

Dr Umesh Vs. State Of Karnataka

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Court : Karnataka

Decided On : Jun-11-2021

Judge : G.Narendar

Appeal No. : WP 12652/2020

Appellant : Dr Umesh

Respondent : State Of Karnataka

Advocate for Def. : Sri. N. K. Ramesh

Advocate for Pet/Ap. : Sri. Shashidhara H. N, Smt. Ashwini Rajagopal, Sri. Jayanth Dev Kumar

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF JUNE, 2021 BEFORE THE HONBLE MR.JUSTICE G.NARENDAR WRIT PETITION No.13414/2020(GM-RES) C/W WRIT PETITION No.12650/2020(GM-RES) WRIT PETITION No.12652/2020(GM-RES) IN W.P.NO.13414/2020 BETWEEN1 DR. DEEPTHI BHAVA W/O ASHRAF BHAVA, AGED ABOUT38YEARS, R/AT DINNUR MAIN ROAD, NANDINI LAYOUT, R.T.NAGAR, BENGALURU-560032.

2. DR. KIRAN KALAI AH S/O SIDD AIAH, AGED ABOUT65YEARS,, SIDDARTH MEDICAL COLLEGE TUMKUR-571112. ...PETITIONERS (BY SRI: UDAYA

HOLLA, SENIOR ADVOCATE FOR SRI: SHASHIDHARA H N, ADVOCATE) AND1 THE STATE OF KARNATAKA, DEPT. OF HEALTH AND FAMILY WELFARE (MEDICAL EDUCATION), VIKAS SOUDHA, DR.AMBEDKAR VEEDHI, BENGALURU-560001, REP BY ITS ADDL. SECRETARY. 2

2. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES (KARNATAKA), BENGALURU4H T BLOCK, JAYANAGAR, BENGALURU-560041. REPRESENTED BY ITS REGISTRAR.

3. DR. M. RAVIKUMAR R/AT NO.12, LAKSHMINARASIMHA NILAYA, THIMMAKKA LAYOUT, WARD NO.5, CHIKKABALLAPUR CHIKKABALLAPUR TQ AND DISTRICT.

4. DR. S. MADHUSHANKAR, R/AT NO.75, 4TH MAIN ROAD, POORNAPRAJNA LAYOUT, BENGALURU-560061.

5. DR. S.H. CHAITANYA R/AT NO.38, 1ST CROSS, NEAR WATER TANK, S.V.G.N.S.S. LAYOUT, BASAVESHWARANAGAR-560070 6. DR. K.N. SATISH BABU R/AT NO.313/DG, SAINAMANA9H A MAIN ROAD, 5TH BLOCK, RAJAJINAGAR BENGALURU-560041.

7. DR. M.L. MURALIKRISHNA R/AT NO.223/C, 13TH CROSS, A-SECTOR, YELAHANKA NEW TOWN, BEGNALURU-560064. ...RESPONDENTS (BY SMT: PRATHIMA HONNAPURA, AGA FOR R1; SRI: N.K. RAMESH, ADVOCATE FOR R2; R3,R4,R5,R6 & R7 ARE SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLES226& 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE3NOTIFICATION DATED2310.2020 ISSUED BY THE R-1 VIDE ANNEX-A AND DECLARE THAT THE PETITIONERS ARE ENTITLED TO CONTINUE AS MEMBERS OF THE SYNDICATE OF THE R-2 IN ACCORDANCE WITH SECTION31OF THE RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCE ACT, 1994 AND ETC. IN W.P.NO.12650/2020 BETWEEN1 DR CHIKKALINGAIAH S/O. SIDDEGOWDA, AGED ABOUT66YEARS, MEMBER OF THE SENATE RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES4H T BLOCK, JAYANAGAR, BENGALURU-560 041, RESIDING AT NO.13, 4TH MAIN, HEBBAL, BENGALURU-560 024.

2. DR. ANAND BASAVARAJ JABASHETTY S/O. BASWARAJ JABSHETTY, AGED ABOUT 44 YEARS, MEMBER OF THE SENATE RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES 4TH T BLOCK, JAYANAGAR, BENGALURU-560 041. RESIDING AT No.8-9-264/1, NIRMALA NIVAS OPPOSITE TO ROHIT RESTAURANT, GURUNAGAR, BIDAR-585 401. ...PETITIONERS (BY SRI: P.S. RAJAGOPAL, SENIOR ADVOCATE FOR SMT : ASHWINI RAJAGOPAL, ADVOCATE) 4 AND 1 STATE OF KARNATAKA BY ITS ADDITIONAL CHIEF SECRETARY DEPARTMENT OF HEALTH AND FAMILY WELFARE (MEDICAL EDUCATION) VIKAS SOUDHA, DR. AMBEDKAR VEEDHI, BENGALURU-560 001.

2. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES REPRESENTED BY ITS REGISTRAR 4TH T BLOCK, JAYANAGAR, BENGALURU-560 041.

3. DR. ARVIND SHENOY RESIDING AT NO.115, OLD AIRPORT ROAD, KODIHALLI, BENGALURU-560 071.

4. DR. G. A. DEEPASHRI RESIDING AT NO.166, 3RD BLOCK, 17TH MAIN ROAD, 49TH CROSS, RAJAJINAGAR, BENGALURU-560010.

5. DR. VENKATASWAMY REDDY RESIDING AT No.836, 6TH MAIN ROAD, MODI HOSPITAL ROAD, WEST OF CHORD ROAD, RAJAJINAGAR, BENGALURU-560 086.

