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(2015) 08 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 54282 of 2014

Shahrukh Shamshad — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:
Aligarh Muslim University Act, 1920 — Section 16, 19(3), 20B
Uttar Pradesh State Universities Act, 1973 — Section 13(6)

Citation : (2015) 7 ADJ 758 : (2015) 112 ALR 866 : (2015) 5 AWC 4750 : (2015) 4 ESC 2304 : (2015) 3 UPLBEC 2486

Hon'ble Judges : D.Y. Chandrachud, C.J;Yashwant Varma, J

Bench : Division Bench

Advocate : Anoop Trivedi, for the Appellant; Ikram Ahmad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner was initially appointed as Registrar of the Aligarh Muslim University on 18 May 2012 in exercise of the powers conferred by clause (3) of Statute 5 of the Statutes of the University. Subsequently, an advertisement was issued by the University on 14 June 2012. A Selection Committee consisting of the Vice-Chancellor, Pro Vice-Chancellor, nominees of the Executive Council and a nominee of the Visitor was constituted. The Selection Committee recommended the name of the petitioner for selection. On 7 September 2006, the Executive Council of the University had authorised the Vice-Chancellor to approve recommendations of Selection Committees on its behalf. The Vice-Chancellor issued an order on 11 January 2013 for the appointment of a Registrar in terms of the resolution of the Executive Council dated 7 September 2006. On 11 January 2013, an office memo was issued by the Deputy Registrar (Administration-NT) stating that the Vice-Chancellor, on the recommendation of the General Selection Committee and in exercise of the powers conferred by Section 19(3) of the Aligarh Muslim University Act, 1920 (AMU Act), had approved the appointment of the petitioner as Registrar of the University with a

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tenure of five years. The action of the Vice-Chancellor would, it was stated, be reported to the Executive Council at its next meeting. On 29 September 2014, the petitioner tendered his resignation as Registrar to the Vice-Chancellor. According to the petitioner, he was summoned by the Vice-Chancellor at 9.30 am on 29 September 2014 and was directed to resign from the post of Registrar. According to him, the Vice-Chancellor pulled out a piece of paper from a writing pad in his drawer, upon which the petitioner was directed to write and sign his letter of resignation. The case of the petitioner is that he tendered the letter of resignation under duress but after returning to his official residence, he was consoled by his spouse, upon which, he addressed an email at 11.26 am on 29 September 2014 to the Vice-Chancellor withdrawing his resignation. The petitioner claims that soon thereafter, he addressed a communication to the Vice-Chancellor stating that he had been forced to submit his resignation under duress which he was retracting and withdrawing. The letter is stated to have been received by the Dak Clerk of which an entry was made in the Dak register.

2. The case of the petitioner is that after the letter dated 29 September 2014 was received, the Vice-Chancellor who is impleaded as the fifth respondent, directed the Pro Vice-Chancellor (the sixth respondent) to prepare an office order recording the acceptance of the resignation. According to the petitioner, the fifth and sixth respondents got another office order prepared, in collusion, bearing the same number (D/373/PVC) as the earlier office order dated 29 September 2014 which contained two interpolations. The first was that the Vice-Chancellor had accepted the resignation of the petitioner under Section 19(3) of the AMU Act on behalf of the Executive Council and the second was the insertion of the time and date (10:45 hours on 29 September 2014) below the signature of the Pro Vice-Chancellor.

3. The petitioner challenged, among other things, the office order dated 29 September 2014 and sought a mandamus restraining the authorities from interfering with his functioning on the post of Registrar. The petitioner also challenged the constitutional validity of Section 19(3) of the AMU Act, which empowers the Vice-Chancellor, if he is of the opinion that immediate action is necessary on any matter, to exercise any power conferred on an authority of the University by or under the Act.

4. The writ petition was filed on 7 October 2014. During the pendency of the proceedings, it emerged that the Executive Council of the University has endorsed the acceptance of the resignation of the petitioner by the Vice-Chancellor at its meeting held on 4 October 2014. A further meeting was held by the Executive Council on 14 October 2014. The resolutions passed by the Executive Council were challenged by way of an amendment to the writ petition.

