

The State of Karnataka Vs. Dr Shivayogeppa B. Hinchigeri

The State of Karnataka Vs. Dr Shivayogeppa B. Hinchigeri

SooperKanoon Citation : sooperkanoon.com/1195887

Court : Karnataka Dharwad

Decided On : Nov-14-2014

Judge : RAM MOHAN REDDY AND B.MANO HAR

Appeal No. : WA 30053/2012

Appellant : The State of Karnataka

Respondent : Dr Shivayogeppa B. Hinchigeri

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE14H DAY OF NOVEMBER, 2014 PRESENT THE HONBLE MR.JUSTICE RAM MOHAN REDDY THE HONBLE MR.JUSTICE B. MANOHAR AND WRIT APPEAL NO.30053 OF2012(S-PRO) BETWEEN: THE STATE OF KARNATAKA REP. BY ITS PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT M.S. BUILDING, BANGALORE 560001. ... APPELLANT (BY SRI. A.G. SHIVANNA, Addl. Advocate General) AND:

1.

2. 3.

4. DR. SHIVAYOGEPPA B HINCHIGERI, S/O LATE BANGARAPPA HINCHIGERI, AGE:

59. YEARS, R/AT PROFESSOR PG, DEPT. OF STUDIES IN BIOCHEMISTRY, KARNATAKA UNIVERSITY, DHARWAD, THE CHANCELLOR, KARNATAKA UNIVERSITY, RAJBHAVAN, BANGALORE-1 PROFESSOR H B WALIKAR, CHAIRMAN, DEPT. OF COMPUTER SCIENCE, KARNATAKA UNIVERSITY, DHARWAD 580 003. KARNATAKA UNIVERSITY, DHARWAD, REP BY ITS REGISTRAR, DHARWAD. ... RESPONDENTS2(BY SRIYUTHS S.S. PATIL & MAHANTESH R PATIL, ADVS FOR R-1, SRI. ARAVIND D KULKARNI, ADV., FOR R-2 SRI. GANGADHAR J.M., ADV., FOR R3, SRI. K.L.PATIL, ADV., FOR R4) THIS WRIT APPEAL FILED U/S.4 OF THE KARNATAKA HIGH COURTS ACT, PRAYING TO, SET ASIDE THE

ORDER

DATED:

04. 11/2011 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT IN W.P.NO.67682/2010(S-PRO) AND DISMISS THE SAID WRIT PETITION FILED BY THE1T RESPONDENT AND GRANT SUCH OTHER RELIEFS AS THIS HONBLE COURT DEEMS FIT AND ETC., THIS APPEAL HAVING BEEN RESERVED ON2509.2014 COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

, THIS DAY, RAM MOHAN REDDY, J., DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal is preferred by the 2nd respondent in WP No.67682/2010, aggrieved by the order dated 4.11.2011 of the learned Single Judge, dismissing the petition.

2. FACTUAL MATRIX: I. Professor S.K. Saidapur, Vice Chancellor of Karnataka University retired on the forenoon of 25.10.2010, whence the post fell vacant requiring to be filled up in accordance with section 14 of the Karnataka State Universities Act, 2000, for short KSU Act. In exercise 3 of jurisdiction under sub-section [2]. of section 14 of the KSU Act, Government of Karnataka, for short GOK' constituted a Search Committee of four members being nominees one each of [i]. the Chancellor; [ii]. the University Grants Commission [iii]. the Government of Karnataka and [iv]. the Syndicate of the University while the Government of Karnataka's nominee was appointed as the Chairman. The Search Committee met on 28.9.2010 and after due deliberations by report dated 11.10.2010 Annexure-B, recommended to the Government of Karnataka a panel of the following three names in alphabetical order, [a]. HINCHIGERI S.B., [b]. THIMME GOWDA B., [c]. WALIKAR H.B.,. II. The Government of Karnataka represented by its Principal Secretary, Education Department [Higher Education]., in its submission note while enclosing the report of the Search Committee, in a sealed cover, nevertheless, indicated the three names from out of 4 which recommended the name of Prof. HINCHIGERI S.B.,. III. The Chancellor, having regard to section 14[4]. of the KSU Act, is said to have perused the proposal of the GOK and applying the principle on merit, equity and social justice, with the concurrence of the State Government appointed Prof. H.B. WALIKAR as Vice Chancellor by Note Annexure-D followed by Notification dated 18.10.2010 Annexure-E. IV. The Minister for Higher Education and Statistics by letter dated 19.10.2010 Annexure-F addressed to the Principal Secretary of the Governor, while extracting section 14[4]. of the KSU Act, stated that the Government of Karnataka does not concur with the said appointment.

3. Aggrieved by the appointment of the 3rd respondent as Vice Chancellor of Karnataka University, the 1st respondent Professor Hinchigeri S.B., instituted WP5No.67682/2010 advancing several contentions including that of there being no concurrence of the State Government in the choice of the 3rd respondent.

4. The appellant Government of Karnataka arraigned as 2nd respondent, in its statement of objections, supported the writ petition, inter alia, admitting the fact that the appointment of 3rd respondent was not with the concurrence of the State Government though it did recommend the name of the writ petitioner.

5. The learned Single Judge by the order impugned, dismissed the petition.

6. Heard Sri. A.G. Shivanna, learned Additional Advocate General for the appellant who submits that the findings recorded by the learned Single Judge that concurrence is consultation and that the Chancellor had the primacy over the appointment of the Vice Chancellor, were contrary to established principles of law. According to the learned Counsel, though the Notification Annexure-E6 states that the appointment is with the concurrence of the State Government, nevertheless, there was neither concurrence nor consultation.

