

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).____/2013
CC 7010/2013

(From the judgement and order dated 07/12/2012 in CWJC No.15123/2011 of
The HIGH COURT OF PATNA)

State of Bihar and others

Petitioner(s)

VERSUS

Dr. Ram Tawakya Singh and others

Respondent(s)

(With appl(s) for c/delay, permission to place addl. documents on record,
permission to file additional documents and prayer for interim relief and
office report)

Date: 18/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR JUSTICE KURIAN JOSEPH

For petitioner(s) Mr. Harish N.Salve, Sr. Adv.
Mr. Ranjit Kumar, Sr. Adv.
Mr. Rudreshwar Singh, Adv.

For Respondent(s) Dr. Rajeev Dhawan, Sr. Adv.
Mr. Amrendra Sharan, Sr. Adv.
Mr. U.U. Lalit, Sr. Adv.
Ms. Neela Gokhale, Adv.
Mr. Amit Pawan ,Adv

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

This petition is directed against order dated 7.12.2012
passed by the Division Bench of the Patna High Court in Civil Writ
Jurisdiction Case No. 15123 of 2011, whereby certain directions were
given in the matter of appointments of Vice-Chancellors and Pro Vice-
Chancellors in various universities of the State. The operative
portion of the High Court's order reads thus:

"For the aforesaid reasons, we hold that the appointment of the
respondent nos. 20 to 29 as Vice-Chancellors or Pro Vice-
Chancellors in the concerned Universities have been made without
"Consultation" as envisaged by Section 10(2) and 12 of the Bihar
Universities Act, 1976 and by Sections 11 and 14 of the Patna
University Act, 1976. All the ten appointments are, therefore,
vitiating and are void ab initio.

For the aforesaid reasons, CWJC No. 15123 of 2011 is allowed.

The impugned Notifications dated 1st August 2011 and 3rd August, 2011 are quashed and set aside. The appointment of the respondent nos. 20 to 29 is held to be illegal and contrary to the Bihar Universities Act, 1976 or the Patna University Act, 1976, as the case may be, and are set aside.

The Chancellor will, within one month from today, propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the above referred Universities to the State Government with the relevant materials. The State Government will, within 30 days therefrom, forward its opinion in respect of all such names to the Chancellor. After receipt of such opinion, the Chancellor will make the appointment of Vice-Chancellors and Pro Vice-Chancellors in the respondents Universities.

We make it clear that the petitioner will have no right to submit his candidature or a right to be considered for appointment as Vice-chancellor or Pro Vice-Chancellor in any of the respondents Universities."

(Copied from the SLP Paper book)

The petitioners have also questioned the consequential actions taken by the Chancellor for appointment of Vice-Chancellors and Pro Vice Chancellors in various Universities of the State.

We have heard Shri Harish Salve, learned senior counsel for the petitioners and perused the record.

Issue notice, returnable on 16.04.2013. Dasti, in addition, is permitted.

Shri Amit Pawan, learned counsel instructing Dr. Rajeev Dhawan, Shri Amrendra Sharan and Shri Uday U Lalit, learned senior counsel accepts notice on behalf of respondent nos. 20, 21 and 22.

Shri Harish Salve strongly pressed for stay not only of the order passed by the High Court, but also of notifications dated 9.2.2013 and 19.02.2013 issued by the Governor-cum-Chancellor, Bihar for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities. Dr. Rajeev Dhawan, S/Shri Amrendra Sharan and Uday U Lalit vehemently opposed the prayer made by Shri Salve.

Dr. Dhawan submitted that the exercise undertaken by the Chancellor and the Government for appointment of Vice-Chancellors and Pro Vice-Chancellors cannot be questioned in the special leave petition which is essentially directed against order dated 7.12.2012 of the High Court and if any person feels aggrieved by the appointments made in furtherance of the directions given by the High Court, then he can avail appropriate legal remedy. Learned senior counsel submitted that this Court can examine the legality of notifications dated 9.2.2013 and 19.02.2013 only if an independent writ petition is filed for that purpose. Dr. Dhawan was joined by Shri Sharan and Shri Lalit in making a submission that the prayer made by Shri Salve should not be accepted because only few of the candidates mentioned in the list annexed with communication dated 5.1.2013 sent by the Secretary to the Governor are shown to be facing criminal cases and any deficiency in their candidature cannot be used against the other respondents, who are fully qualified and have been found suitable for the posts of Vice-Chancellors and Pro Vice Chancellors. Learned counsel then submitted that it will not be desirable to create vacuum in the positions of Vice-Chancellors and Pro Vice-Chancellors because that would adversely affect the functioning of the Universities and the students community.

