

(1998) 12 GUJ CK 0013

Gujarat High Court

Case No: Special Civil Application No. 9418 of 1998

Satishchandra Balashanker Vora

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: Dec. 30, 1998

Acts Referred:

- Bombay General Clauses Act, 1904 - Section 16, 3
- Constitution of India, 1950 - Article 226
- Gujarat University Act, 1949 - Section 10, 10(6), 11, 4, 7

Hon'ble Judges: N.N. Mathur, J

Bench: Single Bench

Advocate: Arun H. Mehta, for the Appellant; J.M. Thakore, Gen. and P. G. Desai, G.P. for Respondent No. 1 and J. M. Thakore, Gen. and N.V. Anjaria, for the Respondent

Final Decision: Allowed

Judgement

N.N. Mathur, J.

By the impugned Notification dated 9.11.1998, the petitioner-Satishchandra B Vora has been dismissed from the office of the Vice-Chancellor, Gujarat University on the following alleged acts of misconduct and misdemeanour.

(1) The petitioner attended International Association of Universities Conference at Bangkok from 12th to 14th November, 1997 without the prior approval of the Chancellor.

(2) The petitioner did not obtain political clearance from the concerned Ministry of the Government of India before proceeding abroad.

3. The petitioner is a Professor of Statistics and Business Management. He was appointed as Vice Chancellor of the Gujarat University by Notification of the State Government dated 27.12.1996 for a period of 3 years. He received an invitation for participating in Fourth Mid-term Conference on the subject "Universities

Responsibilities to the Society." at Bangkok, Thailand, organized by the International Association of Universities from 12th to 14th November, 1997. This invitation was placed for consideration before the Executive Council of the University on 5.10.1997. The Committee accepted the invitation and approved the expenditure of Rs.53,750/-. It was noted that the said expenditure will be available as per the rules from the unassigned grant of the University Grants Commission. On the very next day, i.e. on 6.10.97, the petitioner addressed a letter to His Excellency, the Governor of Gujarat with a request to permit him to attend the said Conference and grant to him "duty leave" for the period from 9.11.97 to 18.11.97. He also made a request for making alternative arrangement in accordance with the provisions of section 10(6)(a) of the Gujarat University Act. Under letter dated 17.10.97, the Dy.Secretary to the Government of Gujarat, Education Department sought certain clarifications from the Registrar of the Gujarat University with respect to the participation of the Vice Chancellor in the Fourth Mid-term Conference organized by the International Association of Universities. The Government particularly wanted to know firstly, if Mr. Vora proposed to visit Thailand on official passport; secondly, who will bear the expenditure of the tour and thirdly, if the expenses on hospitality are to be borne by the host as to whether political clearance would be required from the Government of India, Ministry of Home Affairs. On the very next day, the Registrar Shri M P Jadia, in his letter dated 18.10.97, informed the Government that permission has been granted by the University Grants Commission under letter dated 3.10.97 for participating in the said Conference. It was also informed that 100% expenditure is to be borne by the University Grants Commission from the unassigned grant scheme. With respect to the expenses on hospitality by the host and political clearance in that event, it was informed that there appears to be no need to get political clearance as the entire expenditure will be borne by the University Grants Commission (for short "UGC"). It appears that the petitioner heard nothing thereafter and as such he left the Country for attending the Conference as per schedule. By letter dated 31.1.1998, the Addl. Chief Secretary, Education Department sought explanation from the petitioner with respect to his leaving the Country without obtaining prior permission of the Chancellor and also without obtaining political clearance from the Ministry of External Affairs. The petitioner replied the said notice under communication dated 9.2.1998 informing that the entire matter has been discussed with Shri Dilipbhai Parikh, the then Chief Minister of the State of Gujarat and also clarified to His Excellency, the Governor who is the Chancellor of the University. A copy of the letter dated 24.12.1997 was also enclosed. The letter dated 24.12.97 was addressed to His Excellency stating that the petitioner was required to attend the Conference as part of his duty to keep abreast of world trend in the higher education. He also submitted that the UGC had sanctioned his tour programme. The office of the Chancellor was also informed about his tour. The petitioner expressed that there appears to be some communication gap creating some misunderstanding, which must now stand clarified. After the petitioner's letter dated 9.2.1998, another show cause notice dated 9.7.98 was served upon him

