

\$~61(2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 26.10.2021*

+ **LPA 390/2021 & CM No.37701/2021**

ATUL SOOD Appellant

Through : Mr. Abhik Chimni, Mr. Govind
Manoharan, Mr. Lakshay Garg and
Mr. Shashwat Mehra, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY

THROUGH REGISTRAR & ANR.

..... Respondents

Through: Ms. Monika Arora, Standing Counsel
with Mr. Shriram Tiwary, Adv. for JNU.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

1. Issue notice to the respondents.

1.1. Ms. Monika Arora, learned standing counsel, who appears on advance notice on behalf of the respondents, in effect, Jawaharlal Nehru University (JNU), accepts notice.

1.2. Ms. Arora says that, she does not wish to file a reply in the matter and would argue the matter based on the record, which is presently available before the Court.

2. Thus, with the consent of the learned counsel for the parties, the appeal is taken up for hearing and final disposal, at this stage itself.

3. This appeal is directed against an interlocutory order dated 28.09.2021, passed by the learned single judge.

3.1. The appellant is aggrieved by the fact that, the learned single judge, *via* the impugned order, has declined to grant stay qua the appointment of nine

professors, who were appointed as Chairpersons of various Centres/Special Centres.

3.2. The record shows that, the appointments were made by respondent no.2, i.e., the Vice-Chancellor of JNU.

3.3. Mr. Abhik Chimni, who appears on behalf of the appellant, says that, the exercise of power by respondent no.2 is in complete violation of Statute 18(2)(c)(I) of the Statutes of the University, under the JNU Act, 1966 [hereafter referred as “the 1966 Act”].

3.4. It is Mr. Chimni's contention that, the power of appointment of Chairperson of Centres/Special Centres is expressly conferred on the Executive Council.

3.5. Furthermore, Mr. Chimni submits that, in order to get over a serious legal lacuna, approval qua the appointments made by respondent no.2 was obtained from the Executive Council, at its 296th meeting held on 02.09.2021.

3.6. It is Mr. Chimni's contention that, since the exercise of power by respondent no.2 was in the eyes of law, null and void; the Executive Council could not have approved i.e., ratified the appointments made by respondent no.2.

3.7. In support of his contention, Mr. Chimni has relied upon the following observations made in the judgement of the Supreme Court rendered in the case of *V.C. Banaras Hindu University & Ors. v. Shrikant*, (2006) 11 SCC 42.

“38. The Statute and the Ordinance postulate that an order of termination of services could be passed only by the Executive Council and that too in the event two-third of the members were present and voted in support thereof. Therefore, the Vice-Chancellor had no say in the matter. He was merely a member of the Executive Council. He, thus, could not have initiated any proceeding and imposed any punishment on the respondent.

xxx

xxx

xxx

46. As the initial order passed by the Vice-Chancellor was wholly without jurisdiction, the same was a nullity and, thus, the purported approval thereof, by the Executive Council would not cure the defect.”

4. On the other hand, Ms. Arora says that, respondent no.2 had exercised the power conferred on him, under Statute 4(5) of the Statutes of the University.

4.1. It is Ms. Arora's contention that, since, from time to time, the Centres require appointment of Chairperson(s), the power is exercised by the Vice-Chancellor [in this case, respondent no.2], which is, thereafter, ratified by the Executive Council.

4.2. Besides this, Ms. Arora says that, since nine appointees are already in place, and as they have not been made parties to the present proceedings, no interference is called for, with the impugned order of the learned single judge.

4.3. It is also Ms. Arora's contention that, the learned single judge has indicated that, he would examine the aspect as to, whether the Vice-Chancellor of JNU i.e., respondent no.2 could at all, initiate the process of appointment of Chairpersons to various Centres/Special Centres, under the provisions of Statute 18(2)(c)(I) of the Statutes of the University.

5. We have heard the learned counsel for the parties and examined the record placed before us.

5.1. The controversy in issue veers around the provisions of Statute 18(2)(c)(I) of the Statutes of the University, which, for the sake of convenience, are extracted hereafter:

"18. (1)...

