No. 1 open. This issue can be reconsidered and examined on its merits either by the Central Government or by the new Board of Governors as and when it takes over in accordance with law and on the merits of the case.

22. We actually wish to grant liberty to the Central Government or the Board of Governors as the case may be, even to reconsider and decide whether the suspension of respondent No. 1 is sustainable or not. They are at liberty to take any decision on the merits of the case.

23. Mr. P.K. Prasad, learned senior standing counsel of the Central Government appears for the Union of India in this case. A copy of this order shall be handed over to him immediately. Mr. Prasad is directed to convey this direction to the Central Government immediately so that the working of the Institution does not suffer.

24. Mr. B. Poddar, learned Additional Advocate General is also requested to communicate the directions contained in this order to the State of Jharkhand for compliance.

25. Mr. A.K. Mehta, learned counsel appearing for the R.I.T., Jamshedpur is held responsible by us to inform R.I.T., Jamshedpur, about passing of this order and to implement the directions contained in this order.

26. To the aforesaid extent and in the manner indicated hereinabove. the order dated 21.12.2001 shall stand vacated/modified.

27. The two vacating applications, one filed by respondent No. 1 and the other by the State of Bihar are accordingly disposed of.

28. Let the appeals be heard in usual course.