5. When the petition came up before the Court for hearing on 11 December 2014, this Court directed both the Vice-Chancellor and the Pro Vice-Chancellor to file their personal affidavits to specifically deal with two aspects which were noticed at that stage. The first aspect was that Annexure 1 to the counter-

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affidavit filed by the University on 11 November 2014 was a photocopy of the letter of resignation dated 29 September 2014 by which the petitioner had tendered his resignation on grounds of health with immediate effect. Below the handwritten letter of resignation was an endorsement of the Vice Chancellor that the resignation was accepted with immediate effect ''under para 19(3)''. In the rejoinder which the petitioner filed to the counter of the University, the endorsement of the Vice-Chancellor was to the effect that the resignation was accepted with immediate effect. In the photocopy which the petitioner had annexed to its rejoinder, the words Hinder para 19(3)'' did not find mention. The second aspect of which notice was taken by the Court was that there were two office orders issued by the Pro Vice-Chancellor, bearing the same number, dated 29 September 2014. The two office orders were respectively annexed at Annexures 4 and 6 to the writ petition. Annexure 6 to the writ petition purported to bear an endorsement of being substituted by the same number, date and time and differed in two material aspects from Annexure 4. The office order issued by the Pro Vice-Chancellor at Annexure 6 purported to state that the acceptance of resignation by the Vice-Chancellor was under Section 19(3) of the AMU Act on behalf of the Executive Council and contained below the signature of the Pro Vice-Chancellor an endorsement of time (10.45 hours) and date which did not appear in Annexure 4. In view of these two aspects which were drawn to the attention of the Court, both the Vice-Chancellor and the Pro Vice-Chancellor filed their counter-affidavits explaining the position. Pleadings have been completed by filing of supplementary and rejoinder-affidavits. With the assistance of the learned counsel, we have perused the pleadings and heard submissions in support and in opposition to the petition.

6. The petitioner has challenged the acceptance of resignation by the Vice-Chancellor as well the resolution of the Executive Council on the following grounds which were urged by learned counsel:

"(i) The resignation of the petitioner was obtained under duress and though the petitioner tendered his resignation at 10.00 am on 29 September 2014, he had addressed an email at 11.26 am withdrawing his resignation. Under the provisions contained in Statute 39(2) of the Statutes of the University, resignation is a bilateral act and the act of resignation was not complete until it was accepted. Before the resignation came to be accepted, the petitioner had withdrawn the resignation which, in consequence, would not take effect;

(ii) The power conferred upon the Vice-Chancellor by Section 19(3) of the AMU Act does not comprehend or include the power to accept a resignation. The Executive Council is the appointing authority for the Registrar under Statute 17 of the Statutes of the University and hence, the Vice-Chancellor has no jurisdiction to accept the resignation under Section 19(3);

(iii) Even if the Vice-Chancellor is held to have the power to accept the resignation under Section 19(3), the condition precedent for the exercise of the power is that the Vice-Chancellor has to be of the opinion that immediate action

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is necessary on any matter. In the present case, there was no urgency that would have warranted recourse to the power conferred by Section 19(3) particularly since the meeting of the Executive Council was to be held a mere five days thereafter on 4 October 2014;

(iv) The conduct of the Vice-Chancellor and Pro Vice-Chancellor is vitiated by mala fides. In order to obviate the defence that the petitioner had withdrawn the resignation prior to its acceptance by the Vice-Chancellor, the Vice-Chancellor prevailed upon the Pro Vice-Chancellor to issue a substituted memo of an office order indicating that the resignation had been accepted at 10.45 hours on 29 September 2014. Moreover, the words ''under para. 19(3)'' were interpolated in the alleged acceptance of the resignation by the Vice-Chancellor as well as in the substituted office order which was issued by the Pro Vice-Chancellor. This was resorted to in order to defeat the contention of the petitioner that he had already withdrawn the resignation prior to its acceptance and hence, the resignation had not taken effect. In any event, the Vice-Chancellor could not have exercised the power to accept the resignation contrary to the delegation made to him by the Executive Council which is to issue an order of appointment."