6. DR. S. MURALI RESIDING AT No.520, 6TH E ROAD, 6TH BLOCK, KORAMANGALA, BENGALURU-560 095. 5

7. DR. M. K. MAHENDRA RESIDING AT No.425, 6TH MAIN ROAD, 3RD STAGE, 3RD BLOCK, BASAVESHWARANAGAR, BENGALURU-560 079. ...RESPONDENTS (BY SMT: PRATHIMA HONNAPURA, AGA FOR R1; SRI: N.K. RAMESH, ADVOCATE FOR R2; R3,R4,R5,R6 & R7 ARE SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO THE NOTIFICATION DATED 23.10.2020. AND QUASH NOTIFICATION DATED 23.10.2020 VIDE ANNEX-E ISSUED BY THE R-1 AND

GRANT ALL CONSEQUENTIAL RELIEFS AND BENEFITS AND ETC. IN W.P.NO.12652/2020 BETWEEN1 DR UMESH S/O. DR. BHEEMAPPA, AGED ABOUT52YEARS MEMBER OF THE SYNDICATE, RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES, 4TH T-BLOCK, JAYANAGAR, BENGALURU56004 2. DR. SUDHIR V.R S/O. A.S. RAJAGOPAL REDDY, AGED ABOUT47YEARS MEMBER OF THE SYNDICATE, RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES, 4TH T-BLOCK, JAYANAGAR, BENGALURU56004 3. DR. H N RAVINDRA S/O. N NARASIMHEGOWDA, AGED ABOUT48YEARS MEMBER OF THE SYNDICATE, 6 RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES, 4TH T-BLOCK, JAYANAGAR, BENGALURU56004 ...PETITIONERS (BY SRI:D.N. NANJUNDA REDDY, SENIOR ADVOCATE FOR SRI: JAYANTH DEV KUMAR, ADVOCATE) AND1 STATE OF KARNATAKA BY ITS ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE (MEDICAL EDUCATION), VIKAS SOUDHA, DR. AMBEDKAR VEEDHI, BENGALURU56000 2. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES, REP BY ITS REGISTRAR, 4TH T-BLOCK, JAYANAGAR, BENGALURU56004 3. DR. M RAVIKUMAR R/AT No.12, LAKSHMINARASIMHA NILAYA, THIMAKKA LAYOUT, WARD No.05, CHIKKABALLAPUR4 DR. S MADHUSHANKAR R/AT No.75, 4TH MAIN ROAD, POORNAPRAJNA LAYOUT, BENGALURU56006 5. DR. S H CHAITANYA R/AT No.38, 1ST CROSS, NEAR WATER TANK, SVGNSS LAYOUT, BASAVESHWARANAGAR56007 7 6. DR. K N SATISH BABU R/AT No.313/DG. SAINAMANA, 9TH A-MAIN ROAD, 5TH BLOCK, RAJAJINAGAR, BENALURLU56004.

7. DR. M L MURALIKRISHNA R/AT No.223/C, 13TH CROSS, A-SECTOR, YELAHANKA NEW TOWN, BENGALURU56006 ...RESPONDENTS (BY SMT: PRATHIMA HONNAPURA, AGA FOR R1; SRI: N.K. RAMESH, ADVOCATE FOR R2; R3,R4,R5,R6 & R7 ARE SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLES226OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO THE NOTIFICATION DATED:

23. 10.2020 AND QUASH NOTIFICATION DATED2310.2020 (UNDER ANNEXURE-E TO THE W.P) ISSUED BY THE R-1 AWARD OF COSTS OF THE

WRIT PETITION. THESE WRIT PETITIONS COMING ON FOR

ORDER

S THIS DAY, THE COURT MADE THE FOLLOWING:

8.

ORDER

Heard Sri.Udaya Holla, learned Senior counsel along with Sri. Shashidhara H. N., learned counsel for the petitioners in the lead petition - W.P.No.13414/2020, Sri. P. S. Rajagopal, learned Senior counsel along with Smt. Ashwini Rajagopal, learned counsel for the petitioners in the companion petition - W.P.No.12650/2020, Sri. Jayanth Dev Kumar, learned counsel for the petitioner in W.P.No.12652/2020, Sri. D.N. Nanjunda Reddy, learned Senior Counsel along with Sri. N. K. Ramesh, learned counsel for the respondent - University and Smt.Prathima Honnapura, learned Additional Government Advocate for the respondent - State. The Pleadings have been completed.

2. The petitioners in W.P.No.13414/2020 and W.P.No.12652/2020 are the members of the Syndicate body of the University constituted under Section 24 of the Rajiv Gandhi University of Health Sciences Act, 1994 (hereinafter referred to as the Act-1994 for short) and the petitioners in W.P.No.12650/2020 are the members of the Senate body 9 constituted under Section 21 of the Act-1994. The petitioners in W.P.No.13414/2020 and W.P.No.12652/2020 came to be removed from the membership of the Syndicate, by a common order produced as Annexure-A in the lead petition and under the very said order, private respondent Nos.3 to 7 came to be appointed in the place of the petitioners. Aggrieved, the petitioners are before this Court. Similarly, petitioners in W.P.No.12650/2020, who are the members of the Senate, came to be removed by a common order dated 23.10.2020 produced as Annexure-E to the writ petition and simultaneously, private respondents came to be appointed in the place of the petitioners under the said order. The only discernable difference in the two sets of writ petitions i.e., in respect of Syndicate and Senate members is, the appointment of the senate members (W.P.No.12650/2020) also came to be notified by the University under the Notification No.RGUHS/AUTH/Senate/Reconstitution/23/2018-19 dated

23.10.2018, which is produced as Annexure-C10(W.P.No.12650/2020). Insofar as it relates to the Syndicate members, no such Notification came to be issued.

