

(2015) 11 KL CK 0134

In the High Court Of Kerala

Case No : W.A. No. 2223 of 2015 in WP(C) 26273/2015

Sree Sankaracharya University of Sankrit Kalady and Others	APPELLANT
Vs	
N. Prasanthakumar and Others	RESPONDENT

Date of Decision : 11-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 KL CK 0134

Hon'ble Judges : Antony Dominic and P.V. Asha, JJ.

Bench : Division Bench

Advocate : Bechu Kurian Thomas, Senior Advocate and Arun B. Varghese, SC, for the Appellant; C.P. Sudhakara Prasad, Senior Advocate, S. Ramesh, Naveen T. and Pooja Surendran, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—Sree Sankaracharya University of Sanskrit and its Vice Chancellor, who were respondents 1 and 2 in W.P (C).26273/15 filed by the first respondent herein, are the appellants. The first respondent filed the writ petition mainly seeking to quash Ext. P7 and to direct the appellants to allow him to continue as Head of the Department of English so long as he functions as Professor of English Department. By the judgment under appeal, the writ petition was allowed and Ext. P7 order was quashed. Learned single Judge ordered that Ext. P6 order would hold the field and that the first respondent would be continued as Head of the Department. It was also ordered that the second respondent herein would hand over such charge to the first respondent. It is aggrieved by this judgment, the appeal is filed.

2. We heard learned senior counsel for the appellants, learned senior counsel for the first respondent and the learned counsel appearing for the third respondent.

3. Ext. P1 order shows that the first respondent, then a Reader in English, being the senior most lecturer in the Department, was holding the charge of the Head

of the Department of English. This order also shows that sanction has been accorded by the Vice Chancellor subject to ratification by the Syndicate to post the first respondent as Head of the Department in English with immediate effect. Admittedly, since then, the first respondent was functioning as the Head of the Department of English under the first appellant University. In 2015, first respondent's son applied and obtained admission for M.A. (English) Programme in the appellant University itself. First respondent thereupon submitted Ext. P5, requesting the Pro-Vice Chancellor to exempt him from the conduct and evaluation of M.A. Examination for two years. Acting upon Ext. P5, Ext. P6 order was issued by the University, conveying the sanction of the Vice Chancellor to remove the first respondent from the duties of question paper setting and all other examination related works for a period of two academic years with immediate effect. Ext. P6 also shows that the Vice Chancellor had also accorded sanction to entrust the second respondent, the next senior most faculty in the Department of English, with the duties of question paper setting and all other examination related works of the Department for a period of two academic years. This order was issued by the Examination A section on 24.8.2015.

4. On 25.8.2015, the University issued Ext. P7 order. By this order, with the sanction of the Vice Chancellor, the first respondent was removed from the Headship along with the duties on question paper settings and all other examination related works and to entrust the second respondent with the headship of the Department, including the aforesaid duties for two academic years, subject to ratification of the Syndicate. Sanction was also accorded to transfer the second respondent from the Regional Centre, Trivandrum to the Main Centre, Kalady and to give her the charge of Head of the Department of English with immediate effect. First respondent was also directed to hand over charge to the second respondent. The reasons which led to Ext. P7 are evident from the contents of the order itself and therefore, the relevant portion of the order is extracted below for easy reference:

"As per the U.Os cited 1 to 3 above, the duties and powers of Heads of the Department include overall supervision and control of all examination related matters, along with sufficient financial and administrative powers of the concerned Department.

Dr. N. Prasanthakumar is the Head of the Department of English of this University, who is the Chairman of the Board of Question paper setters and the evaluation of internal and external examinations and also the Chief Superintendent for the conduct of examinations in the respective department. Since his son got admission to M.A. English Programme in this University during this academic year, the pro-Vice-Chancellor vide reference cited 4th above has suggested to remove Dr. N. Prasanthakumar from the duties of question paper setting and all the other examination related works of the department for a period of two years and to assign the duties to the next senior most faculty of the Department of English.

It is relevant to note that the duties of the Heads of the Department and that of exam related works assigned to them are inter linked and inter connected. Hence the removal of Dr. N. Prasanthakumar from the duties of the question paper setting and all other examination related works of the Department alone will not be just and proper without removing him from the Headship. The SSUS Statutes Chapter III Clause 9 which deals with the appointment of the Head of the Departments states that subject to the provisions of the Sub Section (3) of Section 29 of the Act, the Professor in Charge of the Department shall be the Head of the Department. In the absence of Professor the next senior most faculty shall be the Head of the Department.

Moreover, already there is an allegation by a candidate of MA entrance examination against the involvement of Dr. N. Prasanthakumar in the conduct of PG entrance examination and an enquiry is being conducted by the Dean, Faculty of Foreign Languages.