7. Learned Additional Advocate General hastens to add that in the absence of concurrence by the State Government, the Notification, per se, is unsustainable.

8. Lastly, it is submitted that the appointment of the 3rd respondent as Vice Chancellor for a period of four years commencing from 18.10.2010, would be demitting office on 17.10.2014.

9. Per contra, learned Counsel for the contesting respondents seek to sustain the order impugned as being well merited, fully justified and not calling for interference.

10. Regard being had to the factual matrix, the threshold question is whether the Chancellor with the concurrence of the State Government appointed the 3rd respondent as Vice Chancellor of Karnataka University?. 7 11. An examination of the order impugned discloses that the learned single Judge presumed that the recommendation of the GOK while forwarding the three names to the Chancellor for appointment as Vice Chancellor, was in accordance with the statute and therefore framed the question for consideration thus:

Whether the recommendation made by the State Government is binding on the Chancellor?. 12. The Apex Court in CHANDRASHEKARAI AH v. JANEKERE C KRISHNA¹, at paragraph-155 observed thus: The mechanics of the working of a statute has to be decoded from the contents of the statute and the words used therein, otherwise there is a possibility of committing a serious error. 13. Therefore, the mechanics of the working of section 14[4]. of the KSU Act, when decoded from its contents, cannot be read in any other manner except as stated therein, since doing so, would cause commission of a 8 serious error. If regard is had to the tenor of the statute, the Chancellor on receipt of the three names in alphabetical order, keeping in mind, the merit, equity and social justice and with the concurrence of the State Government, is required to appoint one person to be the Vice Chancellor of the University. The Chancellor may with the concurrence of the State Government call for a second panel if it is necessary, whence the Search Committee shall submit a second panel which shall be final. Neither sub-section [4]. of section 14 or the proviso thereto requires the State Government to recommend to the Chancellor a name from out of the three names shortlisted by the Search Committee. Therefore, the recommendation of the name of the writ petitioner by the State Government is of no consequence.

14. Thus, at the threshold, it must be pointed out that the GOK's recommendation of the name of the writ petitioner from out of list of three names forwarded by the Search Committee was not in compliance with the statute 1 2013 [3]. SCC1179 and hence of no consequence, not requiring the Chancellor to take note of the same, in the process of selecting one person from out of the panel of persons. Only after the Chancellor makes a selection of a person, it is required to be put across to the State Government for its concurrence. In other words, agreement or to act in conjunction so as to contribute the same and make it contemporaneous.

15. It is useful to extract the dictionary meaning of the word concurrent and concurrence.

16. The meaning of the word concurrence in Blacks Law Dictionary, IX edition is, 1. Agreement; assent 2. A vote cast by a Judge in favor of the Judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the Judgment.

3. A separate written opinion explaining such a Vote Also termed (in sense

3) concurring opinion [cases; courts - 108]..

4. Acceptance by one house in a bicameral legislature of an amendment passed by the other house. 10 17. (i) The meaning of the word concurrent in Concise Oxford English Dictionary, 12th Edition, concurrent means, 1. existing or happening at the same time.

2. agreeing or consistent. 3. Mathematics(of three or more lines) meeting at or tending towards one point. (ii) K.J.

Aiyars Judicial Dictionary, 16th Edition is:- Acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous. (iii) P. Ramanatha Aiyers The Law Lexicon, II Edition is:- Having the same authority; acting in conjunction; existing together agreeing in the same act; contributing to the same event; contemporaneous; running together; co-operating; contributing to the same effect; accompanying; conjoined; associate; concomitant; joint and equal [as]. concurrent sentences; running together in time or space; covering the same ground. 11 18. Regard being had to the use of the word concurrence, the parties are required to make their points of view known to each other and discuss and examine the relative merits of their views, making it incumbent upon the Chancellor to have made his proposal to the State Government who may or may not have had a counter proposal, since that stage had yet to set in. The appointment of the 3rd respondent by the Chancellor without communication to the State Government cannot but be said to be without concurrence of the State Government. In other words, in the absence of a proposal being made by the Chancellor over the choice of the 3rd respondent, the Notification Annexure-E specifically recording that the appointment is made with the concurrence of the State Government, is incorrect and unsustainable. Learned Additional Advocate General, in the circumstances, is justified in submitting so.

19. In the fact situation, framing the question of binding nature of the recommendation of the State 12 Government, and to interpret the meaning of the expression with the concurrence of the State Government, occurring in section 14[4]. and the proviso to KSU Act, was unnecessary.

20. The 3rd respondent having held office for four years, from 18.10.2010 to 17.10.2014 and the term having expired, the post must have fallen vacant as on date.

21. In our considered opinion, though the learned Single Judge recorded findings over primacy of the Chancellor in a matter of appointment of the Vice Chancellor under the KSU Act, in the facts and circumstances noticed supra, we think it inappropriate and unnecessary. All questions raised by the learned Single Judge in the order impugned, over the jurisdiction of the Chancellor and the interpretation of section 14[4]. of the KSU Act, are kept open for consideration in an appropriate case.

22. Writ appeal is accordingly allowed. The order of the learned single Judge is set aside. Though the 13 Notification Annexure-E called in question in the writ petition is invalid, nevertheless, there is no necessity to quash the said notification in view of the fact that the term of office of four years of 3rd respondent has expired as on date. AN/- SD/- JUDGE SD/- JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com