3. The petitioners are hereinafter referred to as syndicate and senate members for the purpose of brevity and convenience.

4. There is no dispute with regard to the facts pertaining to the appointment and removal of the petitioners from the Syndicate and Senate bodies. The Syndicate members came to be appointed to the body syndicate of the University by order dated 16.10.2018 and were removed from the membership of the syndicate by Notification dated 23.10.2020. Insofar as senate members are concerned, the said members also came to be appointed to the senate of the University by Notification dated 16.10.2018 and came to be removed by Notification dated 23.10.2020. It is also not in dispute that the power of appointment of members to the respective bodies, by way of nomination, to either of the bodies is traceable only to the Act-1994. Though, it was initially asserted that 11 nominations and removal can be made by the Government, it was later conceded that the power of appointment of members to the respective bodies, by way of nomination, is traceable only to the Act-1994.

5. Sri.P.S.Rajagopal, learned Senior counsel would submit that the order impugned is per se violative of the law laid down by this Court and that the issue is no more res integra and is squarely covered by the judgment of this Court rendered in the case of G. Ashok Kumar vs. State of Karnataka and Others reported in 2020 (1) KAR. L.J.

461 and would submit that the impugned order requires to go in the light of the law as laid down by this Court in the case stated supra and as affirmed by the Division Bench. It is further submitted that the said ruling has been rendered in the light of the law laid down by the Honble Apex Court in the case of B.P.Singhal vs. Union of India and Anr. reported in (2010) 6 SCC331 He would contend that the members were appointed to a fixed tenure of 3 years and 12 the same is deducible on a plain reading of Section 31 of the Act.

6. Sri. Udaya Holla, learned Senior counsel would also submit that the writ petitions are required to be allowed on the short ground of the impugned proceedings not satisfying the mandate of the law laid down by the Honble Apex Court and this Court as noted supra. It is submitted that the removal is not for any reason made known to the petitioners, under the impugned orders, much less for a valid reason and hence, on that short ground alone, the impugned proceedings stand vitiated and requires to be set-aside. That the appointments being for a fixed term of 3 years, the members could not have been removed without assigning any reasons and without affording an opportunity of hearing.

7. Sri.P.S.Rajagopal, learned Senior counsel elaborating further would contend that the rigor of the law insofar as it relates to appointments under the pleasure doctrine is even more vigorous, when the appointments are 13 for a specified period. He would contend that in terms of Section 31 of the Act-1994, the term of appointment by way of nominations to either of the bodies is for a period of three years and would contend that the respondents have no authority to curtail the said period except in a manner known to law and as enunciated by the Honble Apex Court and this Court. He would contend that no opportunity having been afforded and the petitioners having neither been heard nor put on notice, removal of members from the said bodies under the impugned proceedings is violative of the principles of natural justice and the same stands vitiated as being arbitrary and warrants interference at the hands of this Court.

8. Per contra, learned Additional Government Advocate would contend that the appointment of the petitioners is governed by the doctrine of pleasure. It is submitted that the nominations have been recommended by the Pro-Chancellor and on the recommendation of the Pro- Chancellor, the Government has issued a Notification 14 appointing them to the respective bodies and in the case of the senate members, the University also has also issued a Notification appointing the said members to the senate body.

9. In the course of arguments, a specific query was posed to learned Additional Government Advocate as to whether there is any similar recommendation from the Pro- Chancellor seeking for removal of petitioners to which the learned Additional

Government Advocate would fairly submit that the records do not reveal availability of such a document. She would contend that the order of appointment has to be read in its entirety and that a partial reading of the order of appointment is impermissible. She would contend that the orders have to be understood in its entirety, which clearly reserves and vests power in the State Government to terminate the appointment mid-way as the appointment is not for an absolute or fixed term or is it a post of a fixed tenure and that the existence of the petitioners in the said posts is only at the will and pleasure 15 of the State Government. She would contend that the petitioners having accepted the orders of appointment, which clearly stipulates that it is for a period of three years or until further orders, have thereby submitted themselves to the jurisdiction of the State Government and to the terms of the appointment and hence, the petitioners having not objected to the conditional order of appointment, it is beyond the petitioners to turn around and object to the same at this late stage. She would further admit that though the relevant provisions empower the appointment to either of the bodies, it does not expressly envisage the applicability of the doctrine of pleasure in the matter of appointment. Yet, she would contend, the same has to be read into, in view of the terms imposed in the appointment orders, by which the appointing authority has retained to itself the authority to curtail the period of appointment. It is further contended that the post is neither a civil post nor can it be contended to be a tenure post nor are the petitioners vested with any statutory or legal right and prays for dismissal of the writ petitions. 16

10. Learned Additional Government Advocate would place reliance on the ruling rendered by the Co-ordinate Bench of this Court while disposing a batch of writ petitions in the case of M. R. Venkatesh vs. State of Karnataka and Others. On a perusal of the same, it is seen that the matter arises out of a dispute with regard to the removal of the Chairman of the Karnataka State Commission for the Scheduled Castes and the Scheduled Tribes Act, 2002. The Co-ordinate Bench after considering various authorities and rulings, more particularly, the empowering provisions of Section 4 of the said enactment was pleased to hold that the appointment of the petitioners therein was governed by the doctrine of pleasure and accordingly, was pleased to reject the writ petition. The provisions of Act-1994 are not in pari materia with provisions of Section 4 of the Act noted supra.

