

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).24314/2008

(From the judgement and order dated 07/01/2008 in WA No. 1718/2007
of The HIGH COURT OF M.P AT JABALPUR)

A.D.N.BAJPAI

Petitioner(s)

VERSUS

STATE OF M.P. & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 12/01/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Mr. Vishwajit Singh,Adv.

For Respondent(s)

Mr. B.S. Banthia,Adv.
Mr. Neeraj Shekhar ,Adv

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

Leave granted.

The appeal is allowed in terms of the signed order.

(Neetu Sachdeva)
Sr.P.A.

(Mithlesh Gupta)
Court Master
(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.471 OF 2010
(Arising out of SLP (C) No.24314/2008)

Prof. A.D. N. Bajpai& Appellant (s)

Versus

State of M.P. and others& Respondents

O R D E R

1. Leave granted.

2. This appeal is directed against order dated 7.1.2008 passed by the Division Bench of Madhya Pradesh High Court whereby it dismissed the appeal preferred by the appellant against the order of the learned Single Judge who declined the appellant's prayer for quashing order dated 25.1.2007 passed by the Kuladhipati (Chancellor) of Awadesh Pratap Singh Vishwavidyalaya, Rewa (hereinafter described as the University) under Section 14(3) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (for short, the Act).

3. The appellant was appointed as Vice-Chancellor of the University on 15.9.2003 for a period of four years. Upon receipt of complaints/information relating to administrative, financial and academic irregularities allegedly committed by the appellant, the Chancellor passed order dated 23.9.2006 whereby he constituted a three member committee under Section 14(3) of the Act to inquire into the matter and submit report within six weeks.

4. The committee issued notice to the appellant to enable him to represent his cause but instead of appearing before the committee, the appellant deputed some officers of the University, who produced the records. At the conclusion of inquiry, the committee submitted report dated 22.11.2006 with the finding that ten out of the seventeen allegations were prima facie established against the appellant. Thereafter, the Chancellor issued notice dated 6.12.2006 to the appellant in terms of Section 14(4) of the Act and called upon him to show cause as to why an order may not be passed for his removal from the post of Vice-Chancellor on the ground of his failure to perform duties in accordance with clauses (i), (ii) and (iii) of Section 14(3) of the Act. In paragraph 8 of the notice, the Chancellor indicated that if the appellant wants to inspect any of the documents relating to the University or obtain copies thereof for the purpose of his defence, then he may submit a list of such documents to the Registrar of the University.

5. The appellant challenged the show cause notice in Writ Petition No. 18479/2006 which was dismissed by the learned Single Judge of the High Court. Thereafter, the appellant submitted reply dated 10.12.2006 stating therein that first an inquiry should have been held under Section 10 and only thereafter an action could be taken under Section 14 of the Act. He also claimed that copies of the records enclosed with the show cause notice were not supplied to him and in the absence thereof, it was not possible for him to know whether any record was enclosed with the report. Simultaneously, he reserved the right to submit reply to the show cause notice after receipt of the enclosed records. This is evinced from the following extract of the reply:

Copies of the records reportedly enclosed in the Show Cause Notice of the Hon'ble Chancellor dated 6.12.2006 should have been provided to me with the Show Cause Notice but these have not been provided to me with the Show Cause Notice. In the absence of these, examination of the records is not possible because it is not in my knowledge that if there is any record also enclosed with the Enquiry Report.

I reserve my right to give reply to the Show Cause Notice on receipt of the enclosed records, and have been submitting the reply of the Enquiry Report.

6. The Chancellor rejected the appellant's plea that an inquiry should have been held under Section 10 as a condition precedent to the initiation of action under Section 14 of the Act and passed order dated 25.1.2007 requiring him to relinquish the post of Vice-Chancellor with effect from 27.1.2007.

7. The appellant challenged order of the Chancellor in Writ Petition No. 1606/2007, which was dismissed by the learned Single Judge. The same was the fate of Writ Appeal No. 1718/2007 filed by the appellant. Both, the learned Single Judge and the Division Bench held that holding of an enquiry under Section 10 was not necessary for passing an order under Section 14(3) of the Act. The learned Single Judge did advert to the appellant's plea that copies of the documents enclosed with the show cause notice were not made available to him but rejected the same by observing that he had not demanded inspection or copies of the documents in terms of paragraph 8 of the show cause notice.