by the Principal Secretary, Government of Gujarat, Education Department, stating that the explanation given in the letter dated 9.2.97 has not been found satisfactory. It was pointed out that the reply is not point-wise and no clarification has been made with respect to the political clearance. The petitioner was also informed that the explanation given by him has not been accepted by His Excellency, the Governor. The petitioner, therefore, was called upon to give his explanation as to why disciplinary action should not be taken against him. The petitioner was also given an opportunity of being heard in person. He was asked to meet the signatory of the notice i.e. the Principal Secretary to the Government of Gujarat, Education Department on 24.7.1998 at 12.00 hours in his office. The petitioner submitted his explanation under communication dated 24.7.98. It was expressed that he was not aware as to what is the connotation of "political clearance" in the context of the Vice-Chancellor attending the Mid-term Conference organized by the International Association of Universities for which the UGC has provided 100% assistance. It was also made clear that neither any funds of the Gujarat University was to be spent nor any foreign agency was to provide any financial assistance in that connection. It was also submitted that the petitioner sought permission from the Chancellor for attending the Conference under letter dated 6.10.97. Certain clarifications sought by letter dated 17.10.97 were also satisfactorily replied. Since there was no reply, it was his bonafide belief that he would receive permission in due course and as such he proceeded to attend the Conference. It was emphasized that it was incumbent upon the Vice-Chancellor to attend the Conference for better exposure and widening the horizon which could be beneficial not only to him personally and the Gujarat University but also to the field of education as such. It was also pointed out that since inception of the Gujarat University, every Vice-Chancellor had gone abroad for such purpose without obtaining political clearance. It was generally understood that such permission is necessary for employees of the Government and not for the Vice-Chancellors, who, though appointed by the Government, are not Government servants as such. It was also pointed out that even in the list of protocol, name of the Vice-Chancellor appears in the non-officials" list. The petitioner also invited attention to the fact that he had subsequently called upon the Hon"ble Chancellor and also addressed letter dated 24.12.97. In his personal meeting, His Excellency, the Governor did not even touch upon the issue, which led the petitioner to believe that the matter has been settled. The petitioner, in continuation of the letter dated 24.7.98, made further submission under communication dated 22.8.98 addressed to the Addl. Chief Secretary, Education, Government of Gujarat. In the said letter, the petitioner not only made his position clear but has also submitted that he is only a simple Teacher by profession and as such even if there is any lapse on his part, it was minor in nature and may not be proceeded further, more particularly, when his visit has not in any way adversely affected the interest of the country or the University. Nothing was heard thereafter till 9.11.98, when the petitioner was served with the impugned order of dismissal.

4. A counter affidavit has been filed by Mr. D C Vora, Dy.Secretary in the Education Department. It is stated that there are many instances of misdemeanour and the impugned notice which specifies the culmination of all misdeeds on the part of the petitioner, is only one of the instances of his misdemeanour. He has referred to following additional instances:

(a) There was an instance of leakage of examination question papers which led to raising of question in the Legislative Assembly. The matter was directed to be investigated by CID (Crime) Branch. In the said investigation, the University did not cooperate.

(b) The Government decided to open a Post-Graduate Examination Centre at Bhuj. A letter was written to the University. But the University did not reply to the letter till date, in spite of repeated reminders.

(c) A strike was organized in the interest of Prof. K S Shastri (Pro-Vice-Chancellor). In that regard, certain informations were sought by the Government, but the same were not supplied.