11. Learned Additional Government Advocate would submit that the petitioners having been similarly appointed by a conditional order of appointment vesting a right in the 17 appointing authority to curtail the period of office and the instant petitions also require to be rejected in the light of the ruling stated supra.

12. The learned Senior counsel Sri. D.N. Nanjunda Reddy, appearing on behalf of the University would make three fold submissions. He would submit that the interpretation placed by the learned Senior counsel for the petitioners that the term of the members occupying the membership of either of the bodies i.e., Syndicate or Senate, under Sections 21 and 24 of the Act-1994, is for a period of three years is in-correct.

13. He would submit that Section 31 has to be read in two parts. Elaborating further, he would submit, that the first part deals with the Senate, Syndicate and other bodies of the University and the second part deals with the continuance of the members for the period of and upto the date of reconstitution of the said bodies. He would submit that the provisions, nowhere envisages or stipulates a fixed tenure for the members appointed to the said bodies. That 18 the provision only mandates the compulsory reconstitution of the body once in three years. He would submit that the three years referred to in the provision has to be read with reference to the reconstitution of the bodies and cannot be interpreted as conferring a fixed tenure on the members of the body and hence, he would submit that the interpretation placed by learned Senior counsels for the petitioners requires to be rejected. He would elaborate further, to submit that the three year term referred to in the order of appointment cannot be equated with the three years term referred to in Section 31.

14. Sri. D. N. Nanjunda Reddy, learned Senior counsel would fairly submit that the provisions of the statute governing the appointment to the bodies of the University and the enactment pertaining to the appointments to the State Commission for Scheduled Castes and the Scheduled Tribes are not on parity. That in view of the order of appointment having been accepted by the petitioners, the doctrine of pleasure comes into play and 19 the power of the State Government is unfettered. He would submit that the order of appointment, by way of nomination of the

petitioners, to the said bodies is unambiguous and it categorically stipulates that the continuance of the petitioners in the membership of the body is at the will of the State Government in view of the Notification of the Clause until further orders in the orders of appointment. He would contend that the phrase until further orders cannot be construed as mere surplusage as the parties have all accepted and acted in accordance and elaborating further, he would submit that if the petitioners were aggrieved by the said conditional order of appointment, it was open for them to lay a challenge at the earliest point of time and the petitioners having accepted and acted upon the said order, it is not open for them to turn around and question the correctness of the same.

15. On a query from the Court as to whether the State Government has competency to nominate or appoint members to either of the bodies, learned Senior counsel 20 would submit that Section 11 of the Act-1994 has to be interpreted, to read the proceedings of the State Government, as an act of the Pro-Chancellor as the Pro-Chancellor is none other than the Medical Education Minister of the State Government. He would further submit that the reconstitution of both the bodies had taken place in August-2017 and that hardly negligible amount of time remains and hence, would plead that the writ petition be rejected for otherwise, it would lead to unsettling of settled positions and the private respondents would be at a disadvantage. He would further submit that Sections 9 and 11 of the Act-1994 have to be viewed in the background of Article 166 of the Constitution of India and the learned Senior counsel would place reliance on the ruling in the case of Khusro Quraishi vs. State of Karnataka - 2012 SCC Online KAR5084 rendered by a Division Bench of this Court and would take this Court through paragraph Nos.6 and 12 to buttress his contention that the petitioners having accepted the conditional order of appointment, it was not 21 open for the petitioners, who are similarly placed, to turn around and question the validity of the same.

16. The learned Senior counsel, would next place reliance on the ruling of another Division Bench in W.P.No.30272/2019, where the Division Bench was pleased to rebut the challenge by the petitioner on similar grounds. He would place reliance on the observations of the Division Bench in paragraph No.15 of the

said ruling.

17. In reply, Sri.Udaya Holla, learned Senior counsel would invite the attention of the Court to Section 31 of the Act-1994. He would, in particular, invite the attention of the Court to the heading and would submit that a reading of the heading renders it unambiguous and the arguments of the learned Senior counsel on behalf of the University is inane. He would submit that the membership of the body continues so long as the bodies exists and that the contention that the term referred to in Section 31 of the Act-1994 is only of the body and is not of the members is highly erroneous. He would further reiterate, that a reading 22 of the Section clearly mandates that the members would remain in office for a period of three years as the re-constitution of the bodies is once in three years only. With regard to the contention that the petitioners having accepted and acted under the condition of the order of appointment and hence, it is not open for them to turn around and impugn the same, the learned Senior counsel would submit that if the argument on behalf of the University is accepted, it would amount to accepting that the principles of estoppel operate against the statute and such a conclusion would be in the teeth of the settled law that there can be no estoppel against the operation of a statute. He would submit that in the light of the language employed in Section 31 of the Act-1994, it is unambiguously clear that the members shall hold office till the reconstitution of the body and which re-constitution is after three years only. Learned Senior counsel would submit that the ruling rendered upon by the learned Senior counsel Sri. D.N. Nanjunda Reddy for the University i.e., in the case of B. Balakrishna vs. State and Others 23 (W.P.No.3072/2019) is totally inapplicable to the facts on hand.