(2) (c) (I) **Each Centre/Department shall have a Chairperson who shall be appointed by the Executive Council from amongst the Professors/Senior Fellows for a period of two years.**

Provided that where in any Centre/Department, there is only one Professor/Senior Fellow, the Executive Council may also appoint one of the Associate Professors/Fellows as the Chairman of the Centre/Department."

(emphasis is ours)

5.2. A plain reading of the aforementioned provision would show that, the power of appointment qua Chairpersons of Centres/Special Centres is expressly conferred upon the Executive Council, and not respondent no.2.

5.3. Therefore, *prima facie*, respondent no.2 could not have exercised the power to appoint Chairpersons of Centres/Special Centres.

6. Ms. Arora, during the course of the hearing, submitted [as adverted to hereinabove] that respondent no.2 had exercised powers under Statute 4(5) of the Statute of the University. Pertinently, the agenda item which was approved by the Executive Council in the 296th meeting referred to the exercise of power qua appointment, under the provisions of Statute 18(2)(c)(I) of the Statutes of the University, and not Statute 4(5):-

" Item No.4/EC/02.09.2021

To approve the action taken by the Vice-Chancellor on the following matters of urgent nature in exercise of the powers conferred on him in terms of Statutes/Ordinances.

4.1. Appointment of Chairperson of Centres/Special Centres in exercise of the powers conferred on him in terms of Statutes/Ordinances.

The Vice-Chancellor, in exercise of the powers vested in him under Statute 18 (2) (c) (I) of the Statutes of the University, has appointed the following faculty member of the University as Chairperson of the Centre/Special Centre as per details given below:"

(emphasis is ours)

6.1. For the sake of convenience, the provisions of Statute 4(5) are extracted hereafter:

"4.(5) If, in the opinion of the Vice-Chancellor, **any emergency has arisen which requires immediate action to be taken**, the Vice-Chancellor shall take such action as he deems necessary **and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter;**

Provided that, if the action taken by the Vice-Chancellor is not

approved by the authority concerned, he may refer the matter to the Visitor, whose decision thereon shall be final;

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council."

(emphasis is ours)

6.2. A bare reading of the abovementioned extract would show that the Vice-Chancellor can exercise the powers, where immediate action is required on account of emergent situation, which then is reported to the concerned authority [i.e. authority which would have dealt with matter in the ordinary course] for obtaining its approval.

7. To be noted, in the instant case, what is not in dispute is that, the agenda for the 296th meeting of the Executive Council was circulated on 26.08.2021. The appellant had raised an objection *qua* the same, on 30.07.2021.

7.1. The aforesaid letter of the appellant [which was addressed to the Registrar and Secretary to the Executive Council], brought to fore the fact that the appointment of Chairperson of Centres/Special Centres made by respondent no.2, by taking recourse to the provisions of Statute 18(2)(c)(I) of the Statutes of the University, was flawed.

7.2. Therefore, *prima facie*, the respondents were put to notice that the course on which they were proceeding was, perhaps, not the correct course. Despite this, respondent no.2, it appears, went on to appoint the Chairpersons of the concerned Centres/Special Centres.

8. As a matter of fact, Mr. Chimni has brought to fore another aspect, which is, that, after the impugned order was passed on 28.09.2021, respondent no.2 has gone ahead and appointed another person i.e., one, Professor Indrani Mukherjee as Chairperson of Centre of Spanish, Portuguese, Italian and Latin American Studies/School of Language, Literature & Cultural Studies, on

08.10.2021, with immediate effect, for two years, in place of Professor Mazhar Asif. This time around as well, respondent no. 2 made the appointment, albeit, in exercise of emergency powers vested in him, under Statute 4(5) of the Statutes of the University.

8.1. It may be relevant to indicate that, since this event, as noticed above, occurred, after the passing of the impugned order, therefore, the relevant document was placed on record with an application supported by an affidavit. Although, the contents of document dated 08.10.2021 were not disputed, Ms Arora did say that the appointment was made in a particular backdrop. In this regard reference was made to the order dated 15.02.2021, passed in W.P.(C.) No.1879/2021. This aspect is referred to in resolution no. 4 of the agenda item no. 3, framed for the 295th meeting of the Executive Council.

