
Professor B.S. Rajput Vs Chancellor and Another

C.M. W.P. No. 8850 of 1995

Court: Allahabad High Court

Date of Decision: May 9, 1995

Acts Referred:

Constitution of India, 1950 " Article 226#Uttar Pradesh State Universities Act, 1973 " Section 12, 12(12), 12(13), 13, 13(4)

Citation: (1995) 2 UPLBEC 818

Hon'ble Judges: Palok Basu, J; I.M. Quddusi, J

Bench: Division Bench

Advocate: S.C. Budhwar, for the Appellant; S.N. Upadhyay, Sanjay Mishra, L.P. Naithani and M.M. Ghildiyal, for the Respondent

Final Decision: Allowed

Judgement

Palok Basu, J.

The only question which has cropped up for the time being for decision of this Court in this writ petition under Article 226

of the Constitution of India revolves round the powers of the Chancellor to pass an order under Sub-section (12) of Section 12 of Uttar Pradesh

State Universities Act (for short, the Act) particularly keeping in view the facts involved, whether the aforesaid order of the Chancellor dated

13.3.1995 would be justifiable on the materials existing on the record or not.

2. In the very nature of the things, the office of the Vice-Chancellor of a University commands more respect than other Heads of the Institution and

every precaution has been taken under the provisions of the Act to see that the persons appointed as Vice-Chancellor of various Universities in the

State of Uttar Pradesh come from a category of persons selected by a highly responsible personnel Committee. In other words, the powers of the

Chancellor as they stood before U.P. Act No. 20 of 1994 did not empower the Chancellor to order removal of a Vice-Chancellor muchless

suspend him from working as the Vice-Chancellor during the pendency of or in contemplation of an enquiry u/s 12(12) of the Act. Though a casual

reference was made by learned Counsel for the Petitioner saying that the aforesaid provisions are draconian in nature but since the arguments were

confined to the facts of the case, this Court is not for the time being, going into the legality or vires of the aforesaid Section 12 of the Act.

3. Professor B.S. Rajput took over as the Vice-Chancellor of Hemwati Nandan Bahuguna, Garhwal University, Srinagar, Garhwal on 1.12.1992.

The impugned order of the Chancellor dated 13.3.1995 reads as under (Translation by the Court):

On reading the complaints and the notings upon them, it appears to the Chancellor that you are flouting the provisions of the Act, as a result of

which the Chancellor has charged you with the charges enclosed in the Annexure-1. For enquiring into those charges Sri Ramesh Chandra,

Chairman, Board of Revenue has been appointed as Enquiry Officer and it is expected of him that he would submit his report within three months

to the Chancellor. It is further expected of him that if some further charges come to his notice or some further facts are brought to his notice, he will

be competent to frame additional charges and submit his report thereon also. During the pendency of the enquiry, in exercise of the powers,

conferred by Section 12, Sub-section (13) of the Act, the Chancellor directs that you are to refrain from acting as Vice-Chancellor and he has

further directed that during the said period Professor K.P. Nautiyal, Head of the History Department of the University will look after the work of

the Vice-Chancellor.

Sd./Sushil Chandra Tripathi

Principal Secretary to the Chancellor.

4. The charge as appended to the aforesaid letter translated into English, would read thus:

No post of Executive Engineer has been sanctioned by the Government in the Hemwati Nandan Bahuguna Garhwal University, Srinagar but in

September, 1990 the then Vice-Chancellor appointed Captain Anil Kumar Sharma as the Executive Engineer. In this connection by letter No.

5509/15-10-90-7(6)/90, dated 5.1.1991, the University was duly informed that the aforesaid post of the Executive Engineer was not sanctioned

by the Government and that the appointment of Sri Sharma is irregular, therefore, the aforesaid appointment may be cancelled forthwith and no

payments be made towards the said post any further. It has further been intimated that if the aforesaid post is thought necessary, the Hill

Development Council may be consulted for its creation. You have taken over the post of Vice-Chancellor on 1.12.1992. Sri R.S. Tolia,

Secretary, U.P. Government, Uttaranchal Development Section intimated you in his letter No. M.-085/28-2-93-5 (108)/90, dated 31.5.1993 that

the Government has rejected the proposal for creation of the post of Executive Engineer and, therefore, the said post be cancelled forthwith.