5. With respect to the prior permission before leaving the Country, it was submitted that the Chancellor is the Head of the University and the President of the Court u/s 9(2) of the Gujarat University Act (for short, "the Act"), and therefore, before the Vice-Chancellor leaves for a foreign country, he is required to obtain prior approval from the Chancellor. It is further stated that on receiving letter of the petitioner dated 6.10.1997, the office of the Chancellor, Gujarat University by letter dated 14.10.97 sought certain clarifications from the Department of Education. In turn, the Dy.Secretary, Department of Education, sent a letter dated 17.10.97 to the Registrar of the University raising the queries. The reply received from the Registrar was sent to the office of the Chancellor. However, by letter dated 7.11.97, further queries were raised by the Raj Bhavan. By a fax message, the Section Officer, Education Department also enquired from the Resident Commissioner, New Delhi whether political clearance was required to be obtained in the case of Vice-Chancellor or not. The Resident Commissioner, by fax message of 11.11.97, informed the Raj Bhavan that such political clearance was required to be obtained from the Ministry of External Affairs. However, by that time, the petitioner had left for Bangkok. In the opinion of the State Government, leaving the Country without approval of the Chancellor itself amounts to an act of insubordination. It is stressed that the petitioner could have even telephonically informed the Chancellor, if no time was there to get approval by way of letter. It is further submitted that the petitioner was given an opportunity of personal hearing on 24.7.98 but he did not appear. He, however, met the Principal Secretary, Education Department earlier informally. While admitting the fact that in past, political clearance was not taken by Vice-Chancellors and other office bearers who attended such Conferences, it is pleaded that this could not exempt the petitioner from going abroad without political clearance.

6. Before dealing with the respective contentions, it would be convenient to set out the relevant provisions of the Gujarat University Act, 1949 and the Bombay General Clauses Act, 1984. By virtue of Section 3 of the Act, the Chancellor, Vice-Chancellor and the Pro-Vice-Chancellor of the University and the Members of the Court, the Executive Council and the Academic Council of the University and all persons who may become officers or members, so long as they continue to hold such office or membership, constitute a Body corporate by the name of the Gujarat University. Section 4 provides for powers of the University. Section 7 empowers the Chancellor, to cause an inspection to be made by such person or persons as he may direct of the University, its building, laboratories, libraries, colleges recognised by or affiliated to, and to cause enquiry to be made in respect of any matter connected with the University. sub-section (5) gives identical power for inspection by the State Government. Section 8 gives list of officers of the University. By virtue of this provision, the Chancellor and Vice-Chancellor of the University are also officers of the University. Section 9 provides that the Governor of the State of Gujarat for the time being shall be the Chancellor of the University. Sub-section (2) of section 9 provides that the Chancellor shall, by virtue of his office be the Head of the University and the President of the Court and shall when present, preside at meetings of the Court and at any convocation of the University. Section 10 provides that the Vice-Chancellor shall be appointed by the State Government from amongst three persons recommended under sub-section (3) by a Committee appointed for the purpose under sub-section (2). Sub-section (4) provides that the Vice-Chancellor shall hold office for a term of three years and he shall be eligible for reappointment to that office for a further term of three years only. The provision also provides the maximum age limit of 65 years for the Vice-Chancellor. sub-section (6) provides that during absence of the Vice-Chancellor, or in the event of permanent vacancy in the office, the Pro-Vice-Chancellor or in absence of the Pro-Vice-Chancellor one of the Deans nominated by the Chancellor shall carry on the current duties of the Vice-Chancellor. Section 11 provides that the Vice-Chancellor shall be the principal Executive and academic officer of the University and shall in the absence of the Chancellor, preside at meeting of the Court and any convocation of the University. He is also an ex-officio Member and the Chairman of the Executive Council and of the Academic Council. He is entitled to be present, with the right to speak, at any meetings of any other authority or body of the University. The power of the Vice-Chancellor are enumerated u/s 11. It is not necessary to state all the provisions in detail as it is not in dispute that for all practical purposes, the Vice-Chancellor is not only the Administrative and Academic Head of the University but also the link between the University on the one side and the Government, Chancellor and the wider public on the other. There is no provision in the Act for removal of a Vice-Chancellor. In view of this, provisions of Section 16 of the Bombay General Clauses Act 1904 are invoked which provides that where by any Bombay Act or Gujarat Act, power to make any appointment is conferred, then, unless a different intention appears, the authority having powers to make the appointment shall also

have power to suspend or dismiss any person appointed by it in exercise of that power.