18. Sri.Udaya Holla, learned Senior counsel would submit that the ruling in Khusro quraishis case has been rendered in the background of Section 4 of the Karnataka State Minorities Commission Act, 1994, which clearly and expressly states that the appointment is subject to pleasure of the Government. He would submit that none of the enabling provisions of the Act vests such a power or authority in respondents. Learned Senior counsel would also take this Court through paragraph No.15 of the order in B. Balakrishnas case and would submit that the observations by the Division Bench are per se contrary to the stand adopted by

the respondent - State and the University and contradicts the stand of the state and the University.

19. Sri.P.S.Rajagopal, learned Senior counsel appearing on behalf of the petitioners in W.P.No.12650/2020 would submit that insofar as the 24 petitioners, who have been appointed as members of the senate, the respondents cannot turn a blind eye to the Notification issued by the University whereby the appointment of the petitioners to the body senate has been notified by the University itself. He would submit that the appointment being in consonance and the term of appointment being for a fixed term, the respondents are denuded of any authority to curtail the said period except in the manner provided under law.

20. Learned Senior counsel Sri P.S.Rajagopal, would further invite the attention of the Court and take the Court through the pleadings in paragraph No.5 of the writ petition to contend that it is not only the petitioners, who have understood the period of term of office as three years but it is the understanding of the respondents also. He would submit that the said pleadings have not been contraverted or denied by the respondents. The relevant portion of the pleadings reads thus:- 25 As a matter of fact, till date from the establishment of the University, all Members appointed under Section 12(xii) of the RGUHS Act have served as Members for their entire tenure of three years. The learned Senior counsel Sri P.S. Rajagopal, would contend that the University was established in the year 1994 and till date no member of any of the authorities/bodies have been removed before the completion of his term, that is prior to the reconstitution of the bodies as stipulated under Section 31 of the Act. Adopting and advancing the interpretation of contemporaneous construction or administrative expression, he would submit that the contention of the respondents that the provision incorporates and enables the criteria of curtailment of the period of office requires to be rejected. The very fact that since the date of establishment of the University, the membership of the bodies has never been curtailed is a pointer in the direction as to how the respondents have interpreted and understood the provisions of Section 21. He would place reliance on the decision in 26 the case of COMMISSIONER, HUBBALLI DHARWAD MUNICIPAL CORPORATION & ANOTHER vs. BUDAPANAHALLI reported in ILR 2016 KARNATAKA2068 21. In the course of

hearing, it was observed by the Court, after going through the various provisions of the University Act and more particularly, Section 11 of the Act that the appointments ought to and can be done by the Pro-Chancellor and that the State Government has no role in the matter of appointments by way of nominations to the Senate body. No doubt that the Pro-Chancellor is none other than the Medical Education Minister of the State Government, but a reading of the provisions more particularly of Section 11 of the Act leaves no doubt in the mind of the Court, that the Pro-Chancellor of the University, is deemed to have been appointed to the said post, by virtue of his occupation of the office of Minister for Medical Education. In other words, it is by a fiction of law that the occupant of the office Minister of Medical Education also doffs the hat of a Pro-Chancellor of the University under the Scheme of the Act.

22. At this juncture, the learned Senior counsel Sri. D.N. Nanjunda Reddy appearing on behalf of the University would submit that if it is to be contended that the order of removal by the State Government is without authority, then the order of appointment is also without authority and the very appointment is vitiated. He would further contend that it is not the case pleaded by the petitioners and that there are no pleadings in support thereof and hence, would object to the examination of the said issue. Be that as it may, in the opinion of this Court, the said issue is a legal issue and hinges solely on the interpretation of the Statutory provisions.

23. In reply to which the learned Senior counsel Sri Rajagopal, would contend that the said contention is contrary to the settled law and would place reliance on the ruling in the case of THE STATE OF ASSAM vs. RAGHAVA RAJAGOPALACHARI reported in 1972 S.L.R. 915 (para- 28

17) to contend that it is not open to the respondent in a petition to attack its own order in view of the fact that the respondent has not mounted any challenge with regard to the correctness of the order complained of. The learned Senior counsel proceeding further would submit that Kushros case has been rendered prior to the ruling rendered by the Apex Court in the case of UNION OF INDIA AND ANOTHER vs. S.N.MAITY AND ANOTHER reported in (2015)4 SCC164 and in the

light of the subsequent exposition of law by the Apex Court, it cannot be construed as the correct position in law. He would invite the attention of the Court to paras-7 and 15.

24. The learned Senior counsel, proceeding would further contend that any action contrary to the Statute stands vitiated and placing reliance on the observations in paras 21 and 24 of MALIK MAZHAR SULTAN AND ANOTHER VS. U.P.PUBLIC SERVICE COMMISSION AND OTHERS reported in (2006) 9 SCC507 would contend that the administrative actions cannot override the statutory 29 provisions and hence the restrictive clause of until further orders incorporated in the order of appointment being contrary to the provisions of Section 31 of the Act, the same requires to be eschewed from consideration. He would submit that the same has to be looked as an aberration and the same being inconsistent with the provisions of Section 31 of the Act of the 1994, the same requires to be ignored and not to be considered. The learned Senior counsel would further reiterate his contention that the term of office of members appointed by way of nomination to the body of Senate and the body of Syndicate is for a period of 3 years and hence the removal being in the teeth of law settled by this Court and the Apex Court in its various authoritative pronouncements, warrants interference as being arbitrary and in violation of the principles of natural justice.