Similar directions were contained in the letter of Sri Trilochan Prasad Sharma, Deputy Secretary, U.P. Government, Education Department in his

letter No. 3071/15-10-93-35(30)92. dated 17.11.1993 which was addressed to you. The Government was informed by Sri Deo Chandra,

Deputy Director, Local Self Government, U.P. Allahabad through his letter No. V.M./G-93/85, dated 26.8.1994 that the appointment against the

aforesaid post was not cancelled and continuous payment was being made and in the year 1993-94 a sum of Rs. 93,400 has been paid and that

inspite of specific directions, you have not cancelled the post and are continuing with the irregular payment. In this manner, you are wilfully

disregarding the provisions contained in Section 21(3) of the Act and are continuing with such actions. In this manner, you have flouted Section

13(4) also of the Act and I am of the opinion in accordance with the powers conferred upon me u/s 12(12) of the Act that you are wilfully

disregarding the provisions of the Act and are abusing the powers vested in you as Vice-Chancellor and, therefore, your continuance as Vice-

Chancellor would be detrimental to the interest of the University.

2. The following materials will be used to substantiate charges;

(1) Dr. Harsharan Das"s letter....

(2) Sri R.S. Tolia"s letter....

(3) Sri Trilochan Prasad Sharma"s letter....

(4) Sri Deo Chandra"s letter....

3. You are hereby directed to submit your reply to the aforesaid charges within a month. If your reply is not received within the time allowed, then

it will be presumed that you have nothing to say about charges and ex parte orders may be passed.

4. You are further directed to indicate within the time allowed whether you would like to cross-examine any person or call any one in your defence

and also intimate on what points would the defence witnesses be deposing about.

Dated 13.3.1995

Sd./Moti Lai Vora Chancellor.

5. When this writ petition was filed, Sri S.C. Budhwar, learned Counsel for the Petitioner was heard on 4.4.1995. A supplementary affidavit was

filed on 7.4.1995. Sri S.N. Upadhyaya assisted by Sri Rajnesh Upadhyaya, Advocate put in appearance on behalf of the Chancellor. Sri L.P.

Naithani, "" Advocate appeared on behalf of caveators who have described themselves as Teachers" Association of the University concerned. Sri

M.S. Negi, Advocate has put in appearance on behalf of Professor K.P. Nautiyal who was to look after the office of the Vice-Chancellor in the

event of suspension of the Petitioner. All of them prayed for and were granted, a week"s time to file counter-affidavit and it was also directed that

rejoinder-affidavit may be filed within three days thereafter. Detailed counter-affidavit on behalf of the Chancellor has been filed which is sworn by

Sri Nand Kumar Pant. The impleadment application on behalf of the Teachers' Association was also accompanied by an affidavit which in terms

was described as a counter - affidavit to the writ petition. As stated, rejoinder - affidavits have been filed along with supplementary affidavit of the

Petitioner sworn on 7.4.1995.

6. Looking at the extreme urgency involved in the matter, the request of the learned Counsel for the parties that the case be decided finally at the

admission stage was accepted. Sri S.P. Gupta, learned Advocate General has appeared on behalf of the Chancellor as well as the University. It

has been stated that the affidavit filed on behalf of the Chancellor may be taken to be sufficient stand so far as the University is concerned. It may

be noted here that arguments have been advanced and since the question argued touches the factual basis, any observation made hereinafter will

be confined for use only in this writ petition and will not be permitted to be interpreted by either side in any of the proceedings to follow.