In his rejoinder submissions, Shri Salve invited the Court's attention to the regulations framed by the University Grants Commission, which were circulated on 30.06.2010 for selection of Vice-Chancellors and Pro Vice-Chancellors of the Universities and claimed that even though Legislature of the State of Bihar had made appropriate amendments in the relevant enactments and forwarded the same to the Governor in the month of March, 2011, the latter has neither approved nor returned the same to the State Legislature.

We have considered the respective submissions.

The record of the case shows that in the purported compliance of the direction given by the High Court on 7.12.2012, the Secretary to the Governor sent letter No. 2C/GS/GB dated 5.1.2013 to the Principal Secretary to the Chief Minister, Government of Bihar stating therein that in exercise of powers conferred upon him under Section 10(1) and (2) and Section 12(1) of the Bihar State Universities Act, 1976 (as amended up to date) as well as Sections 11 and 14 of the Patna University Act, 1976 (as amended up to date) and Sections 11(1) and (2) of the Nalanda Open University Act, 1995 (as amended up to date), the Chancellor proposes to appoint the persons named in Annexure-A and Annexure-B as Vice-Chancellors and Pro Vice-Chancellors against the vacancies existing in the Universities and sought the Chief Minister's view on the names. In the last column of the lists enclosed with letter dated 5.1.2013, few lines were recorded about the capabilities of the candidates to be appointed as Vice-Chancellors and Pro Vice-Chancellors.

In response to the aforesaid letter, the Principal Secretary to the Chief Minister of Bihar sent communication dated 21.1.2013 to the Special Secretary to the Governor, paragraphs 1 to 3 and last paragraph of which read as under:

"1. In compliance of the Hon'ble High Court order in the CWJC No. 10569 of 2011, the envisaged "Consultation" process has to be meaningful and based on substantive material. The order clearly mentions that "the legislature has cast a duty upon the State Government to scrutinize the names proposed by the Chancellor for appointment of Vice-Chancellors and Pro-Vice-Chancellors for their academic qualifications, experience, integrity and moral standards".

It is to bring to your notice that the list sent by you contains only qualifications and experience and that too in a very brief and inadequate manner. There is no record of their vigilance clearance or integrity and moral standards. Hence it is not possible for us to scrutinize the names as envisaged in the Hon'ble High Court order.

2. Further prima facie, this is to point out that the proposed list contains name of one such person who has the criminal proceedings pending against him i.e. Sl. No.4 of the proposed Vice Chancellors' List. Please refer page no.16 of the Hon'ble High Court order wherein it has been admitted by the advocate of the person referred above.

3. The list also do not mention the name of the University against which proposed names are contemplated for consideration.

You are therefore requested to kindly arrange for the required information with details in your possession so that an effective consultation takes place between the consulting parties."

(copied from the SLP paper book)

Thereafter, the Secretary to the Governor sent letter dated 28.1.2013 to the Principal Secretary to the Chief Minister mentioning therein that if the latter is in possession of substantive and credible materials as to the integrity and moral standards of the persons named in the communication sent by the Governor's Secretariat, then the same may be forwarded for being placed before the Chancellor. The Secretary to the Governor also wrote that if the Chief Minister has any record of judicial conviction, instead of merely criminal

proceedings pending, against the name at serial no.4 in the list, then he may send the same for being considered by the Chancellor.

After 12 days, the Principal Secretary to the Chief Minister sent letter dated 9.2.2013 to the Special Secretary to the Governor enclosing therewith summary of the report received from the Department of Education on various candidates mentioned in the list forwarded by the office of the Chancellor. On the same date, the Governor-cum-Chancellor issued notification dated 9.2.2013 appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities.

