

Supreme Court of India

Dr Umrao Singh Choudhary vs State Of M.P on 2 May, 1994

Equivalent citations: 1994 SCC (4) 328, 1994 SCALE (2)1008

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

DR UMRAO SINGH CHOUDHARY

Vs.

RESPONDENT:

STATE OF M.P.

DATE OF JUDGMENT 02/05/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 SCC (4) 328

1994 SCALE (2)1008

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The petitioner was appointed as Vice-Chancellor of Devi Ahilya Vishwavidyalaya (University) on 5-9-1992 under Section 13 of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, for short 'Adhiniyam' for a period of four years and he had joined on 17-9-1992. The Governor exercising the power under Section 52(1) of the Adhiniyam issued a notification on 21-1-1994 and by operation thereof the petitioner had ceased to be the Vice-Chancellor with effect from the said date. On 22-1-1994 the petitioner had moved a writ petition in the High Court of Madhya Pradesh to declare the action as mala fide, illegal, arbitrary, impinging his right to continue in office till 17-9-1996 and was violative of principles of natural justice. The Division Bench, by its order dated 21- 2-1994, in Misc. Petition No. 125 of 1994 dismissed the petition. Thus this petition by special leave.

2.Two contentions were raised in the High Court as well as before us that the action of the Governor is administrative and omission to give opportunity to the petitioner is violative of principle of

natural justice, apart from being a mala fide exercise of powers by the State Government. Since the Misc. Petition was taken up for hearing at the admission stage, records had been called for by the High Court and were made available by the Government. As stated in the judgment, the High Court felt it expedient to dispose of the case at the hearing stage itself. In those circumstances no counter-affidavit was filed on behalf of the State Government. With a view to satisfy the tenability of the contentions raised vis-a-vis the material made available by the Government in support of the impugned order and to satisfy ourselves independently, we sent for the records and the counsel today placed the records before us. We have carefully gone through the record and also the note said to have been submitted to the Governor for consideration before issuing the notification. We have heard the counsel on both sides.

3. Undoubtedly the petitioner was appointed under Section 13 of the Adhiniyam and Section 14 thereof provides an elaborate enquiry and reasonable opportunity for removal of the Vice-Chancellor (Kulpati) from office before expiry of the term, obviously as a measure of punishment. Section 52(1) of the Adhiniyam equally empowers the State Government in a modified form to satisfy that :

"If the State Government on receipt of a report or otherwise, is satisfied that situation has arisen in which the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interests of the University, and it is expedient in the interest of the University so to do, it may by notification, for reasons to be mentioned therein, direct that the provision of Sections 13, 14, 20 to 25, 40, 47, 48, 54 and 68 shall, as from the date specified in the notification, apply to the University, subject to the modifications specified in the Third Schedule."

On issuance thereof the Vice-Chancellor shall cease to hold office by operation of sub-section (4) of Section 52, clause (ii) thus- "the Kulpati, holding office immediately before the appointed date, shall notwithstanding that his term of office has not expired, vacate his office."

By operation thereof the applicability of Sections 13 and 14 stood modified and the need to conduct a regular enquiry against the petitioner was obviated. On issuance of the notification under Section 52(1) and on and with effect from the said date the Vice-Chancellor, by operation of Section 52(4) shall, notwithstanding his term of office had not been expired, is required to vacate his office. In other words, he ceased to hold the office. It is found as a fact that the petitioner ceased to hold office with effect from 21-1-1994 and the new incumbent had assumed office.

4. Though the contention of mala fides has been repeated by the learned Senior Counsel, when we pointed out, that the petitioner had not made any specific allegation against any specified officer or holder of the office, nor impleaded any officer or holder of the office as a party respondent, in fairness, the learned Senior Counsel did not pursue the line of argument. Nonetheless it was contended that the petitioner was entitled to be afforded an opportunity of being heard before passing the impugned notification and the order passed in violation thereof offends the principle of

natural justice. We find no force in the contention. Section 14 engrafts an elaborate procedure to conduct an enquiry against the Vice-Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office. Section 52 engrafts an exception thereto. The condition precedent, however, is that the State Government should be satisfied, obviously on objective consideration of the material relevant to the issue, as on record, that the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interest of the University, and that it is expedient in the interest of the University and for proper administration thereof, to apply in a modified form, excluding the application of Sections 13 and 14, etc. and to issue the notification under Section 52(1). By necessary implication, the application of the principle of natural justice has been excluded. In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under Section 52(1) would be self-defeating. The principle of natural justice does not supplant the law, but supplements the law. Its application may be excluded, either expressly or by necessary implication Section 52 in juxtaposition to Section 14, when considered, the obvious inference would be that the principle of natural justice stands excluded.

5. Obviously for this reason, to satisfy ourselves whether the notification is founded upon any record and whether the reasons given in support thereof, are relevant to the issue, the record was summoned, and has been made available to us. The note placed before the Governor also was placed. It is an elaborate note, pregnant with material details touching the maladministration of the University. From the record we have seen that the Government considered the above material and the Governor after due satisfaction had exercised the power under Section 52(1). Though the High Court held that the action under Section 52 is legislative action, it is obviously illegal in the light of the decision of this Court in *S.R. Bommai v. Union of India* wherein this Court considered the presidential proclamation under Article 356 and held that the action is not beyond the ken of judicial review. The action 1 (1994) 3 SCC 1 under Section 52 is only statutory action, but subject to judicial review. However, the court would not sit in appeal over the opinion of the State Government. The statute gives power to the State Government. The Governor exercised his power with the aid and advice of the Council of Ministers in issuing the notification under Section 52. Therefore, though it was a statutory notification, the condition precedent is that the satisfaction of the State Government, i.e., the Governor, with the aid and advice of the Council of Ministers is of the situation mentioned in Section 52(1) and for reasons to be recorded therein, for better administration of the University, the State Government was satisfied that a situation had arisen in which the administration of the University could not be carried on in accordance with the provisions of the Adhiniyam and for better administration whereof and to prevent the detriment to the interest of the University, the State Government issued the notification "for the reasons mentioned therein" and directed that the provisions mentioned therein under Sections 13 and 14 shall not apply. When those facts are present and the State Government were satisfied of the situation contemplated under Section 52(1), though the court may differ from that formation of satisfaction when the court is called upon in an appeal against the said satisfaction and may come to a different conclusion, we would not be justified to differ from the conclusion in our judicial review under Article 136 or of the High Court under Article 226 of the Constitution. Though the Academic Council etc. had been dissolved, the correctness thereof is not the subject-matter of this special leave petition. We are not called upon to enter into that question. Therefore, from the records we are satisfied that the State

Government were justified in issuing the notification under Section 52(1) of the Adhiniyam.

6.The special leave petition is accordingly dismissed, but in the circumstances without costs.