
(1969) 09 MP CK 0006
In the Madhya Pradesh High Court
Case No : M. P. No. 277 of 1969

Vasu Deo

APPELLANT

Vs

His Excellency Shri K. C. Reddy, Chancellor Vikram University
and others

RESPONDENT

Date of Decision : 16-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Bharat Vikram University Act, 1955 — Section 10(1)

Citation : (1969) JLJ 1009 : (1970) MPLJ 34

Hon'ble Judges : Bishambhar Dayal, C.J; R. J. Bhave, J

Bench : Division Bench

Advocate : R. K. Tankha, for the Appellant; K. S. Chitale, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

R. J. Bhave, J.

The petitioner is a registered graduate and is also a member of the Syndicate of the Vikram University, Ujjain. He has filed this petition under Articles 226 (221 of the Constitution of India, challenging the appointment of Dr. Shiv Mangal Singh (respondent No. 3), as Vice-Chancellor of the Vikram University.

Under section 10 (1) of the Madhya Bharat Vikram University Act, 1955, the Vice-chancellor is to be appointed by the Chancellor from a panel of three persons selected by Committee as constituted under clause 2. Clause (2) of section 10 reads as under:-

The Committee referred to in sub-section (1) shall consist of three persons, two of whom shall be persons not connected with the University or a Constituent or affiliated College, nominated by the Syndicate and one person appointed by the Chancellor. The Chancellor shall appoint one of the three persons to be Chairman of the Committee:

Provided that if the Chancellor does not approve of any of the persons so recommended he may call for fresh recommendations.

Consequent on the death of Shri Nand Dularey Bajpai, the post of Vice-Chancellor of the said University fell vacant and a committee, contemplated u/s 10 (1) was to be constituted. It appears that a special meeting of the Syndicate was called for 8th April 1968 for the purpose of electing two persons to be nominated for the committee, but no decision could be taken in that meeting of the Syndicate for want of corum. In these circumstances, the Chancellor of the University advised respondent No. 4, Registrar of the said University, who was also discharging the functions of the Vice-Chancellor, to call a meeting of the Syndicate expeditiously. Accordingly the 4th respondent called a special meeting of the Syndicate for 15th April 1968 for the purpose of nominating two members of the Committee to be constituted u/s 10 (1) of the Act. In that meeting, a decision was taken to nominate Shri Bhagwan Sahai (respondent No. 7) and Shri Dr. Bhagwatsharan Upadhyaya (respondent No. 6). The Chancellor, on his side, nominated Shri G. K. Shinde as the third member of the committee. This committee submitted a panel for Vice-Chancellor in which the name of Shri Shiv Mangal Singh (respondent No. 3) was included. The Chancellor, by notification dated 6-7-1968, Annexure I appointed Dr. Shiv Mangal Singh as the Vice-Chancellor of the Vikram University. This appointment is being challenged by the petitioner on three grounds, namely:-

(i) That the meeting of the Syndicate was not properly called; (ii) That it was not presided over by an appropriate person; and (iii) That Shri Bhagwatsharan Upadhyaya, nominee of the Syndicate, was closely connected with the University and as such, his nomination was invalid.

On the first ground, our attention was invited to Regulation No. 2 framed u/s 31 of the Act. Clause 1 of the said regulation is that-

The meetings of the Syndicate shall be held ordinarily once in two months or at such times as the Vice-Chancellor may direct.

Clause 2 provides that-

A special meeting of the Syndicate shall be convened by the Registrar on a requisition signed by any eight members of the Syndicate, to convene a special meeting. The date of this meeting will be fixed by the Vice-Chancellor and such subjects as the signatories to the requisition have set forth to the requisition shall be first considered While clause 3 provides that-

The Vice-chancellor shall preside at the meetings of the Syndicate. In the absence of the Vice-Chancellor, the members will elect their own Chairman.

On the basis of these clauses in the said regulation, it was urged that the meeting in which the two members were nominated could not be termed as a "special meeting" as it was not called at the requisition of eight members, but was called by the Registrar on his own initiative. This meeting, therefore, could

only be treated as an ordinary meeting called by the Registrar. In that case, a notice of not less than 15 clear days before the meeting is compulsory as contemplated under clause 4 of the said regulation and inasmuch as such a notice was not given, the meeting was invalid, and the nomination of the two members was bad. We find it difficult to accept the interpretation put by the petitioner on the clauses referred to above.