7. On the other hand, it has been urged by learned Senior Counsel appearing on behalf of the respondents that:

"(i) The initial appointment of the petitioner by the Vice-Chancellor was under the provisions of Statute 5(3) of the Statutes of the University. Subsequently, in pursuance of the recommendations made by the Selection Committee, the petitioner was appointed on 11 January 2013 in exercise of the powers conferred under Section 19(3) of the AMU Act;

(ii) Several complaints were received from the Members of the Executive Council complaining that the MBA degree obtained by the petitioner from EIILM University, Sikkim and an off campus centre in NOIDA was not valid since the University had not been recognised by UGC to conduct off campus courses and the petitioner as a serving member of the National Defence College allegedly pursued a full time degree programme without the grant of permission by the competent authority. Hence, the Vice-Chancellor called the petitioner to his office on 29 September 2014 and confronted him with the serious consequences that would flow out of his degree being held to be non recognised upon which the petitioner chose to voluntarily tender his resignation on health grounds;

(iii) The petitioner does not deny that the resignation was accepted by the Vice-Chancellor in his presence at 10.00 am and the letter of resignation which has been annexed by the petitioner to the rejoinder-affidavit, categorically contains an endorsement of acceptance by the Vice-Chancellor at 10.00 am on 29 September 2014;

(iv) The Vice-Chancellor upon the acceptance of the resignation of the petitioner called the Pro Vice-Chancellor to his office and directed him to issue an office order of the acceptance of the resignation. Following this, an office order was

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issued. Subsequently, the Vice-Chancellor directed the Pro Vice-Chancellor to issue a substituted office order, clarifying that the resignation had been accepted under Section 19(3) of the AMU Act. This practice of issuing a substituted office order is part of normal procedure in Aligarh Muslim University and several such orders, which have been issued under the signature of the petitioner himself, have been annexed to the replies which have been filed on behalf of the respondents;

(v) The acceptance of the resignation by the Vice-Chancellor in exercise of the powers conferred by Section 19(3) of the AMU Act was approved by the Executive Council which passed a resolution on 4 October 2014. The Executive Council was the only body which could have raised an objection to the recourse taken by the Vice-Chancellor to the provisions of Section 19(3). Moreover, the petitioner who tendered his resignation ''with immediate effect'' could have no objection whatsoever if the resignation was accepted with immediate effect by the Vice-Chancellor;

(vi) The Vice-Chancellor was justified in accepting the resignation with immediate effect having due regard to the unseemly controversy, which had emerged as a result of the degree of the petitioner having been obtained from an off campus and unrecognised institution. The allegations of mala fides have been denied;

(vii) The resignation which was tendered by the petitioner was accepted in accordance with his lawful authority by the Vice-Chancellor before the withdrawal was communicated. Hence, the resignation has been validly accepted and has been endorsed by the Executive Council."

8. The rival submissions fall for consideration.

9. Section 16 of the AMU Act provides that the officers of the University include the Registrar. Section 20B provides that the Registrar shall be appointed in such manner as may be prescribed by the Statutes. The Statutes of the University, inter alia, contain provisions in regard to the Registrar. Statute 5(1) provides that the Registrar shall be a whole time salaried employee of the University to be appointed on the recommendation of a Selection Committee for a tenure of five years which may be renewed on similar terms by the Executive Council. Clause (2) stipulates that the emoluments and other terms and conditions of service of the Registrar shall be such as is prescribed by the Ordinances. Statute 5(3) enables the Vice-Chancellor to appoint a person to perform the duties of the office of the Registrar when the office is vacant or when the incumbent is unable to perform his duties by reason of illness, absence or any other cause. Statute 17 which defines the powers and functions of the Executive Council incorporates in sub clause (i) of clause (2) the power to appoint the Registrar. Among other clauses, clause (2) empowers the Executive Council to delegate its powers, inter alia, to the Vice-Chancellor.

10. Statute 39 of the Statutes of the University makes the following provisions in regard to resignation:

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"39. Resignation:--(1) Any member, other than an ex officio member of the Court, Executive Council, Academic Council or any other authority of the University or any committee of such authority may resign by letter addressed to the Registrar and the resignation shall take effect as soon as such letter is received by the Registrar.

(2) Any officer of the University, whether salaried or otherwise, may resign his office by letter addressed to the Registrar.

Provided that such resignation shall take effect only on the date from which the same is accepted by the authority competent to fill the vacancy."