In response to the Court's query, the learned senior counsel appearing for respondent Nos. 20 to 22 gave out that they are not in a position to say whether or not the amendments made by the State Legislature have been approved by the Governor. The question whether the Governor had kept pending for two years, the Bill passed by the State Legislature and whether there was any justification will require serious consideration by the Court at the time of final adjudication of the matter. However, at this stage, we are prima facie satisfied that the selection of Vice-Chancellors and Pro Vice-Chancellors has not been made by following the procedure laid down in the UGC Regulations because no such Committee was constituted by the Chancellor for preparing panel of the candidates who could be considered for such appointments. We may also observe that even in the absence of UGC Regulations, appointment to the posts of Vice-Chancellors and Pro Vice-Chancellors could have been made by the Chancellor in consultation with the competent authority only after following some procedure consistent with the doctrine of equality enshrined in Article 14 of the Constitution so as to enable all eligible persons to compete for selection.

In a somewhat similar case, this Court had an opportunity to consider the legality of the appointment of Director of the Indian Statistical Institute and it was held that selection made without following the procedure laid down in the bye-laws of the society and issuing public notice was contrary to Article 14 of the Constitution. (See B.S. Minhas v. Indian Statistical Institute and others (1983) 4 SCC 582).

De hors the above observations, we are of the view that even though the special leave petition is primarily directed against the order of the High Court, this Court can take cognizance of the subsequent events including notifications dated 9.2.2013 and 19.2.2013 issued by the Chancellor and pass appropriate order in the matter.

A reading of the letter sent by the Principal Secretary to the Chief Minister to the Special Secretary to the Governor on 9.2.2013 shows that criminal complaints are pending against some of the candidates who were proposed by the Chancellor to be appointed as Vice-Chancellors and Pro Vice-Chancellors and were actually appointed against those posts on 9.2.2013. Against two of them charge sheets have already been filed in the competent Court. Against one of the candidates, charge sheet has been filed under Sections 341/342/506 and other provisions of IPC read with Section 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Against another candidate, a case has been registered under Section 420/409/467/468/471 and other provisions of IPC read with Sections 13 and 14 of Prevention of Corruption Act. One more case is said to have registered against him under Sections 420/409/467 and other provisions of IPC.

All this, prima facie, indicate that the Chancellor did not at all apply his mind on the question of suitability and desirability of appointing the particular candidates as Vice-Chancellors and Pro Vice-Chancellors. Why this was done would require serious scrutiny by the Court which is possible only after giving opportunity of hearing to the private respondents and the Chancellor. However, the manner in which the Chancellor has made appointments albeit in the guise of adhering to the time schedule fixed by the Division Bench of the High Court leaves much to be desired. The High Court had not fixed any time limit for the Chancellor to take final decision after receiving the opinion of the State Government. One month's time was fixed by the Court for the Chancellor to propose the names for appointment of Vice-Chancellors and Pro Vice-Chancellors in various Universities and

forward the same to the Government with relevant materials. The State Government was required to forward its opinion within next 30 days. However, there was no time limit for Chancellor to take final decision in the matter. Notwithstanding this, the Chancellor exhibited undue haste and ensured that the notifications appointing the particular candidates are issued in less than 24 hours of the receipt of the opinion of the Chief Minister. It is a matter of serious concern that candidates facing criminal prosecution have been appointed as Vice-Chancellors/Pro Vice-Chancellors.

In the premise aforesaid, we are convinced that it is a fit case in which an interim order should be passed by the Court.

Accordingly, the operation of notifications dated 9.2.2013 and 19.2.2013 issued by the Governor-cum-Chancellor, Bihar appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities is stayed and they are restrained from functioning as Vice Chancellors and Pro Vice Chancellors of the concerned Universities.

With a view to ensure that functioning of the various Universities is not jeopardized, we direct that as a purely stop gap arrangement, the senior most Deans in the Universities shall discharge the function of the Vice-Chancellors and Pro Vice-Chancellors.

It shall be the duty of the petitioners to serve the remaining respondents well before 16.04.2013.

A copy of this order be sent to the Secretary to the Governor of Bihar by fax. He shall ensure that the entire record relating to the selection of Vice-Chancellors and Pro Vice-Chancellors be sent to this Court in sealed envelopes through a messenger and deposited with the Secretary General of this Court on or before 10.04.2013.

Copies of this order be also sent to the Registrars of all the Universities by fax. They should place the order before the senior most Dean in the concerned University so as to enable him to discharge the function of Vice-Chancellor till the next date of hearing i.e. 16.4.2013.

| (Parveen Kr.Chawla)

| Court Master

| | (Phoolan Wati Arora)

| | Court Master