7. The issue of selection of Vice-Chancellors, their appointment and removal and their status has been a matter of discussion at several educational forums. It is felt that Vice-Chancellors of Universities are subjected to humiliating service conditions, which are wholly inconsistent with the spirit of the Universities. The political and bureaucratic supremacy has adversely affected the autonomy of Universities. Two Scholars of International Institute of Education Planning, namely, Bikas C Saniyal and Joyce E Collins, in their joint Article, on University Management, have said thus:

"Whereas it is the duty of the Vice-Chancellor not to create an embarrassing situation for the Government, it is also necessary that his dignity is not to be undermined since he is the top executive of the University. If a Vice-Chancellor is shabbily treated, it can only have deleterious effect on the system. If the Chancellor is convinced that some wrong or series of wrongs have been committed by the Vice-Chancellor, there are adequate ways to undo the wrong. Another unhappy point is that some of the leading politicians in Government some times lose restraint and do not display moderation."

One of the former Vice-Chancellors has said in anguish that "Universities are already in their death throes". It is stated that since independence, particularly since emergency, University and Vice-Chancellors have been denigrated and lost their high position in the society. Thus, the conference of the Vice-Chancellors held in September 1991 made certain recommendations including appointment of the UGC Committee to examine the mode of selection and security of tenure of Vice-Chancellors. This Committee submitted its recommendations which have been considered in February 1993 meeting of the UGC, Association of Indian Universities and Vice-Chancellors. It has been brought to my notice that at the instance of the Ministry of Human Resource Department, in September 1991, UGC appointed a Committee under the Convenership of Prof. Ramanlal Parikh, Vice-Chancellor of Gujarat Vidyapith (Member-UGC) with Prof. A Gnanam, Vice-Chancellor of Pondicherry University, Prof. S P Verma, Dayalbagh Educational Institute, Member, Dr. M M Mehta, Addl. Chief Secretary, UGC, Mr. I J Gupta, Joint Secretary, UGC for examining the procedure of appointment and removal of Vice-Chancellors. The Committee, inter-alia, addressed itself to the following issues:

(i) appointment of Vice-Chancellor and Pro-Vice-Chancellor

(ii) Role of Chancellor

(iii) Security of tenure of Vice-Chancellor

(iv) Service conditions of Vice-Chancellor and
Pro-Vice-Chancellor

(v) Model Ordinance.

With reference to the removal of the Vice-Chancellor, the Committee suggested as follows:

"A Vice-Chancellor should not be removable by a Chancellor except through a notice served by the Chancellor stating specifically the grounds of the charges which have been established against him/her after a proper enquiry by a sitting or retired Judge of the High Court or Supreme Court in which he/she has been given opportunity of being heard in accordance with the well established principles of natural justice."

8. It is contended by Mr. A H Mehta, learned Advocate appearing for the petitioner that the tenure of the Vice-Chancellor is of 3 years and this fixed term cannot be curtailed by the State Government by arbitrary and malafide exercise of powers under the provisions as contained in the Bombay General Clauses Act. Analysing the facts, it is submitted that there was an implied permission granted to the petitioner to proceed abroad to attend the Conference. With respect to the political clearance, the learned Advocate submitted that at the first instance, there is no such requirement in case of Vice-Chancellor and even if it is so, the action of the respondent suffers from vice of "pick and choose". It is further submitted that even if there was any lapse on the part of the Vice-Chancellor, it was simply procedural lapse which cannot be treated as misconduct or misdemeanour. It is also submitted that some of the instances of misconduct given in the reply do not find place in the show cause notice, and thus, the decision of dismissal based on extraneous material is ex-facie illegal and void. It is also submitted that the action of the respondent of dismissing the petitioner is nullity being in utter violation of principles of natural justice, inasmuch as no enquiry of whatsoever nature with respect to the alleged misconduct has been conducted. On the other hand, Mr. J M Thakore, learned Advocate General submitted that the Government has ample power u/s 16 of the General Clauses Act to dismiss a Vice-Chancellor. It is also submitted that a person holding the high office of the Vice-Chancellor is expected to act in a disciplined manner. It is also submitted that the requirement of political clearance is for the purpose of safety of the Nation and it cannot be simply overlooked as suggested by the petitioner. According to the learned Advocate General, it is clearly a case of wilful act of insubordination. So far as the principles of natural justice is concerned, he was given an opportunity to appear before the Principal Secretary on 24.10.1998, but he did not avail the said opportunity. It is lastly submitted that unless the action of the Government and the Chancellor is found to be malafide, judicial intervention is not called for.