7. A quick resume of the provisions of the Act appears absolutely necessary to determine as to the existence of the powers of the Vice-Chancellor

independent of the powers of the Executive Council. How much option is available with Vice-Chancellor after resolution of the Executive Council

will be one of the primary considerations which will determine the fate of this case. The Vice-Chancellor is appointed u/s 13 of the Act. He is the

Principal Executive and Academic Officer of the University and is the Ex-Officio member and Chairman of the Executive Council, Academic

Council and the Finance Committee. Sub-section (7) of Section 13 of the Act provides that nothing in Sub-section (6) shall be deemed to

empower the Vice-Chancellor to incur any expenditure not fully authorised and provided for in the budget. Likewise, Sub-section (8) says that

where the exercise of the powers by the Vice-Chancellor under Sub-section (6), involves the appointment of an Officer, such appointment shall

terminate on the expiration of a period of six months from the date of the order of the Vice-Chancellor, whichever is earlier.

8. The Executive Council is to be constituted in accordance with provisions contained in Section 20 of the Act and the powers and duties of the

Council are delineated in Section 21. Clause (xiii) of Sub-section (1) of Section 21 may be relevant for discussion to follow and, therefore, is

quoted verbatim:

to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University, and for that

purpose, to appoint such agents as it may think fit.

Having thus noticed the power of the Executive Council to appoint "such agents as it may think fit", a look at Sub-section (3) is also imperative,

which for ready reference, is quoted below:

21(3). No expenditure in respect of which approval of the State Government is required by this Act or the Statutes or Ordinances shall be

Incurrd except with such approval previously obtained, and no post shall be created either in the University or in any Institute or Constituent

College maintained by the University except with the prior approval of the State Government (or except in accordance with any general or special

order of the State Government)"".

9. Sri S.C. Budhwar, learned Counsel for the Petitioner vehemently argued that once it is aji admitted case that the Petitioner was nowhere in

picture when the original appointment of the said Executive Engineer, namely, Sri Anil Kumar Sharma was made, it does not lie in the mouth of the

opposite parties to saddle responsibility of continuing him in the said post only upon the Petitioner. In this connection, he has referred to the

resolution which was passed by the A.W.C. 88 Executive Council when advertisements were called for making appointment to the post of

Executive Engineer and a resolution was also taken that the Government be approached for suitable action in that regard. innexure-2 to the writ

petition is the true copy of the proceedings of the Executive Council held on 25.2.1989 translated into English item No. 33 in the Agenda along

with resolution may be quoted here for ready reference after quoting the Hindi version:

Chauras sthal ke vikas ke liye Vishwavidyalaya dwara sevanivratta abhiyantaon se avedan patra amantrit klye Jane bisayak vigyapti ke suchna se

parishad ko avgat karana.

RESOLUTION:

Parishad ne sevanivratta adhishasi Abhiyantaon ki anumanya ki sambhavana ko anubhav karte hue, yah nirnaya liya ki Sarvajanic Nirman Vibhag

se sampark kar Adhishasi Abhiyanta ki sewaon ko Sthal ke Vikash ke nimitta prapt karne ka prayas klye jaye.

Regarding development of Chauras Area for the use of the University, the Council be informed of the steps proposed to be taken concerning

advertising the post from amongst the retired Engineers.

RESOLUTION:

The Council considered the question of calling for and advertising for the post of the Engineer from retired persons and decided that P.W.D.

Department be contracted for recommending such names.

10. Annexure-3 is the Advertisement in the local newspapers issued under the name of the then Vice-Chancellor of the University. Annexure-4 is

the copy of the letter through which a Selection Committee was constituted which comprised of the then Vice-Chancellor, Professor K.P. Nautiyal

and the Registrar. Annexure-5 is the noting on the proceedings of the Selection Committee held on 20.8.1990 whereby Sri Anil Kumar Sharma,

son of Sri Brij Lai Sharma was selected for appointment as the Executive Engineer of the University and it was further noted that his salary be paid

from out of the Development Funds. The appointment letter indicates that he will be paid salary in accordance with the norms of the Government.

However, Annexure-7 is the copy of the order of the then Vice-Chancellor by which it was directed that a fixed amount of Rs. 4,450 per month

will be payable to Captain Anil Kumar Sharma, Executive Engineer and that he will not be entitled to any other allowances.