8.2. A close perusal of paragraphs 5 and 6 of the order dated 15.02.2021 [as referred hereinabove] would show that, it was the contention of Ms. Arora as well as the direction of the Court¹ that the appointment of the Chairperson would be made by the Executive Council. Therefore, for respondent no. 2 to have exercised the power qua appointment, does not align with the direction contained in the order dated 15.02.2021.

9. Given the aforesaid position, we are prima facie of the view that

¹ “5. On the other hand, Ms.Monika Arora, learned counsel for the respondent No.1-University,would submit that the office order itself depicts that the respondent No.3 has been made Acting Chairperson of the Centre for Spanish, Portuguese, Italian & Latin Americans Studies., School of Language, Literature and Culture Studies till further orders only to tie over a situation till such time a decision is taken by the Executive Council within four weeks for appointing a regular Chairperson. In other words, his appointment as an Acting Chairperson is a temporary one.

6. Noting the orders passed by this Court, the petition is disposed of by directing that the respondent No.3 shall hold the post of Acting Chairperson; (i) till such time the Executive Council meets and takes a decision on the appointment of the Chairperson of the Centre for Spanish, Portuguese, Italian & Latin Americans Studies, School of Language, Literature and Culture Studies; (ii) only to facilitate the meeting and in the capacity of Acting Chairperson no substantive decision shall be taken by him which would affect the functioning of the Centre, be it apropos the academic syllabus, faculty of personnel to be appointed / retained and / or the technology to be engaged etc.”

respondent no.2 is not vested with the power to appoint Chairpersons of Centres/Special Centres. The Statute confers the power of appointment on the Executive Council. Thus, clearly the appointment of Chairpersons of Centres/Special Centres by respondent no.2 is, as is evident at this stage, *prima facie*, without authority.

9.1. The argument advanced by Ms Arora that the impugned action cannot interdicted because the appointment was made in an emergent situation which was then ratified by the Executive Council, seems tenuous, at this stage.

9.2. In this context, observations made by the Supreme Court in the judgement rendered in the case of *Marathwada University v. Seshrao Balwant Rao Chavan*, (1989) 3 SCC 132, being apposite, are extracted hereafter:

"25. By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's *Law of Agency* (5th Edn.) Chapter 5 at p. 73, the principle of ratification has been explained:

“What the ‘agent’ does on behalf of the ‘principal’ is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done. The interesting point, which has given rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification: it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorised from the outset to act as he did. Ratification is ‘equivalent to an antecedent authority’.”

26. In *Bowstead on Agency* (14th Edn.) at p. 39 it is stated:

“Every act whether lawful or unlawful, which is capable of being done by means of an agent (except an act which is in its inception void) is capable of ratification by the person in whose name or on whose behalf it is done.... The words ‘lawful or unlawful’, however, are included primarily to indicate that the doctrine can apply to torts. From them it would follow that a principal by ratification may retrospectively turn

what was previously an act wrongful against the principle, e.g. an unauthorised sale, or against a third party, e.g. a wrongful distress, into a legitimate one; or become liable for the tort of another by ratifying.”

27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified."

(emphasis is ours)

10. However, we are cognizant of the fact that, the Centres/Special Centres need Chairpersons for effective functioning.

10.1. Having regard to the aforesaid, the learned single judge is requested to advance the hearing in the writ petition. The writ petition will be listed before the learned single judge for directions, on 10.11.2021.

10.2. Pending decision in the writ petition, the nine (9) Chairpersons, who have been appointed, and whose names are set out in Annexure P21 of the case file i.e., Minutes of the 296th meeting of the Executive Council, will not take any major decisions, including functions relating to convening of selection committees and/or carrying out selection(s), concerning the Centres/special centres.

11. The appeal is, thus, allowed to the extent, indicated above.

12. Needless to add that, the views expressed by us are only *prima facie*, and therefore, the learned single judge will decide the writ petition on merits, after hearing both sides.

13. Consequently, pending application shall also stand closed.

14. The case papers shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 26, 2021/aj

Click here to check corrigendum, if any