9. Before I proceed to analyse the act of misconduct and misdemeanour as enumerated in the impugned Notification dated 9.11.1998, it would be necessary to deal with the additional allegations made in the counter affidavit filed by Mr. D C Vora, Dy.Secretary. It is stated in the reply that there are many instances of misdemeanour and the impugned notice which specifies the culmination of all

misdeeds on the part of the petitioner is only one of the instances of misdemeanour. The question is whether such instances could be taken into consideration which are not reflected in the notice dated 9.7.98. Mr. Mehta, learned Advocate for the petitioner submits that the consideration of material regarding which no show cause notice was given, itself is sufficient to vitiate the impugned order of dismissal. He, however, submits that in spite of taking advantage of the technical grounds, he would like to make the record straight by making the position of his client clear. In para 9 of the reply, three instances have been given. The first allegation is non-cooperation on the part of the University to the investigation conducted by the CID (Crime) regarding leakage of examination papers. In the affidavit-in-rejoinder, the petitioner has stated that full co-operation was offered by the University in the said investigation. It is also denied that name of the press was not disclosed to DIG Mr. Pandey who was investigating the matter. Another allegation is with respect to not giving reply to the State Government in the matter of strike by the supporters of the Pro-Vice-Chancellor. It is stated in the rejoinder that the allegation is false as by letter dated 4.9.98 addressed to the Director of Education, necessary informations were given to the Government. Another letter dated 3.9.98 was addressed to the Government. It is stated that necessary informations were also given on telephone. In view of the statement made in the rejoinder, there appears to be no substance in the additional instances of misconduct cited by the respondent. It is pertinent to notice that it is too much for the State Government to expect from a Vice-Chancellor to reply on such petty matters. These are matters which are to be dealt with by the subordinate staff of the University. Every inaction on the part of the staff of the University cannot be a ground for dismissal of a Vice-Chancellor. If these are the reasons on which the State Government claim immunity to dismiss a Vice-Chancellor, in my view, it would be a case of gross abuse of power. The third instance given is that the Government decided to open a Post-Graduate Examination Centre at Bhuj, and therefore, a letter was written to the University but the University did not reply to the letter in spite of reminders. The allegations have been denied in the rejoinder. It is stated that the question has been hanging fire during the term of several Vice-Chancellors since 1990. Every time, the concerned Vice-Chancellor asked the Registrar to write appropriate reply to the Government. One of the replies given by the Registrar under the instructions of the Vice-Chancellor is produced at Annexure (11). It is further pointed out that the controversy with respect to giving Bhuj a Post-Graduate Examination Centre, has been decided by the Division Bench of the High Court in Special Civil Application No.2388/98 dated 15.6.98. A copy of the said order has been placed on record. In the said order, the Court held that there was no reason to issue any direction to the Gujarat University for starting examination centre at Bhuj. An affidavit was also filed by the petitioner setting out detailed reason for not giving separate examination centre for Post-Graduate at Bhuj. The Division Bench being satisfied of the stand of the University, rejected the petition. I am surprised that in spite of the controversy with respect to establishing separate Post-Graduate

Examination Centre at Bhuj, being settled by a judicial pronouncement, the State Government has considered it an act of misconduct calling for dismissal of the Vice-Chancellor.

10. In view of the aforesaid, I disapprove the attempt of the state Government in unnecessarily exaggerating the matter. The attempt to prejudice the Court by adding the aforesaid instances, accordingly fails.