11. Statute 39 (1) deals with members (other than ex officio members) of the Court, Executive Council, Academic Council or any other authority of the University or any committee or other authority. Clause (2) of Statute 39 stipulates that any officer of the University, whether salaried or otherwise, may resign his office by a letter addressed to the Registrar. However, by the proviso, a resignation shall take effect only on and from the date on which it is accepted by the authority competent to fill the vacancy. Two things emerge from the provisions of the proviso to clause (2) of Statute 39. Firstly, the resignation of an officer of the University is a bilateral act which requires acceptance before it takes effect. Secondly, the acceptance of the resignation is to take effect only upon its acceptance by the authority competent to fill in the vacancy. The power to appoint a Registrar is vested in the Executive Council under Statute 17(2)(i) of the Statutes of the University.

12. The essential aspect which needs to be determined is whether the Vice-Chancellor had the power to accept the resignation tendered by the petitioner under the powers conferred by Section 19(3) and if he did, whether as a matter of fact, the resignation was duly accepted before it came to be withdrawn by the petitioner. If we come to the conclusion that the Vice-Chancellor had the power to accept the resignation then the further question that would survive, is whether the resignation was in fact accepted prior to its rescission. On the other hand, if the petitioner is right in submitting that the Vice-Chancellor had no power to accept the resignation, the acceptance of the resignation by the Vice-Chancellor in this case, would have to be disregarded as being of no consequence. In that event, the Executive Council, in the submission of the petitioner, was the only body which was competent to accept the resignation and before the acceptance of the Executive Council was formalised, the petitioner had withdrawn his resignation from service.

13. The proviso to clause (2) of Statute 39 of the Statutes of the University states that a resignation by an officer of the University shall take effect only on the date on which it is accepted by the authority competent to fill the vacancy. Hence, what needs to be deduced on a reading of the statutory provisions of the Act and the Statutes, is the meaning of the expression ''by the authority competent to fill the vacancy'' within the meaning of clause (2) of Statute 39.

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There are two provisions which have a bearing on this issue. The first provision in Statute 5(3) is the provision under which the Vice-Chancellor is authorised to appoint a person who shall perform the duties of the office of the Registrar when the office is vacant or when the Registrar is by reason of illness, absence or any other cause, unable to perform his duties. The vacancy within the meaning of the second part of Statute 5(3) may be of a temporary character caused by a reason such as illness or absence and it may well be interpreted that the words ''any other cause'' would be analogous to an absence and similar to a cause as a result of which the incumbent is unable to discharge his duties for a temporary period. Statute 5(3) also refers to the office of the Registrar being vacant in its first part and that vacancy which is contemplated may be a substantive vacancy which arises as a result of the Registrar having demitted office for whatever reason. The Vice-Chancellor in making an appointment does so, so as to enable the duties of the office to be performed by such person as he may designate. When the Vice-Chancellor makes an appointment under Statute 5(3), that appointment is to ensure that the office of the Registrar does not remain unattended and the duties which are attached to the office are performed by a person to be appointed until a substantive appointment is made. This would be a reasonable interpretation of the expression the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose''. The substantive power to make an appointment of the Registrar is vested in the Executive Council under Statute 17(2)(i) of the Statutes of the University. Hence, it would be appropriate to harmonise the provisions contained in Statute 5(3) with those of Statute 17(2)(i) by interpreting, them to mean that while a substantive appointment in the office of the Registrar has to be made by the Executive Council as the appointing authority, in the event of a vacancy in the office, the Vice-Chancellor is empowered to appoint a person who shall perform the duties of the office. That is how, in the present case, it appears that before the petitioner was selected by a Selection Committee in pursuance of a selection process that he was initially appointed by the Vice-Chancellor against a vacancy in exercise of the powers conferred by Statute 5(3) of the Statutes of the University.

14. Now Section 19(3) of the AMU Act empowers the Vice-Chancellor to exercise any power that is conferred upon any authority of the University by or under the Act. Any power comprehends every power conferred upon any other authority of the University. Section 19(3) is in the nature of an emergent power. The legislature had taken cognizance of the fact that in an institution such as the University which functions through a large number of academic and executive bodies, many of them being multi number bodies, the need for completing the urgent business of the University should not be defeated by the delay caused in the meeting of the body. Yet what the Vice-Chancellor does while exercising power under Section 19(3) is to exercise powers which properly conceived are vested in another authority. Hence, the power under Section 19(3) of the AMU Act which is vested in the Vice-Chancellor is subjected to various safeguards.