Clause 1 clearly authorises the Vice-Chancellor to call a meeting of the Syndicate ordinarily once in two months and any other meeting as many times as the Vice-Chancellor deems fit. The other meeting would, therefore, necessarily be "a special meeting" of the Syndicate. Clause 2 of the Regulation merely authorises eight members of the Syndicate to submit a requisition to convene a special meeting, if they so desired. It does not follow from this that the meeting called on the requisition of eight members should only be treated as "a special meeting". The expression "special meeting" is nowhere defined in the Act, Statute or Regulations. We do not, therefore, find it necessary to give it a limited meaning which the petitioner wants to put on the expression "special meeting". The contention of the petitioner that the meeting was not properly called for want of sufficient notice must, therefore, be rejected.

Sub-section (5) of section 10 of the Act provides that-

Where any temporary vacancy of not more than a year's duration.....occurs.... the Chancellor shall.....make such arrangements for carrying on the office of the Vice-Chancellor as he may think fit; (and) until such arrangements have been made, the Registrar shall carry on the current duties of the office of the Vice-Chancellor.

Under this provision, the Chancellor had directed the Registrar (respondent No. 4) to carry on the current duties of the Vice-Chancellor. A question, therefore, arose as to whether the Registrar, who was to carry on the current duties of the office of the Vice-Chancellor, would be entitled to preside over the meeting of the Syndicate. The Registrar, therefore, sought advice of the Chancellor on this matter. He was advised that inasmuch as he was not a Vice-Chancellor but was only authorised to discharge the current duties, it would not be proper on his part to preside over the meeting of the Syndicate and hence, the Registrar did not preside over the meeting of the Syndicate in which the two members were nominated and the Syndicate had elected its own Chairman for that particular meeting. We think that the advice given by the Chancellor was correct. The registrar was not the Vice-Chancellor and hence he was not competent to preside over the meeting of the Syndicate as is contemplated under clause 3 of the Regulation No. 2. The attack on the meeting on the ground that the meeting was not presided over by a proper person must, therefore, fail.

This brings us to the third ground, namely, intimate connection of respondent No. 6 with the University. In this connection, it was urged on behalf of the petitioner that Shri Bhagwatsharan Upadhyaya was a member of the Research Degree

Committee of the University. He was also a member of many other authorities and committees functioning under the University; Shri Bhagwatsharan Upadhyaya tendered his resignation from all these bodies, authorities and committees only a few days before the impugned meeting of the Syndicate was held. This was done only with a view to show that he was not connected with the University when his nomination was made by the Committee. It is further urged that soon after the appointment of the Vice-Chancellor, Shri Bhagwatsharan Upadhyaya was appointed as a Professor in the department of Ancient Indian History and Culture in the University which clearly indicated how closely he was connected with the University.

In his return filed by Shri Bhagwatsharan Upadhyaya (respondent No. 6), he has averred that he was not connected with the University on the date he was selected on the committee, as on 28-3-1968, he had already sent his resignation of his membership of any of the bodies or committees connected with the University, as he was thinking of going abroad. The respondent No. 6 specifically averred that the last meeting he attended was that of the Research Degree Committee in History held on 3-4-1967 and thereafter, he had no connection whatsoever with the University. In the additional return filed on behalf of the Registrar of the University, it has been stated that "Doctor Bhagwatsharan Upadhyaya filled in the Faculty of Arts as an advisory role and was not a member of the Board of Studies". It is further stated that "the Faculty of Arts" ordinarily meets only once in a year for the purpose of framing its recommendations. This meeting is usually held in the month of September-October and the members appointed to the Faculty are informed of their having been appointed in or about the month of May or June" and that, "no letter of appointment to the Faculty of Arts had been issued to Dr. Bhagwatsharan Upadhyaya or any other member before the 28th March 1968. However, in connection with his resignation, he himself obtained information as to the committees on which he had been appointed." It is further averred that, "as the appointment was not notified to Dr. Bhagwatsharan Upadhyaya, there was no occasion for the Vice-Chancellor to accept the resignation sent by him". It is further stated that Dr. Bhagwatsharan Upadhyaya was appointed by the Syndicate to the Kalidas Sahitya Samiti for a period of three years on 1st of July 1965 and that the Samiti is an advisory body which advises the Syndicate in the matter of organising the celebrations of the Kalidas Samaroh and that the Samiti has no executive function to discharge. "It is also stated that" on 16th October 1965, Dr. Bhagwatsharan Upadhyaya was appointed to the Research Degree Committee in History. The function of this Committee is to judge and recommend to the Academic Council the suitability of the candidates for registration for research and that this appointment was for a period of three years only and that the committee has no executive function to discharge. It was also averred that "Dr. Bhagwatsharan Upadhyaya did not participate in any of the activities of the Committee after 3-4-1967, his last participation being in the Research Degree Committee in History, on 3-4-1967."