11. At this stage, it may be noted that it appears from the pleadings that the State Government had sanctioned a sum of Rs. 35 crores for

constructions of additional building for the University in Chauras area. The constructions were to be done by and under the supervision of Utter

Pradesh Rajkiya Nirman Nigam. It further transpires that there is no doubt that the work has been going on at the site and payments were

periodically released. Several annexures have been filed by the opposite parties indicating withdrawals from the account which was opened for

ear-marking funds received for construction of those additional accommodation. Under the circumstances, a question arises as to whether the

University was competent to think in order to supervise the work at the construction site that the Executive Engineer should be appointed as its

agent to oversee the constructions and execution of the plan as per the requirements of the University. Since nothing is said about the original

resolution and its justification, it has to be presumed that when the Executive Council resolved to make the appointment it considered pros and

cons and resolved to make the said appointment in the best interest of the University. There being no material on the record to show that the

erstwhile Vice-Chancellor had not or for that matter the Executive Council did not take into account all aspects for betterment of the University. It

need not satisfy any one that the aforesaid resolution of the Executive Council and consequent appointment of Captain Anil Kumar Sharma as the

Executive Engineer was in any way malicious or motivated action. This being so, a heavy responsibility is cast upon the opposite parties to indicate

by positive evidence atleast place sufficient materials before the Chancellor that so far as the Petitioner is concerned, he had any personal motive or

ill-design to continue with appointment of the said Engineer. On the materials filed, the solitary objection is that since the State Government had not

sanctioned the appointment, the Petitioner has flouted the conditions imposed upon him by the provisions of the Act, in particular, provisions

contained in Section 21. This necessitates a minute examination of the materials which were available before the Chancellor when he has passed

the impugned order.

12. If it comes to examining only as to the need and justification of continuing with appointment of Captain Anil Kumar Sharma or to find out the

ways and means for and by which his services may be done away with, it is always open to the State Government to have an enquiry done u/s 8 of

the Act. If such an action is taken, a Member of the Executive Council would be present to inform the State Government of the need and necessity

of appointing an Executive Engineer to oversee the work which was to be executed by an outside agency not connected with the University at all.

Nothing of the type has happened and, but for writing three letters in a span of three years, the State Government sends a note to the Chancellor

and then the impugned order is thrust upon the Vice-Chancellor. This method, at the most, can justify the enquiry but on the facts stated above

does not occasion the suspension of the Vice-Chancellor. It may be stated here that the Advocate General appeared apologetic when the Court

asked from him the basis of suspending the Vice-Chancellor and he said that the Vice-Chancellor has not been suspended but only his powers to

work as the Vice-Chancellor have been taken away though he will draw his salary alright. To the Court, however. It appears that it is a doing insult

to the injury. One can understand suspension simplicitor but the provisions of the Act have been so enacted as to make the Vice-Chancellor go on

getting his salary but not to do any of his functions which is statutory in nature. However, this aspect was only an ancillary argument which has been

mentioned only to emphasise that while dealing with such office as the Vice-Chancellor, some more introspection is expected particularly, while

exercising powers u/s 12(12) or 12(13) of the Act. May be that some independent enquiry should precede an action of the Chancellor u/s 12 and

only a report may not in a given case be the basis for an action u/s 12 of the Act. However, since neither the question of vires nor the question of

going ahead with the enquiry is sought to be touched at this stage, this Court in this matter, no further comments in this regard is called for.

13. Sri L.P. Nalthanil, learned Counsel for caveators vehemently argued that a sum of Rs. 6 lacs was withdrawn at the behest of the aforesaid

Captain Anil Kumar Sharma and in this connection he drew the attention of the Court to Annexure-22 of the counter-affidavit filed on behalf of the

Teachers" Association. However, when closely questioned, Sri Naithani admitted that the said Annexure-22 did not appear to bear the signature

of Captain Anil Kumar Sharma but had the rubber stamp marking of U.P. Rajkiya Nirman Nigam. Below the aforesaid withdrawal certificate the

Finance Officer of the University had put another certificate concerning the assets acquired. Initially, argument of Sri Naithani, therefore, comparing

the aforesaid annexure with Annexure-25, that the constructions referred to in Annexure-22 has not been executed, obviously does not refer to

either Vice-Chancellor or the said Engineer. It is, in fact, this aspect of the matter which has persuaded this Court to permit the Chancellor to go

ahead with the enquiry to find out truth as to whether everything is well with the constructional activities under the U.P. Rajkiya Nirman Nigam. No

other document was showji on the basis of which the action of either the Vice-Chancellor or the said Engineer may be called in question in these

proceedings.