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Section 19(3) of the AMU Act provides as follows:

"The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter;

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final;

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice- Chancellor under this subsection shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor."

15. Firstly, in order to exercise the power, the Vice-Chancellor has to be of the opinion that immediate action is necessary on any matter. The second safeguard is that upon taking such action in the exercise of the power conferred on an authority of the University, the Vice-Chancellor has to report to that authority the action taken by him on the matter. The third requirement is that if the authority to which the power was entrusted is of the opinion that the action ought not to have been taken, it would refer the matter to the Visitor whose decision shall be final. Finally, where any person is in the service of the University and is aggrieved by the action of the Vice-Chancellor, a right of appeal is provided against the decision of the Vice-Chancellor to the Executive Council. The Executive Council is empowered to confirm, modify or reverse the action taken by the Vice-Chancellor. The first requirement which we have spelt out above is antecedent to the exercise of the power of the Vice-Chancellor because before he exercises the power he must be of the opinion that immediate action is necessary on any matter. The other safeguards operate after the Vice-Chancellor has taken action by subjecting him to the requirement of reporting the action; empowering the authority which is vested with the power to refer the matter to the Visitor if it is of the opinion where the action should not have been taken and by conferring a right of appeal to the Executive Council where a person aggrieved, is in the service of the University.

16. Ex facie under Section 19(3) of the AMU Act, the Vice-Chancellor is duly empowered to exercise authority in respect of any power which is conferred on any authority of the University under the provisions of the Act. Undoubtedly, emergency powers have to be exercised with a measure of restraint by the Vice-Chancellor. On 11 June 2001, the Government of India in the Ministry of Human Resource Development (Department of Secondary Education and Higher Education) approved the following guidelines for observance by Vice-Chancellors of all Central Universities; these guidelines have been issued with the approval of

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the President as a Visitor of all the Central Universities. The guidelines stated as follows:

"(i) Emergency powers conferred on the Vice-Chancellors should be exercised with restraint and only in such emergency situations where the authority ordinarily empowered to exercise such powers is unlikely to meet in the near future and deferring a decision for consideration of the appropriate body is likely to create serious administrative inconvenience.

(ii) Routine matters like creation of teaching and academic posts, appointment to the said posts, finalizing recruitment procedures, promotions under Merit Promotion Scheme/Career Advancement Scheme, up gradation of posts making them personal to the incumbents should invariably be placed before the authorities ordinarily empowered to take decisions in such cases. Emergency powers should not be exercised by the Vice-Chancellors in such cases.

(iii) Policy matters like amending/making/repealing of Statutes which, in fact, require assent of the Visitor should in no case be decided by the Vice-Chancellors by invoking emergency powers."

17. These guidelines were issued by the Union Government, since as they state, complaints have been made in certain Universities that the emergency powers of the Vice-Chancellor were being invoked as a matter of routine as a result of which the other statutory bodies such as the Executive and Academic Councils were being increasingly asked to endorse the action taken by the Vice-Chancellors. The concern was that these powers should not be used to marginalise the bodies of the University and to reduce the frequency of their meetings since the enabling statutory bodies were envisaged to play a critical role in the democratic governance of Universities.

18. The nature of the emergency power which is conferred upon the Vice-Chancellor was dealt with in a judgment of a learned Single Judge of this Court in Smt. Chitra Kala Sharma Vs. Chancellor, Agra University and Others, (1988) 1 AWC 642 . Considering the provisions of Section 13(6) of the U.P. State Universities Act, 1973, the learned Single Judge has held as follows:

"16....The use of the words "any matter is of urgent nature requiring immediate action" indicate that the intention of the Legislature was to clothe the Vice-Chancellor with emergency power in such matters. According to the dictionary meaning "emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. But this provision cannot be intended to permit the Vice-Chancellor to himself create an emergency so as to usurp the power which ordinarily under the provisions of the Act, Statutes, Ordinance and Regulations vest in the authority or body of Committee provided therein. The Vice-Chancellor has to act bona fide in the interest of Institution."

19. The learned Single Judge held that the exercise of the power could be struck down by the Court if it is mala fide or if there is an abuse of power or a

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colourable exercise of power. The formation of opinion by the Vice-Chancellor was held to be purely subjective and the view of the learned Single Judge was that the opinion of the Vice-Chancellor could not be challenged except on the ground of mala fides. However, it was held that the powers of the Court would extend to those cases in which in arriving at the opinion, the Vice-Chancellor did not have relevant material for consideration or had considered irrelevant material.