In order to ensure a fair and transparent examination procedure and considering the entire matter in the academic interest of the University, the Vice-Chancellor has accorded sanction to remove Dr. N. Prasanthakumar from the Headship along with the duties of the question paper settings and all other exam related works and to entrust Dr. Nisha Venugopal, Associate Professor who is the next senior most faculty in the Department of English with the Headship of the Department including the duties of question paper settings and all other exam related works of the Department for a period of two academic years with immediate effect, subject to the ratification by the Syndicate. Sanction has also been accorded to transfer Dr. Nisha Venugopal from the Regional Centre, Thiruvananthapuram to the Main Centre, Kalady and to give her the charge of Head of the Department of English with immediate effect. Dr. N. Prasanthakumar is directed to hand over the charge of HOD to Dr. Nisha Venugopal.

Orders are issued accordingly."

5. It is seen that subsequently, as per Ext. R1(m) dated 15.9.2015, the Syndicate accepted Ext. P7 and on that basis, Ext. R1(n) order dated 22.9.2015 was issued. It was on receipt of Ext. P7, the first respondent filed the writ petition seeking to quash the same and to allow him to continue as Head of the Department of English.

6. The University filed affidavits justifying Ext. P7 and reiterated the very same reasons as stated therein. The writ petition was heard and taking the view that it would be appropriate if the second respondent is entrusted only with the evaluation and examination procedures carried out in the M.A. English Programme for the next two years when the first respondent's son would normally be undergoing the course and that any other programme could be effectively managed by the first respondent without any allegation of bias, learned single Judge allowed the writ petition and it is this judgment which is challenged before us.

7. The contention raised by the senior counsel for the appellants is that it was the University's duty to ensure transparency in the conduct of examination and in the discharge of all other related duties. According to him, there is already a complaint raised by a candidate against the 1st respondent in regard to the entrance examination to M.A. English, on which an enquiry is going on. It is stated that it is in order to ensure transparency that in exercise of their administrative powers, the University has, with due application of mind, decided to remove the first respondent from the duties as Head of the Department for a period of two years. This order issued by the University in the bonafide exercise of its administrative powers, should not have been interfered with by this Court exercising powers under Article 226 of the Constitution of India.

8. On the other hand, the contention raised by the learned counsel for the first respondent is that the order is vitiated by legal malice and that in view of the provisions contained in the Sree Sankaracharya University of Sanskrit Act, 1994 and the Sree Sankaracharya University of Sanskrit Statutes, 1997, the Vice Chancellor could not have ordered the removal of the first respondent in the manner it was done. While the counsel for the appellants relied on the judgment of the Apex Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , learned senior counsel for the first respondent relied on the judgments of the Apex Court in J.N. Ganatra Vs. Morvi Municipality, Morvi, , Babu Verghese and Others Vs. Bar Council of Kerala and Others, and Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, to contend that if the Statute prescribes that something shall be done in a particular manner, it shall be done in that manner and none else.

9. We have considered the submissions made. Section 19 of the Act provides for faculties and as per section 19(3), every faculty shall consist of one or more Academic departments. Section 26 of the Act deals with the powers and duties of the Vice Chancellor and among others, under sub section (6) thereof, the Vice Chancellor shall, subject to the provisions of the Act and the Statutes, appoint teachers and other employees of the University and shall assign their duties and functions and shall exercise general supervision and control over them. In so far as the Head of the Department is concerned, provision has been made in Chapter III Statute 9 and as per this provision, subject to the provisions of section 29(3) of the Act, the Professor in charge of a Department shall be the Head of the Department. Chapter III Statute 9 reads thus:

"9. Head of the Department - Subject to the provisions of sub-section (3) of section 29 of the Act, the Professor in charge of a Department shall be the Head of the Department. The Syndicate, shall nominate the senior-most Professor as the Professor in charge of a Department. It shall however be open to the senior-most Professor who has been nominated as such to make a request that he shall be relieved of such a responsibility for academic reasons. In such a case, the next senior-most Professor shall be the Professor in charge. The Readers, Lecturers and other members of the teaching staff shall work under the direction

of the Professor. If there are more than one Professor, they shall work under the Senior Professor and assist him in the performance of his duties. In Departments which have no professor, the Reader or the Senior Reader, if there are more Readers than one shall be the Head of the Department and the other members of the teaching staff, if any, shall work under his direction and assist him in the performance of his duties. In departments which have no professor or reader, the Lecturer or the senior Lecturer, if there are more Lecturers than one, shall be the Head of the Department and the other members of the teaching staff, if any, shall work under his direction and assist him in the performance of his duties."