14. However, Sri S.P. Gupta, Advocate General, strenuously argued that the action of the Vice-Chancellor in taking the matter to the Executive

Council after receiving last letter calling upon him to desist from making payment to the said Engineer is motivated and malaftde. It was emphasised

by the Advocate General that a close examination of the resolution, a copy of which has been appended by the Petitioner in his writ petition and

the copy which was sent to the Chancellor along with earlier letter of the Petitioner, are not identical. On the strength of difference of a few words

here and there, the Advocate General wanted to convince the Court that the Vice-Chancellor was erring in placing reliance on the said documents

because though he wanted to take shelter behind the resolution of the Executive Council but is not fully sure of language which should find place in

the resolution. Sri S.C. Budhwar, learned Counsel for the Petitioner, however, challenged the argument by referring to the fact that while one

document was the exact resolution, the other was only its report to the Chancellor and that report was prepared by the Registrar. Under the

circumstances, it was argued that missing of one or two words has hardly any consequence particularly when the gist and genesis of both the

documents is the same and identical. On examining both documents, there is no doubt left in mind of the Court that there is neither any intentional

deviation nor is there concealment of fact in any of the said resolutions.

15. It thus appears now reasonable to refer to the last item emphasised by Sri S.C. Budhwar that as the Vice-Chancellor who was conscious of

the fact that the appointment of the Executive Engineer was preceded by resolution of the Executive Council, he had under compulsion to take

matter to the Executive Council. Consequently when this matter was brought before the Executive Council on 4.1.1995, it was unanimously

resolved as under (Translation by Court):

Item No. 71:

Discussion concerning Executive Engineer episode.

Resolution: On the aforesaid matter, after examining all letters of the Government, the Executive Council directs that for creation of the post of the

Executive Engineer and acceptance thereof by the Government, a letter be sent to the Government and the arrangement continuing for the time

being should be continued till the post is sanctioned.

It was rightly emphasised by learned Counsel for the Petitioner that by his letter dated 21.1.1995 the Registrar had specifically written to the

Chancellor about the resolution of the Executive Council dated 4.1.1995 noted above. It was emphasised on behalf of the University in the

aforesaid letter sent on behalf of it that the appointment of Captain Anil Kumar Sharma was imperative keeping in view the need and necessity of

the University. It is not known whether this letter, the existence of which is not denied, was ever placed before the Chancellor or not before he

passed the impugned order. Along with this letter, copy of the resolution was also forwarded as Annexure-8. As stated above, the resolution and

the decision of the University has been well intimated to the Chancellor much before the impugned order was passed. Though some other

provisions may indicate that such an order was not necessary at all, the Court is refraining from making any comments to those references for the

time being because it thinks that in the interest of justice, the enquiry may go on and the truth may be found out.

16. The impleadment application is allowed since Mr. Naithani has already been heard at sufficient length on behalf of the Teachers' Association.

The last argument made by him is to be noted here before concluding this judgment. He argued that some of the teachers have made a statement

that the aforesaid resolution was placed by the Vice-Chancellor not in the normal course but all the letters, etc. were not placed when the matter

came up for consideration. Suffice it to say that once a dispute arises, any one can opt for making a statement which may suit his convenience.

However, these are matters which, if necessary, may be gone into at suitable stage. For the time being, the resolution or passing thereof is neither

denied nor disputed and that is sufficient for disposal of this writ petition.

17. In the result, this writ petition partly succeeds and is allowed. The order of the Chancellor dated 13.3.1995 is upheld to the extent that an

enquiry as envisaged u/s 12(12) of the Act may go on and be expeditiously completed but the order passed u/s 12(13) thereby divesting the Vice-

Chancellor of his powers is quashed.

The parties will bear their own costs.