20. In Virendra Singh Sen Vs. The Jiwaji University, Gwalior and Another, AIR 1976 MP 230 : (1976) JLJ 491 : (1977) 22 MPLJ 32 : (1977) MPLJ 32 , a Division Bench of the Madhya Pradesh High Court following an earlier decision held that the Vice-Chancellor is the sole judge of the existence of the emergency calling for immediate action and his discretion would not be open to judicial review. The nature of the power conferred upon the Vice-Chancellor by Section 13(6) of the U.P. State Universities Act, 1973 was also considered in a judgment of a Division Bench of this Court in Committee of Management of Janta Vedic College and Others Vs. The Vice-Chancellor, Meerut University and Another, AIR 1983 All 128 , where the powers were held to be temporary to be exercised in urgent cases.

21. There are more recent decisions which indicate that the power which the Vice-Chancellor exercises has to be in a genuine situation of an emergency and cannot be exercised arbitrarily. A learned Single Judge of the Andhra Pradesh High Court in Professor V.N. Dass Vs. Vice-Chancellor, Sri Padmavathi Mahila Viswavidyalam, Tirupathi and others, (2000) 1 ALD 209 : (2000) 1 ALT 18 , held that the Vice-Chancellor cannot act arbitrarily in bad faith or in abuse of power. In the facts of that case, it was held that the acceptance of a resignation of the petitioner by the Vice-Chancellor was in bad faith and vitiated by mala fides. In Dr. R.K. Sharma Vs. University of Delhi and Others, (2004) 112 DLT 88 : (2004) 75 DRJ 17 : (2005) 1 SLJ 302 , it was held that the Vice-Chancellor was required to disclose what emergent situation existed and it was held as follows:

"34. The scheme of the Act, Statutes and Ordinances of the University of Delhi would reveal that the Vice-Chancellor of the University is an office of the University. The Executive Council is a statutory body of the University. The Vice-Chancellor has been conferred with executive powers to act in emergent situations. Save and except an emergency action, the normal course of conduct has to be followed."

22. In another judgment of a learned Single Judge of the Delhi High Court in Bhupendra Singh Vs. University of Delhi and Others, (2001) 2 AD 293 : (2001) 89 DLT 661 : (2001) 57 DRJ 423 , it was held as follows:

"16. But it is equally true that when the exercise of power rests on fulfillment of conditions precedent, it must be shown that the existence of such conditions led to the exercise of that power. It must also be shown that exercise of power was based on relevant grounds. In other words, the authority must show of the conditions precedent for exercise of power as no order passed by an authority

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even on the basis of its subjective opinion is above judicial scrutiny. The opinion of the authority originating from its own subjective satisfaction regarding the existence and satisfaction of the conditions precedent for exercise of power under the statute is subject to judicial review. Though the satisfaction was of the Vice-Chancellor, it related to facts which were capable of being proved objectively. These facts have not been proved. As already noted the counter-affidavit of the University makes it clear that there is nothing on record to show the existence of the emergency which called for action by the Vice-Chancellor under Clause 11(G)(4) of the Statutes."

23. The later decisions construing the emergency powers of a Vice-Chancellor indicate that the formation of opinion by the Vice-Chancellor that immediate action is necessary on any matter is not completely immune from judicial review. The power which is conferred upon the Vice-Chancellor under Section 19(3) of the AMU Act is a power in the exercise of which the Vice-Chancellor exercises the powers which are conferred upon another authority duly empowered to take action in the University. Hence, it is but reasonable to posit that the formation of opinion by the Vice-Chancellor must be on the basis of cogent material and for bona fide reasons. Once these requirements are fulfilled, undoubtedly the Court would not interfere in the formation of opinion by the Vice-Chancellor so long as it is supported by a bona fide application of mind to relevant material. The Supreme Court held in Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, AIR 2008 SC 1771 : (2008) 2 CLT 334 : (2008) 2 FLR 1531 : (2008) 4 JT 10 : (2008) 4 SCALE 278 : (2008) 4 SCC 144 : (2008) AIRSCW 2446 : (2008) 2 Supreme 548 , while construing the provisions of the Gujarat Town Planning and Urban Development Act, 1976 which empowered the State Government to take action where it was of the opinion that substantial modifications in a draft Development Plan was necessary that though these words are indicative of the satisfaction being subjective, there must exist circumstances stated in the proviso which are conditions precedent to the formation of opinion. In other words, it was held that the formation of opinion cannot be on imaginary grounds. The opinion though subjective must be based on material disclosing that a necessity had arisen to make substantial modifications in the draft Development Plan. The Supreme Court held that there was nothing like absolute and unfettered discretion at any rate in the exercise of statutory powers and it was open to the Court to examine whether any material was available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have a rationale connection with or relevant bearing on the formation of the opinion. Hence, it would be open to the Court to determine when the formation of the opinion is challenged, whether it was arbitrary, capricious or whimsical and the reasons for the formation of the opinion should have a rationale connection or relevant bearing to the formation of the opinion.