25. In the above background and having heard the learned Senior counsel on behalf of the petitioners, the respondent - University and the learned Additional Government Advocate on behalf of the State Government 30 and having given my anxious consideration to various contentions, this Court is of the considered opinion that the entire gamut of the lis hinges around the interpretation of some of the provisions of the Statute of 1994. The relevant provisions(Sections, 11, 12, 21, 24, 31, 55 ad

65) are extracted herein for the sake of brevity and convenience. 11. The Pro-Chancellor .- (1) The Minister incharge of the Medical Education in Karnataka shall be the Pro-Chancellor by virtue of his office. (2) The Pro-Chancellor shall exercise such powers and functions of the Chancellor that may be conferred upon him under the Statutes. [underlining by this Court].

12. The Vice-Chancellor .- (1) The Vice- Chancellor shall be a whole time officer of the University. (2) The Vice-Chancellor shall be appointed by the Chancellor from out of the panel of persons who have distinguished themselves in the field of health sciences. The panel shall consist of not less than three and not more than five persons arranged in the alphabetical order. The panel shall be recommended by a committee constituted under sub-section (3); [underlining by this Court]. Provided that , - 31 (a) the first Vice-Chancellor shall be appointed by the Chancellor on the recommendation of the Government; (b) No person shall be appointed or hold office as Vice-Chancellor if he has attained the age of 65 years. (c) If the Chancellor does not approve of any one of the persons recommended by the committee or if the person so recommended is not willing to accept the appointment, the Chancellor may call for fresh recommendations from the committee. [(3) The Committee referred to in sub-section (2) shall be a Search Committee constituted by the State Government consisting of three persons of whom, one shall be nominated by the Chancellor, one by the State Government and one by the Syndicate. The State Government shall appoint one of the members as Chairman of the Committee. The Secretary to the Government incharge of Medical Education or his nominee not below the rank of Deputy Secretary to Government shall be the Convenor of the Search Committee]. (4) The Vice-Chancellor shall, subject to the pleasure of the Chancellor and the provisions of sub-section (2) hold office for a period of three years, he shall not be eligible for re-appointment for a second term [underlining by this Court]. [XXX]. Provided [XXX]. that no Vice-Chancellor shall be removed from the office except by an order 32 passed on the ground of misbehaviour, mis- management, incapability or otherwise after due enquiry by a serving or retired Judge of a Supreme Court or High Court appointed by the Chancellor. [underlining by this Court]. (5) When any temporary vacancy occurs in the office of the Vice-Chancellor by reason of leave, illness or other cause, the Chancellor shall make such arrangements for carrying on the duties of the Vice-Chancellor as he may deem fit: Provided that pending the making of such arrangement by the Chancellor, the Vice- Chancellor may designate among the Deans of the University to be in charge of current duties of the Vice-Chancellor for a period not exceeding one month or till arrangements are made by the Chancellor, whichever is earlier.

21. The Senate .- (1) The Senate shall consist of the following members, namely:- (i) The Vice-Chancellor; (ii) The Secretary to Government, incharge of Health and Family Welfare or his nominee not below the rank of Deputy Secretary to Government; (iii) The Secretary to Government in charge of Medical Education, or his nominee not below the rank of Deputy Secretary to Government (iv) The Director of Medical Education; 33 (v) The Director of Health and Family Welfare Services; (vi) The Director of Indian Systems of Medicine and Homoeopathy; (vii) Three members of the Karnataka Legislative Assembly elected from amongst themselves; (viii) Two members of the Karnataka Legislative Council elected from amongst themselves; (ix) Six persons nominated by the Chancellor in consultation with the Vice-Chancellor from amongst persons having special interest in health sciences out of whom one shall be person belonging to the Scheduled Castes and one belonging to the Scheduled Tribes and one shall be a woman; [underlining by this Court]. (x) Five persons to be nominated by the Pro-Chancellor form amongst the graduates of health sciences; [underlining by this Court]. (xi) Five Professors elected from amongst themselves; (xii) Five teachers, other than Professors elected from amongst themselves. (xiii) Six members each of whom elected to Medical Council of India, Dental Council of India, Pharmacy Council of India, Indian Nursing Council, Central Council of Indian Medicine and Central Council of Homeopathy from Karnataka Chapter 34 (xiv) Six heads of colleges nominated by the Chancellor in consultation with the Vice- Chancellor by rotation for a period of three years. (2) No non-teaching employee of the University or an affiliated college shall be eligible to be elected or nominated by the Senate.

24. The Syndicate .- The Syndicate shall consist of the following members, namely:- (i) The Vice-Chancellor; [(i-a) The Secretary to Government, in charge of Health and Family Welfare or his nominee not below the rank of Deputy Secretary to Government. (i-b) The Secretary to Government in charge of Medical Education, or his nominee not below the rank of Deputy Secretary to Government]. (ii) The Director of Health and Family Welfare, Karnataka; (iii) The Director of Medical Education, Karnataka; (iv) The Director of Indian System of Medicine and Homoeopathy, Karnataka; (v) The President, Karnataka Chapter of the Indian Medical Association; (vi) The President, Karnataka Medical Council; (vii) Three persons elected by the Senate amongst themselves; (viii) One Professor

nominated by the Vice- Chancellor by rotation, every two years; 35 (ix) Two Heads of University or affiliated colleges by yearly rotation, nominated by the Vice-Chancellor; [(x) One nominee from an autonomous Government Medical institute nominated by the Government by yearly rotation]. (xi) Three experts in the field of health sciences nominated by the Chancellor on the recommendation of the Vice-Chancellor; [underlining by this Court]. (xii) Six persons nominated by the State Government from amongst eminent personalities in the field of Health Sciences of whom,- [underlining by this Court]. (i) one shall be a person belonging to the Scheduled castes or the Scheduled Tribes; (ii) one person belonging to the Other Backward Classes; (iii) one Woman; (iv) one person belonging to Linguistic Minorities; and (v) two others. Provided that no person who is in the employment of an affiliated college or in the University in whatever capacity shall be eligible for nomination]. (2) Seven members of the Syndicate shall form a quorum for a meeting of the Syndicate. 36