10. It was in pursuance of Statute 9 that the first respondent, being the senior most Professor, was nominated by the Vice Chancellor as the Head of the Department. This was in exercise of the vice Chancellor's powers under Section 26 of the Act. While continuing in that capacity he submitted Ext. P5. This, according to him, was done taking advantage of the provisions contained in Statute 9 that it shall be open to the senior most Professor who stands nominated as Head of the Department to make a request that he shall be relieved of such a responsibility for academic reasons and that in such a case, the next senior most Professor shall be the Professor in charge. As we have already seen, the request made in Ext. P5 was processed and Ext. P10, the note file obtained by the first respondent under the Right to Information Act and produced before this Court shows that after processing the request at various levels, including at the level of the Pro-Vice Chancellor and the Vice Chancellor, Ext. P6 order dated 24.8.2015 was issued. By this order, though he was retained as the Head of the Department, the first respondent was relieved from question paper settings of M.A. English and all examination related duties for a period of two years. It was thereafter that Ext. P7 order was issued on 25.8.2015, whereby, for the reasons stated therein, he was removed from his duties as Head of the Department. The judgment under appeal shows that the learned single Judge has concluded that in the circumstances, it would have been appropriate if the second respondent was entrusted only with the evaluation and examination procedure carried on in the M.A. English Programme for the next two academic years when the first respondent's son would be undergoing the course.

11. When an order issued by an administrative authority or a statutory authority is challenged before a Court exercising powers of judicial review, interference is possible only when it is established that the order is illegal for any reason or is vitiated by malafide exercise of power. Such a review by this Court is also not an appellate power but is the exercise of power of judicial review. The judgment under appeal does not show that the learned single Judge was satisfied that either of these grounds are made out by the first respondent. On the other hand, according to the learned single Judge, in the circumstances, it would have been appropriate to entrust the evaluation and examination procedures of M.A. English Programme to the second respondent and to allow the first respondent to continue as Head of the Department in the University. In other words, learned single Judge has substituted his views with the views of the authorities of the

University and it is on that basis, Ext. P7 order has been interfered with. Such an exercise of power, in a proceedings under Article 226 of the Constitution of India, it is trite, is beyond the jurisdiction of this Court. In this context, it is apposite to refer to the judgment of the Apex Court in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, , relied on by the learned counsel for the appellants, where, it has been held thus:

"10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back in 1970 in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in *Secy. Of State for Education and Science v. Metropolitan Borough Council of Tameside* [(1976) 3 ALL ER 665], All ER at p.695]. The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Greene, M.R. In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn* [(1947) 2 All ER 680 pp.682H-683A)

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

11. While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the

power of the courts while reviewing the administrative action is not that of an appellate court.

12. The aforesaid position was succinctly stated in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, .

13. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or business like it may be, for the decision of the Corporation."

12. One of the contentions raised by the counsel for the first respondent was that once a person is designated as the Head of the Department, he could be relieved of such responsibility only for academic reasons and that too, only if the person makes a request as contemplated under Chapter III Statute 9 of the University Statutes. It was to substantiate this plea that, since Statute 9 has specified a procedure for relieving the Head of the Department, the relief could not be by any other method, the learned counsel has relied on the three Apex Court judgments referred to by us in the earlier part of this judgment.

13. It is true that Statute 9 makes provision whereby it is open to the person who has been nominated as Head of the Department to make a request that he be relieved of such responsibility for academic reasons and if such a request is made, the next senior most Professor shall be put in charge. Fallacy of this argument is that Statute 9 though enables the person nominated to make a request for his relief, the request contemplated is for a complete relief and not a partial one, as made in Ext. P5 or allowed in Ext. P6 order. Therefore, if according to the first respondent, the request he made was under Statute 9, he could not have been partially removed as allowed in Ext. P6 and the obligation of the University is to relieve him from the duties as Head of the Department and to entrust the duties to the next senior most person. In other words, the first respondent could not have had best of both. We are also not inclined to think that Statute 9 places any fetter on the power of the University or the Vice Chancellor to relieve the Head of the Department if for administrative or other valid reasons, such relief is necessary. That residuary power is always available with the Vice Chancellor in terms of the provisions contained in section 26 of the Act laying down the powers and duties of the Vice Chancellor. Therefore, we are unable to accept the contention that Ext. P7 has been issued contravening Statute 9 and that therefore, the said order is illegal.

14. Learned counsel for the first respondent raised another contention that Ext. P7 order was issued by Examination A section and not by the Administration section and that therefore, the order is illegal. This contention was sought to be substantiated by making reference to Ext. P10, a copy of the note file of the Examination Section obtained by the first respondent invoking the provisions of the RTI Act, where the Vice Chancellor has ordered the relief of the first respondent from the duties as Head of the Department. It was based on Ext. P10, Ext. P6 order was issued. When this contention was pressed into service and was contradicted by the learned counsel appearing for the University reiterating that the Administration Section had simultaneously processed the matter, resulting in Ext. P7, we directed the learned counsel to make available the relevant files of the Administration Section of the University. Accordingly, file No. 10225/Ad.A3/SSUS/2015 of the Administration Section on the transfer from Headship of the first respondent was made available to us. We have gone through the files and are satisfied that Ext. P7 was preceded by processing at various levels and was issued with the approval of the Vice Chancellor. Therefore, this contention also does not merit acceptance.

15. For all these reasons, we are satisfied that the learned single Judge exceeded his powers in interfering with Ext. P7 order issued by the University in the exercise of its statutory powers.

The judgment under appeal is set aside and the writ appeal is allowed.