24. In the present case, there is material on the record to indicate that a controversy had arisen following the selection and appointment of the petitioner

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on whether he was duly qualified to hold the post. On 8 September 2014, the Members of the Executive Council addressed a complaint to the Vice-Chancellor in his capacity as Chairperson of the Executive Council stating that EIILM University, Sikkim was, according to a communication of the UGC dated 17 April 2014, not authorised to open study centres beyond the territorial jurisdiction of the State in view of the judgment of the Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, AIR 2005 SC 2026 : (2005) 2 ESC 129 : (2005) 2 JT 165 : (2005) 5 SCC 420 : (2005) 3 SCR 23 : (2005) AIRSCW 1168 : (2005) 2 Supreme 322 . A serious doubt was expressed upon the legality of the MBA degree of the petitioner. This is not a trifling matter but was a serious issue of concern. The Vice-Chancellor, as is admitted before the Court, called upon the petitioner to meet him on 29 September 2014. Paragraphs 9 and 10 of the affidavit dated 6 January 2015 filed by the Vice-Chancellor, in these proceedings, contain the following elaboration of what took place during the course of the meeting:

"9. That on 29th Sept., 2014 at 9.30 AM, I summoned Gp. Capt. Shahrukh Shamshad (Retd.) to my office and told him the implications if his degree was found to be fake. I also told him that the Degree was not recognised by the UGC. He then chose, voluntarily, to avoid any disciplinary/legal proceedings and decided to offer his resignation with immediate effect. I gave him a note pad on which he, in own hand writing opted to resign, voluntarily, on health ground since he had earlier undergone open heart surgery and the same was accepted by me in his presence. The allegation that he was coerced into submitting his resignation is blatantly false. The petitioner, without any demur, left his office immediately without any complaint to anybody. It is only when he reached home he was pressurized by his clique to withdraw his resignation and level baseless charges.

10. That I immediately summoned the PVC at 10.00 AM on 29th Sept. 2014 and in the presence of Gp. Capt. Shahrukh Shamshad informed him (PVC) that the Registrar had resigned on health grounds and told him to issue a promulgation notice where I verbally directed that my Secretary, Dr. Asfar Ali Khan was to take over the responsibility of officiating Registrar and Professor Irfan Ahmad was to take over the duty as Manager of AMU schools. These appointments were held by Gp. Capt. Shahrukh Shamshad (Retd.). I also summoned the PRO and handed him a copy of the letter of resignation and directed him to inform all concerned."

25. The rejoinder which has been filed by the petitioner to the affidavit of the Vice-Chancellor deals with the contents of paragraphs 9 and 10 in the following terms:

"4. That the contents of paragraph No. 9 of the affidavit as they are stated are incorrect, and hence vehemently denied. The averments made in the paragraph No. 9 are wholly misconceived in so far as they relate to submission of resignation. It is reiterated that the resignation was obtained under duress as has already been mentioned in detailed in the writ petition. The respondent No. 5

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has admitted that he has given a note pad for writing one line with regard to tendering the resignation. The respondent No. 5 has further stated that the resignation was accepted by him in presence of the petitioner.

5. That the contents of paragraph No. 10 of the affidavit cannot suitably be replied with for want of knowledge. However, in this paragraph the respondent No. 5 has accepted that he summoned the P.R.O handed him a copy of the letter of resignation and directed him to inform all concerned."