11. The question which arises for consideration is the scope and the extent of application of principles of natural justice in the matter of removal of a Vice-Chancellor. Both the learned Advocates for the parties have relied upon a decision of the Apex Court in the case of [Dr. Bool Chand Vs. The Chancellor, Kurukshetra University](#). In the said case, Dr. Bool Chand was appointed as Vice-Chancellor in the Kurukshetra University under the Kurukshetra University Act. The office of the Vice-Chancellor was a statutory office providing a period of 3 years. Before the expiry of the period of 3 years, the Chancellor terminated the services of Dr. Bool Chand and question arose whether the Chancellor was entitled to do so and if he was so entitled, whether he could do it without applying the principles of natural justice. The Apex Court held that the tenure of the Vice-Chancellor under the Act can be terminated before the expiry of the period for which he is appointed, because power to appoint ordinarily would include the power to terminate the employment but since the office of the Vice-Chancellor is a statutory office under the Act, the Vice-Chancellor can be removed from the office only for good cause and after holding the enquiry consistent with the rules of natural justice. Shah, J, speaking on behalf of the Court observed that

"The power may not be exercised arbitrarily. It can be only exercised for good cause, i.e. in the interests of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor."

Thus, the Chancellor can exercise the power to dismiss the Vice-Chancellor only for good cases i.e. in the interest of the University and only when it is found after due enquiry held in a manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor. It is significant to notice that the Apex Court has used the phrase "found after due enquiry" and not the phrase "after giving opportunity of hearing" The Apex Court in the case of [Workers Employed in Hirakud Dam Vs. State of Orissa and Another](#), after referring Dr. Bool Chand's case (supra) held that the word "dismissal", not only denoted termination of service of employee by way of punishment but it also covers the case of termination even before the completion of work. In the case of [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee](#), the service of the respondent employee was terminated after enquiry. The order of termination was challenged on various grounds including the ground of violation of principles of natural justice, inasmuch as that he had not been given opportunity to

cross-examine the witness and to establish his innocence. In the counter affidavit, the Corporation urged that there was no regulation for conducting enquiry in a particular manner, and therefore, remedy of the respondent was by way of suit and he has no locus to exercise the extraordinary jurisdiction under Article 226 of the Constitution. The Apex Court repealed the contention and held that even if at the time of dismissal of the respondent employee of the U.P. State Warehousing Corporation, statutory regulations had not been framed or had not come into force, then also, employment of the respondent was public employment and the statutory body, the employer could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any, in force, or in the absence of such Regulations, in accordance with the rules of natural justice. The Court further held that such an enquiry into the conduct of the public employee is of quasi-judicial character. The court would, therefore, presume the existence of duty on the part of the dismissing authority to observe the rules of natural justice to act in accordance with the spirit of Regulations which were then on the anvil and came into force after the impugned dismissal. The Court further held that the Rules of natural justice required that the respondent should be given reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which mean and includes an opportunity to cross-examine the witnesses relied upon by the Corporation and an opportunity to lead evidence in defence of the charges as also a show cause notice for the proposed punishment.

12. In the instant case, it is of course true that a show cause notice was given to the petitioner firstly on 31.1.98 and secondly on 9.7.98. The petitioner was also asked to appear in person before the Principal Secretary on 24.7.98. However, on the basis of these two notices, it cannot be said that the petitioner has been dismissed from the office of the Vice-Chancellor after due enquiry. If respondents No.1 and 2 were not satisfied with the reply of the petitioner, they ought to have instituted enquiry. Looking to the high office of the Vice-Chancellor, in all fairness, enquiry could be entrusted to a Hon^{ble} sitting or retired Judge of the High Court for which a request could be made by the Government to the Hon^{ble} Chief Justice. The order of dismissal being not preceded by enquiry of whatsoever nature, is ex-facie illegal, void and non-est.

13. Even if it is assumed that giving of opportunity of appearance before the Principal Secretary was sufficient in the facts of the case, and there was no violation of principles of natural justice, the next question which arises for consideration is whether the allegations against the petitioner constitute act of misconduct. The last question which arises for consideration is whether "doctrine of proportionality" is attracted in the facts of the case.