31. Term of office of the members of Senate, Syndicate and Academic Council .- Save as otherwise provided in this Act the Senate, Syndicate and Academic Council shall be reconstituted at or about same time every three years, and members of the authorities shall except in the case of ex-officio members hold office as members thereof up to the date of next reconstitution: [underlining by this Court]. Provided that no person nominated or elected to any of the authorities specified in section 20 shall hold office for more than two consecutive terms in such authority. [Underlining by the Court].

55. Vacating of office .- (1) Any member other than an ex-officio member of any authority or body of the University may resign his office by a letter addressed to the Registrar and the resignation shall take effect on receipt of the letter by the Registrar. (2) A person who is a member of any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold office so long only as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be. (3) A member of any authority or body of the University shall cease to be a member on his being convicted by a court of law for any offence which involves moral turpitude. 37 The provisions vesting the

jurisdiction or authority in respondents to appoint or nominate a member to either of the bodies is traceable to Sections 21 and 24 only. Sections 21 and 24 not only detail the composition of the body but also designates the authority, who may appoint or nominate or be consulted prior to appointment or nomination such members to the Senate or Syndicate.

26. The provisions of Section 21(10) provides for nomination. Clause 10 of Section 21 sub-Section(1) of Section 21 enables the Pro-Chancellor to nominate 5 persons from amongst the Graduates of Health Sciences, to be appointed as members of the Senate body. The Pro- Chancellor is defined by Section 11 to mean the Minister incharge of the Medical Education to be the Pro-Chancellor, that is the person by virtue of his occupation of the office of Minister for Medical Education (including in-charge Minister), is by default or is deemed to be appointed as the Pro-Chancellor of the respondent University. From a reading of Clause 10 of sub-Section(1) of Section 21, it 38 leaves no scope for any ambiguity with regard to the authority empowered, to appoint by way of nomination, 5 persons to the body of the Senate and it is the Pro- Chancellor only.

27. A reading of Sections 3 and 4 clearly obviates any detailed discussion in this regard. Sub-Section(2) of Section 3 mandates that the University shall be a body corporate by the name specified in sub-Section(1) and to have a perpetual succession by a common seal. It further empowers the body corporate to acquire, hold and dispose off the property and also mandates all the body corporate shall sue and shall be sued in its name only. The powers and functions, to be exercised by the University are also detailed in Section 4. Section 4 is pre-emptive in nature and goes on to fully establish the powers of the respondent - University, in the matter of imparting education and health sciences within the State. Thus, the Statute is a self- contained Code. 39

28. Though an attempt is made by the learned Additional Government Advocate to demonstrate control by the State Government over the University by reference to Section 8, a reading of Section 8 would only reveal a limited role for the State Government in the affairs of the University. The above digression is necessitated on account of the fact that it has been brought to the notice of the Court, that all

along the appointment of members of the Senate has been by the State Government and not by the Pro-Chancellor. In the considered opinion of this Court, such action can only be viewed as colourable exercise of power and contrary to the mandate of the Statute and an abdication of his powers by the Pro-Chancellor.

29. The language employed by the Legislature in Clause 10 of sub-Section(1) of Section 21 leaves no doubt that the authority who can nominate 5 members to the body Senate, is none other than the Pro-Chancellor and the Pro-Chancellor alone. There is neither vagueness nor ambiguity in the language employed by the Legislature. In that view of the matter, it is made clear that the authority 40 competent under Section 21(1) Clause (x) is only the Pro- Chancellor. That apart, the settled law is that once the Statute mandates the authorities to perform an act in a particular manner, then the authorities shall perform that act in the said manner only and the said act shall be in tune with the mandate of the Statute. The above interpretation placed by this Court is further buttressed by the very provisions of the Statute itself, in particular Clause (xii) of sub-Section(1) of Section 24 pertaining to the appointments by way of nomination to the Syndicate. In so far as it pertains to the appointments by way of nominations to Syndicate, Clause(xii) empowers the State Government to nominate and appoint 6 persons from amongst the eminent personalities in the field of Health Sciences. Thus, it cannot be contended that the power to appoint persons to the Senate is also vested in the State Government. This discussion is necessitated in view of the fact that the orders of removal, that is, the impugned proceedings, not only directs removal of membership from the body of Senate but also appoints the private respondents to the membership of 41 the said body. In the light of the interpretation placed by this Court the order appointing the private respondents to the Senate stands vitiated as lacking in jurisdiction. On this short ground alone, the writ petition No.12650/2020 requires to be allowed. Not only the removal stands vitiated for want of jurisdiction, conversely the subsequent and consequential appointments of the private respondents also stands vitiated on account of lack of jurisdiction in the State Government to make the appointments by way of nomination to the body Senate.