26. For the sake of clarity, it would be necessary for the Court to lay down the admitted facts. It is not in dispute that (i) the petitioner met the Vice-Chancellor in his office at 9.30 am on 29 September 2014; and (ii) the petitioner tendered his resignation on health grounds with immediate effect. The endorsement by the Vice-Chancellor at the foot of the resignation indicates that it was accepted with immediate effect and upon the acceptance of the resignation, arrangements were made for handing over charge to Dr. Afsar until a new Registrar was selected. Significantly, though the petitioner has made a general denial of what has been stated in paragraph 9 and 10 of the affidavit of the Vice-Chancellor, there is no specific traverse of the averment that the resignation was accepted with immediate effect. The petitioner has raised a doubt about the endorsement of the Vice-Chancellor on the ground that the words ''under para 19(3)'' were introduced subsequent to the acceptance of the resignation. That, in our view, could not make any substantial difference to the legal position because either the Vice-Chancellor did have the power to act under Section 19(3) or he did not. If the Vice-Chancellor had the power to do so, whether or not, a mention was made of the enabling provision, would make no difference because it is well-settled that even a reference to a wrong provision of law would not invalidate the exercise of power so long as the authority is vested with the power which it had exercised. The Vice-Chancellor put down his signature in the acceptance of the resignation and the time of 10.00 am together with the date below the acceptance. If the resignation was accepted at 10.00 am, whether it was accepted under Section 19(3), is of subsidiary importance because whether the Vice-Chancellor had the power to do so in the first place is the basic question. Mentioning or not mentioning the provisions of Section 19(3) in the acceptance of the resignation would not carry the matter any further. The Vice-Chancellor has fairly accepted that the words hinder para 19(3)'' were introduced subsequently after he had instructed the Pro Vice-Chancellor at 10.00 am to issue a notice of the acceptance of the resignation. The Vice-Chancellor has stated that the Secretary pointed out that the acceptance of resignation must specifically state the provisions of Section 19(3) of the AMU Act and it was thereupon inadvertently worded as ''under para 19(3)''. The Vice-Chancellor thereafter reported to the Pro Vice-Chancellor at 10.35 am and asked him to mention Section 19(3) of the AMU Act and the fact that the resignation was being accepted on behalf of the Executive Council in the final notification. So far as the Pro Vice-Chancellor''s version of events which took place, it is also consistent with the version of the Vice-Chancellor. In fact, the Pro Vice-

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Chancellor has stated that there were several examples in the past bearing the signature of the petitioner himself where a substituted order bearing the same number and date was issued. Once the resignation of the petitioner was accepted by the Vice-Chancellor at 10.00 am on 29 September 2014, the issuance of a formal office memo by the Pro Vice-Chancellor was consequential and the insertion of the time of 10.45 hours subsequently would make no difference to the initial acceptance of the resignation.

27. The University had been drawn into an unseemly controversy before the appointment of the petitioner to the office of the Registrar. In this background, as the Vice-Chancellor states, the petitioner met the Vice-Chancellor and tendered his resignation with immediate effect. If the Vice-Chancellor, in this background, exercised his discretion under Section 19(3) and accepted the resignation which had been tendered with immediate effect, it cannot be held that in doing so, he has transgressed the powers which are conferred upon him by the provision. The Executive Council has thereafter ratified the decision of the Vice-Chancellor. Under the provisions of Statute 39 of the Statutes of the University, the Executive Council had the power, in the event that it was disputing as to whether the Vice-Chancellor should have exercised emergency powers to refer it to the Visitor which the Executive Council has not done. In this view of the matter, we find no substance in the challenge to the exercise of power by the Vice-Chancellor under Section 19(3) of the AMU Act.

28. For the reasons which we have indicated above, we also see no substance in the allegation of mala fides. We have already discussed the circumstances in which the Vice-Chancellor explained why the words ''under para 19(3)'' were introduced subsequently to the acceptance of the resignation. The issues of the substituted order by the Pro Vice-Chancellor has also been dealt with above. Having duly considered the submissions of the petitioner, we see no reason to entertain the writ petition. No violation of law has been shown, we are unable to find substance in the allegation of mala fides. Finally, we may also note that the challenge to the constitutional validity of Section 19(3) of the AMU Act has not been raised in the course of hearing of these proceedings.

In these circumstances, the writ petition stand dismissed. There shall be no order as to costs.

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