14. Broadly speaking, there are two charges against the petitioner. Firstly, without prior approval or information to the Chancellor, the petitioner proceeded on foreign tour and secondly, he attended the Conference abroad without prior approval of the

Ministry of Foreign Affairs in the Government of India. So far as the first ground is concerned, I proceed on the assumption that it was necessary on the part of the Vice-Chancellor to inform the Chancellor before proceeding on foreign tour. It is not in dispute that the Chancellor received the letter of the petitioner dated 6.10.97 wherein the petitioner requested him to grant duty leave for the period 9.11.97 to 18.11.97. Therefore, it cannot be said that he left the country without informing the Chancellor. The question of course remains as to whether he should have waited for the approval of the Vice-Chancellor or not. I refrain from returning any finding on this question for the time being. The second allegation is attending the Conference abroad without prior political approval from the Ministry of Foreign Affairs, Government of India. In this regard, it is significant to notice that till now nobody is aware as to what exactly is the "political clearance" which is required from the Ministry of Foreign Affairs. As far as the University is concerned, they are not aware of such requirements. It is admitted fact that till the present controversy was raised, no Vice-Chancellor of the Gujarat University or any other University in the State of Gujarat ever obtained "political clearance" from the Ministry of Foreign Affairs. It is of course true that this cannot be just a reason for not obtaining the "political clearance" but this fact fairly establishes that in the University circle, this requirement was not known. It further appears that even the Chancellor and the State Government were also not knowing the actual requirement of "political clearance". Perhaps it was thought that "political clearance" may be necessary in case of hospitality borne by host. This is evident from the query raised by the State Government in letter dated 17.10.1997 which is extracted as follows:

"2. Who will bear the expenditure of this tour i.e. travel expenses, hospitality etc. If the expenditure is to be borne by the Government, kindly clarify whether such sanction has been accorded.

3. If the expenses on hospitality are to be borne by the host, political clearance would be required from the Government of India, Ministry of Home Affairs give details about this."

The frame of the above questions clearly indicate that the Government thought that the political clearance was necessary only in a case where hospitality is by the host. The question was answered by letter dated 18.10.97 saying that the entire expenses are to be borne by the grant given by the UGC. Thus, the petitioner could be under a bonafide understanding that a political clearance is required only when he is accepting hospitality of the host country. It is only on 10.11.97, with reference to fax message dated 7.11.97, the Resident Commissioner, Government of Gujarat ascertained from the Ministry of External Affairs that a political clearance is required for visit of the Vice-Chancellor of the Gujarat University. The reply of the University was received on 18.10.97 and the office of the Respondents No.1 and 2 were aware that the Vice-Chancellor will have to leave the Country on 9.11.97 for attending the conference. In spite of having sufficient resources with them, they did not bother to

enquire about political clearance for the period 19.10.97 to 7.11.97. It is only two days prior to the date scheduled for departure of the petitioner, i.e. on 7.11.97 that information were sought from Resident Commissioner on Fax, the reply of which was received on 11.11.97. If political clearance was necessary, all resources of State Government should have been employed to ensure the decision of the concerned Ministry is taken well in time and no embarrassment is caused to the Vice-Chancellor. Though a "political clearance" has been used as tool for the dismissal of a dignitary of the status of a Vice-Chancellor, it is interesting to note that the Respondents No.1 and 2 are still not aware of the exact contents of the document which requires such clearance. For complete one year, no effort has been made to obtain the actual document from the Ministry of Foreign Affairs which require "political clearance". During the course of argument, it is submitted by the learned Advocate General that it is not obligatory on the part of respondents No.1 and 2 to show the said document to the petitioner. The respondents have not claimed any immunity for not showing such documents. Be that as it may, an assurance was given that the said document will be shown to the Court but it has been completely forgotten. The fact remains that the said document has not been produced even for perusal of the Court. There is no reference of such document in their reply which clearly shows that respondents No.1 and 2, before taking the drastic action of dismissal of the Vice-Chancellor, did not bother to look at the document, which is the foundation of the impugned order. In fact, on query from the Court, the learned Advocate General has failed to spell out the names of the officials and dignitaries who are required to obtain political clearances, in what circumstance, and what is the procedure provided. It clearly speaks how casually a matter of dismissal of a dignitary of the status of Vice-Chancellor has been taken by the respondents No.1 and 2. Thus, the impugned Notification of dismissal of the petitioner is illegal and void, based on wholly unsustainable ground.