8. We have heard learned counsel for the parties and perused the records. Although, the appellant had questioned order dated 25.1.2007 before the High Court on several grounds set out in the writ petition and the memo of writ appeal, which have been reiterated before this Court, we do not consider it necessary to delve upon the same because in our considered view, the order passed by the Chancellor is liable to be set aside only on the ground of non-compliance of th

e mandate of Section 14(4) of the Act, which represents statutory embodiment of the one of the facets of the rules of natural justice and fairness. Section 14(3) of the Act, which enables the Chancellor to make an inquiry for satisfying himself about the truthfulness or otherwise of the allegations levelled against the Vice-Chancellor in the context of clauses (i), (ii) and (iii) thereof and Section 14(4), which is couched in negative form and casts a duty upon the Chancellor to communicate to the Vice-Chancellor the particulars of the grounds on which action is proposed to be taken and give him a reasonable opportunity of showing cause against the proposed order, read as under:

14. (1)xxxxxxxx

(2)xxxxxxxx

(2-A)xxxxxxxx

(3) If at any time upon representation made or otherwise and after making such enquiries as may be deemed necessary, it appears to the Kuladhipati that the Kulapati :

(i) has made default in performing any duty imposed on him by or under this Act; or

(ii) has acted in a manner prejudicial to the interests of the University; or

(iii) is incapable of managing the affairs of the University the Kuladhipati may, notwithstanding the fact that the terms of office of the Kulpati has not expired, by an order in writing stating the reason therein, require the Kulpati to relinquish his office as from such date as may be specified in the order.

(4)No order under sub-section (3) shall be passed unless the particulars of the grounds on which such action is proposed to be taken are communicated to the Kulpati and he is given a reasonable opportunity of showing cause against the proposed order.

(5)xxxxxxxx

(6)xxxxxxxx

9.An analysis of Section 14(3) of the Act makes it clear that upon receipt of representation or otherwise and after making such inquiry as he may deem necessary, the Chancellor can make an order and ask the Vice-Chancellor to relinquish his office from a particular date. Section 14(4) of the Act, which incorporates the procedure to be followed for making an order under Section 14(3) thereof, lays down that no order under that sub-section shall be passed unless the particulars of the grounds on which action is proposed to be taken are communicated to the Vice-Chancellor and he is given a reasonable opportunity of showing cause against the proposed order.

10.The expression 'reasonable opportunity of hearing' has not been defined in the Act. Therefore, the same has to be interpreted keeping in view the fact that an order made under Section 14(3) of the Act has grave adverse impact not only on the image, reputation and integrity of the person holding the high office of the Vice-Chancellor, but also the institution of which he is the academic and administrative head, and in consonance with the expansive meaning given by the courts to the rule of audi alteram partem. The rules of natural justice in the context of Section 14(3) and (4) of the Act would mean that the Vice-Chancellor is made aware of the specific allegations on which an inquiry is proposed to be made and he is also informed about the material/evidence sought to be used against him at such inquiry and is given an opportunity to controvert/rebut such material/evidence. The Vice-Chancellor can also ask for an opportunity to lead evidence to prove that the allegations levelled against him are false and baseless and that he is innocent. The Chancellor is required to evolve an appropriate mechanism by which the Vice-Chancellor gets an effective opportunity to challenge the grounds enumerated in the show cause notice. After receiving reply of the Vice-Chancellor, the Chancellor has to consider the entire record of inquiry as well as the defence put forward by the Vice-Chancellor and then pass a speaking order.

11.In State of Orissa v. Binapani Dei 1967 (2) SCR 625, this Court considered the question whether the respondent, who was due to retire on 10.4.1968, could be deemed to have retired on 15.7.1963 by making an alteration in her recorded date of birth. The High Court quashed the retirement of the respondent on the ground that she was not given reasonable opportunity of showing cause against the proposed action. While dismissing the appeal preferred by the State, this Court held:

The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decisio

n of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

The Court then referred to the inquiry conducted by the Additional Director of Family Planning, Dr. S. Mitra, and observed:

In the course of the enquiry before Dr S. Mitra the letter was shown to the first respondent but she declined to make any comments thereon. Thereafter on September 28, 1962 there was a notice from the Secretary in the Department of Health stating that according to the school admission register her date of birth was August 22, 1906, and according to the first year class admission register it was April 1907, and it was intended to treat the latter date as the date of her birth, and the first respondent was called upon to show cause why that date should not be accepted. The report which Dr S. Mitra had submitted to the State was not disclosed to the first respondent. It may be recalled that there were four different dates before the State authorities: (1) the entry in the Ravenshaw Girls School admission register showing the date of birth as August 22, 1906; (2) the entry in the admission register of the first year class showing the date of birth as some date in April, 1907; (3) the report of the Principal, Lady Hardinge medical college, Delhi, showing the date of birth as April 4, 1908, as recorded in the medical college Admission Register; and (4) the first respondent's statement supported by her father's statement at the time when she joined the service in 1938 giving her date of birth as April 10, 1910. If an enquiry was intended to be made, the State authorities should have placed all the materials before the first respondent and called upon her to explain the discrepancies and to give her explanation in respect of those discrepancies and to tender evidence about her date of birth.