From the returns, it is clear that the appointment of Dr. Bhagwatsharan

Upadhyaya to the Kalidas Sahitya Samiti and the Research Degree Committee in History came to an end by a lapse of time and that he did not participate in these committees after 3-4-1967. As to his appointment on the Faculty of Arts, it is clear that, that appointment was not communicated to him and as such, there was no question of his resignation being accepted. It is, thus, clear that the resignation sent by him was only by way of intimating the University that he was not available for any appointment on the various bodies as he was likely to go abroad. We do not see any reason to doubt the averment of Dr. Bhagwatsharan Upadhyaya that he really intended to go abroad and hence he had sent his resignation. It must, therefore, be held that on the date Dr. Bhagwatsharan Upadhyaya was appointed by the Syndicate in the Committee, he was not in any way connected with the University. It must also be held that so far as the Faculty of Arts is concerned, inasmuch as he was not informed about his appointment officially, there was no question of his sending any resignation and its being accepted by the Vice-Chancellor as required by clause 25 of the First Statute. Even if it is assumed that Dr. Bhagwatsharan Upadhyaya was a member of the Faculty of Arts, the Kalidas Sahitya Samiti or the Research Degree Committee in History, it cannot be said that he was connected with the University.

In *Dr. (Mrs.) Shabbir Fatima and Others Vs. The Chancellor, University of Allahabad and Others*, the expression "connected with", in similar circumstances, came for consideration by the learned single Judge of the Allahabad High Court. His Lordship observed:-

It is true that the expression "connected with" is capable of wide meaning. The expression, in itself, does not indicate the confines within which its use must be limited. Whenever an expression of such wide connotation is employed in a statute, it is necessary for the Courts to draw the lines between which its meaning must be confined. This task is necessarily one of judicial interpretation and must be discharged by reference to the context in which the expression occurs, the object sought to be advanced by the enactment and the mischief sought to be suppressed. The object behind the enactment of section 11 seems to be to ensure that the Committee should not consist of persons who might desire the favour or apprehend the prejudice of whoever might be appointed Vice-Chancellor. That appears to be the test for the determination of who is a person who can be said to be connected with the University and the other bodies mentioned in clause (a). It is clear, therefore, that only such person can be said to be connected with the University and those bodies who holds an office therein or enjoys a pecuniary or some other benefit from them.

When the matter was taken in Letters Patent Appeal, the Division Bench of that High Court observed in *Kashi Nath Misra Vs. Chancellor, University of Allahabad and Another*, as under:-

In our judgment the word "connected" means intimately connected or connected in a manner so as to take pressure or be unable to act independently.

We respectfully accept the interpretation put by the Allahabad High Court on the word "connected with" the University. It may be pointed out that in the Committees in which Dr. Bhagwatsharan Upadhyaya was working, he played an advisory role only. He could not expect any pecuniary benefit from membership of those committees. It is, no doubt, true that when persons from outside are appointed on such committees, they are paid travelling allowances but they cannot be equated with any pecuniary advantage which a person is expected to derive because such allowances are paid towards the expenses that a person is likely to incur. On this ground also, the conclusion is inevitable that Dr. Bhagwatsharan Upadhyaya was not in any way connected with the University in question.

On the question of his subsequent appointment as a Professor in the department of Ancient Indian History and Culture in the said University, Dr. Shiv Mangal Singh (respondent No. 3) has averred in his return that the appointment was not in any manner initiated by him. The name of Dr. Bhagwatsharan Upadhyaya was suggested by Dr. Rajbali Pande, the Vice-Chancellor of the Jabalpur University) who was an expert member on the Selection Committee constituted u/s 37-A of the Act, and that the appointment was unanimously made by the Syndicate. This clearly shows that nomination of Dr. Shiv Mangal Singh in the Panel was not prompted from the desire of Shri Bhagwatsharan Upadhyaya to get himself appointed subsequently as a Professor in Ancient Indian History and Culture. That was a mere accident and has had no connection with the recommendations made by Dr. Bhagwatsharan Upadhyaya. The finding of mala fides cannot be based on mere suspicions. We are, therefore, satisfied that there is no basis for holding that the resignation from all the posts by Dr. Bhagwatsharan Upadhyaya was a mere make belief and a fraud practised on the Statute.

In the view, we have taken, it is not necessary to decide as to whether the petitioner has any locus standi to present this petition and as to whether he can be allowed to traverse beyond the allegations made in the notice of demand for justice.

For the aforesaid reasons, the petition fails and is dismissed with costs. The petitioner shall pay Rs. 100 each to three sets of respondents who have put in appearance, namely, the respondents Nos. 2, 4 and 5 of the one set, respondent No. 3 of the second set and respondent No. 6 of the third set. Though His Excellency the Chancellor has also put in appearance through counsel, before us, we do not think that, any cost should be awarded in his favour. The balance of the security amount, if any, after deducting the costs, shall be refunded to the petitioner.