15. Even if both the grounds referred to above are found to be of substance, the next question arises for consideration is whether the subject act can be construed as misconduct. The word, "misconduct" as such has not been defined. The Supreme Court, in the case of [State of Punjab and Others Vs. Ram Singh Ex. Constable](#), has considered the word, "misconduct" as follows:

"The word "misconduct" though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the term occurs, regard being bad to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf

erodes discipline in the service causing serious effect in the maintenance of law and order."

It is thus evident that a mere error of judgment, in performance of duty does not amount to misconduct. In the instant case, after informing the Chancellor, if the petitioner, without waiting for the approval, left for attending the Conference, which in his judgment was more important, cannot be construed even as negligence or carelessness. Such a bonafide error cannot be construed as misconduct. The same reasoning applies in the case of obtaining political approval from the Ministry of Foreign Affairs. Thus, in my opinion, the impugned order of dismissal is ex-facie illegal, as it is not at all a case of misconduct or misdemeanour.

16. Now, on the question whether the "doctrine of proportionality" is attracted in the facts of the case, Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Services* (1985) AC 374 has enunciated three heads of grounds upon which administrative action is subject to control by judicial review, viz; (i) illegality, (ii) irrationality, and (iii) procedural impropriety. He has also stated there that the three grounds evolved till then did not rule out that "further developments on a case by case basis may not in course of time add further grounds" and has added that "principle of proportionality" which is recognized in the administrative law by several members of European Economic Community may be a possible ground for judicial review for adoption in the future. It may be stated that we have already adopted the said ground both statutorily and judicially in our labour and service jurisprudence". Lord Diplock has explained the three heads of grounds. By "illegality" he means that the decision-maker must understand correctly the law that regulates its decision-making power and must give effect to it and whether he has or has not, is a justiciable question. By "irrationality" he means unreasonableness. A decision may be so outrageous or defiance of logic or of accepted moral standards and no sensible person who had applied his mind to the question to be decided, could have arrived at it, and it is for the Judges to decide whether a decision falls in the said category or not. By "procedural impropriety" he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the Tribunal's jurisdiction is conferred even where such failure does not involve any denial of natural justice. Where a decision is one which does not alter rights or obligations enforceable in private law, but only deprives a person of legitimate expectations "procedural impropriety" will normally provide the only ground on which the decision is open to judicial review.

17. Thus, it would be disproportionate and unreasonable exercise of power if dismissal is ordered when the circumstance does not call for such extreme harsh action. In the instant case, leaving the country by an officer of the status of a Vice-Chancellor on official tour for attending a Conference, in the interest of the University after informing the Chancellor, but before his approval and further

leaving the country without obtaining political clearance from the Ministry of Foreign Affairs in a circumstance when none was very clear about the requirement of political clearance from the Ministry of Foreign Affairs, in my view, the decision to dismiss a Vice-Chancellor can by no standard, be said to be a rational act. The act is so outrageous that it amounts to excessive use of power amounting to illegal, irrational and malafide exercise of power. Thus, in the facts of the case, doctrine of proportionality is relevant and has to be applied. By no stretch of imagination, it can be said that the power has been exercised by the respondents No.1 and 2 for a good cause. It is difficult to understand how the said alleged act could make the petitioner unfit to continue in the office of the Vice-Chancellor.

18. In view of this, I hold the impugned order of dismissal as illegal being in violation of principles of natural justice, based on unsustainable grounds, irrational, malafide in law, and outrageous. Such an order is nullity in the eye of law. In view of this, the impugned order dated 9.11.98 deserves to be set aside *ex-debito justitiae*, in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

19. Consequently, I allow this Special Civil Application and make the Rule absolute by issuing a writ of mandamus quashing and setting aside the Notification of the State Government dated 9.11.98. The petitioner is treated to be continuing in his tenure as Vice-Chancellor as if the Notification dated 9.11.98 has never been issued at all. Respondent No.1 will pay the cost of the petition which is assessed as Rs.10,000/-.

The learned Advocate General submits that the operation of this order may be stayed for some time. I do not find any justified reason to stay the order. The prayer is rejected.