(emphasis supplied)

12. In *Sayeedur Rehman v. State of Bihar* (1973) 3 SCC 333, a three-Judge Bench of this Court, while considering the question whether the President of the Board of Secondary Education could partially review the order passed in favour of the appellant and direct that instead of full salary, dearness allowance and increments from the date of suspension, he will be entitled only to subsistence allowance without giving him notice and opportunity of hearing, observed as under:

We are, however, clear that if the order, dated April 22, 1960, is to be reconsidered then the appellant must be afforded adequate opportunity of hearing and presenting his case. This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The President of the Board of Secondary Education would be deciding a controversy affecting the rights of the parties before him if and when he chooses to reconsider the order, dated April 22, 1960, whatever be the source of his power to do so a point left open by us. He is required to decide in the spirit and with a sense of responsibility of a tribunal with a duty to mete out even-handed justice. The appellant would thus be entitled to a fair chance of presenting his version of facts and his submissions on law as his rights would be directly affected by such proceeding. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

(emphasis supplied)

13. In the present case, the three member committee appointed by the Chancellor issued notice to the appellant but, he chose not to appear and felt contented by deputing the officers of the University, who produced records before the committee. The committee examined the records and submitted report with the finding that the majority of the allegations levelled against the appellant are correct. The Chancellor accepted the report and issued notice dated 6.12.2006 specifying therein the grounds on which an order in terms of Section 14(3) of the Act was proposed to be made. A copy of the inquiry report was also supplied to the appellant, but documents forming part of the show cause notice were not made available to him. In other words, the complete inquiry report was not supplied to the appellant, who on the first available opportunity made a specific grievance on this score. However, without advertent to his grievance regarding non-supply of copies of documents forming part of the show cause notice and without even recording a finding that the documents were not relevant or were not being relied upon for taking action prejudicial to him, the Chancellor passed order dated 25.1.2007 and asked the appellant to demit the office of the Vice-Chancellor 7 months before completion of his tenure and that too in the backdrop of the allegations of misdemeanour. It is thus clear that the action initiated against the appellant did not suffer from any infirmity till the stage of submission of inquiry report but the follow up action taken by the Chancellor was vitiated due to violation of the mandate of Section 14(4) of the Act and the rule of audi alteram partem inasmuch as the appellant was not supplied with copies of the records which formed part of the show cause notice and on that account he could not submit effective reply in the context of the order proposed to be passed against him. Not only this, specific grievance made by the appellant on this score remained unattended. To put it differently, the appellant did not get a reasonable opportunity of hearing within the contemplation of Section 14(4) of the Act.

14. Learned counsel for the Chancellor argued that the appellant's complaint on the ground of violation of the rules of natural justice should not be entertained because he did not approach the Registrar of the University for inspection of the documents and/or for supply of copies of the documents. This argument is merit-less and deserves to be rejected. What the show-cause notice dated 6.12.2006 envisaged was that the appellant could inspect the record of the University or obtain copies thereof for the purpose of preparing his defence, but this has nothing to do with the issue raised in the writ petition, writ appeal and this appeal i.e., non-supply of the documents which formed part of the show cause notice sent to the appellant. Without those documents, the show cause notice was incomplete and inchoate. In other words, the foundation of the final action taken against the appellant was defective. There cannot be any doubt that the order passed by the Chancellor affected the image, reputation, integrity and career of the appellant. Therefore, before passing the order, the Chancellor ought to have ensured fullest compliance of the principles of natural justice which have been treated fundamental to the rule of law in a democratic polity like ours.

15. The learned Single Judge of the High Court committed serious error when he brushed aside the appellant's plea that he was denied reasonable opportunity of hearing by simply observing that he had neither asked for inspection nor applied for copies of the documents in terms of paragraph 8 of the show cause notice. In our view, this amounts to begging the question. What the Chancellor had indicated in paragraph 8 of the show cause notice was that the appellant that he can seek inspection or obtain copies of the records of the University. This had nothing to do with the appellant's grievance that he had not been supplied copies of the documents forming part of the show cause notice. That apart, in view of the plain language of Section 14(4) of the Act, which casts a duty upon the Chancellor to give a reasonable opportunity of hearing to the Vice-Chancellor before an order can be passed under Section 14(3), omission on the appellant's part to seek inspection or apply for copies of documents of the University was inconsequential and the High Court should have treated the violation of the mandate of Section 14(4) of the Act as sufficient for invalidating the order passed by the Chancellor.

16. Before concluding, we deem it necessary to observe that we have not expressed any opinion on the correctness of the procedure adopted by the committee appointed by the Chancellor because the appellant had not appeared before it despite notice. In an appropriate case, the Court may consider whether the committee appointed under Section 14(3) of the Act can record prima facie finding of guilt against the Vice-Chancellor without recording oral and documentary evidence by associating the concerned person.

17. In the result, the appeal is allowed. The impugned order of the Division Bench as also the one passed by the learned Single Judge are set aside. As a corollary, the writ petition filed by the appellant is allowed and order dated 25.1.2007 passed by the Chancellor of the University is quashed. The parties are left to bear their own costs.

& & & & & & & & & J.
(G.S. Singhvi)

& & & & & & & & & ...J.
(Asok Kumar Ganguly)

New Delhi
January 12, 2010