30. That apart, the only question that arises for determination is whether the membership of either of the bodies is for a fixed tenure or it can be at the sweet will and pleasure of the appointing authority be it the Pro-Chancellor under Section 21(1)(x) or the State Government under Section 24(1)(12) of the Act?.

31. A reading of Section 31 would suffice to resolve the controversy involved in the petitions. Section 31(1) is reproduced once again for the sake of convenience.

42 As rightly pointed out by the learned counsel for the University it could be read in two parts. The first part has to be read as under:- Save as otherwise provided in this Act the Senate, Syndicate and Academic Council shall be reconstituted at or about same time every three years, and members of the authorities shall (except in the case of ex-officio members) hold office as members thereof up to the date of next reconstitution; [underlining by this Court]. The provision can be read as below after eschewing that portion that relates to the ex-officio members, Save as otherwise provided in this Act the Senate, Syndicate and Academic Council shall be reconstituted at or about same time every three years .. and Members of the authorities shall hold the office as members thereof up-to the date of next reconstitution. From a reading of the above, if the principles of purposive construction are to be adopted, the reading would render a meaning in the following manner:-

43 32. The first part apparently governs the period stipulated under the Statute mandating the reconstitution of the bodies mentioned therein. The bodies shall be mandatorily reconstituted once in every three years and normally the reconstitution shall be of all the authorities at or about the same time. The second part clearly envisages the term of the members of the body sought to be reconstituted, that is, a member once appointed under Section 21 or Section 24 shall mandatorily be continued till the reconstitution of the said body. The Legislature has deemed it fit to frame the provision pertaining to the terms of office of its members also. Section 31, in the opinion of the Court is to be read as one which mandates the term, not only for re-constitution of the bodies but also the term of the members appointed. As read above it is the only way in which the provision could be read. The natural consequence would be that the members are assured of a tenure till the date of reconstitution, irrespective of the date they assume office and the maximum period for which the body can remain without being reconstituted is three 44 years, then necessarily the maximum tenure that a

member may enjoy is three years or lesser, that is until the re- constitution and not at the mercy of the appointing authority. The date of appointment of the member is irrelevant in the context of Section 31. The language employed in Section 31 makes it abundantly clear that the term is up-to the date of next re-constitution. The words deployed are as under:- xxxx xxx as members thereof up-to the date of reconstitution.

33. The language used by the legislature leaves no quarter for any doubt or ambiguity. A member once appointed shall be and is entitled to hold office until the next reconstitution and the reconstitution cannot be beyond a period of three years. If this is the interpretation on a plain reading of the provision, then it cannot be gainfully argued that there is no fixed tenure or that it is not a tenure post or that it is a post without tenure. The tenure of the post is made amply and abundantly clear by the words 45 employed by the Legislature. That is up-to the date of next reconstitution. This interpretation is buttressed by the very heading of the provision which reads as 31. Term of office of the members of Senate, Syndicate and Academic Council, - Thus the implication of the language employed in the provision is that, the term of the members appointed to the various bodies is co-existent with that of the body and they do not have a term or remain in office after the re- constitution. But they are entitled to hold office for the term of the body or in other words, till the next reconstitution or between one re-constitution and the next re-constitution.

34. The provision mandates that the bodies shall be reconstituted in every three years. The language of the provision makes it abundantly clear that the reconstitution of the bodies cannot be put off beyond a period of three years and the reconstitution is rendered mandatory and is not at the discretion of the University/authorities. The exercise of reconstitution shall mandatorily take place at 46 about the same time and once in three years. Thus the first part refers to the period before which the reconstitution must happen and the second part mandates that the members are entitled to the office till such date of reconstitution. The use of the words to hold is not without significance. It cannot be argued that it is discretionary or that they do not confer any right on the members. That the use of the words to hold definitely indicates the intention of the Legislature to vest in the

member a right to hold or occupy the office till the re-constitution. It is also interesting to note the absence of a provision for removal. If the absence of power for removal is read in conjunction with the interpretation placed by this Court on Section 31, there can be no doubt that the members are clothed with security of their tenure till the re-constitution and the exception being the curtailment of office as provided under Section 55 which deals with aspect of vacating of office either voluntarily or on the happening of certain events, like the member being convicted or being declared insolvent etc. 47

35. This Court arrives at the said interpretation on a conjunctive reading of the provisions of Sections 31 and 55 and also the absence of the power to remove a member, under the Statute. The provisions of Section 55 which only enables the vacating of office and the conspicuous absence of power or absence of a provision enabling the removal of a member leads to the inevitable conclusion as drawn above.

36. The legislating or enactment of the provisions of vacating of office on account of a voluntary act of the member or on account of a person being incapacitated, or on account of the happening of certain event like conviction, [which could lead to a vacancy during the term of the body, that is during the period of 3 years of constitution or reconstitution and the next constitution].. Coupled with the absence of a provision enabling the authority to remove a member is not without significance and cannot be brushed aside lightly and has to be appreciated in the background of the fact, that we are dealing with an institution whose 48 hallmark and objective remains achieving excellence and that too in the field of health sciences, in other words, in matters involving life and death of human. The members, who are to be appointed are not laymen or some Tom, Dick or Harry but only those, who possess a particular qualification in a particular field and as detailed in the provisions of Clause (x) of Section 21(1) and Clause (xii) of Section 24(1). The persons indicated therein are not laymen, illiterates, vagabonds or members of any other expertise or from any political group or administrative class but are persons, who have excelled in the field of Health Sciences, that is persons who have and hold Degrees of Graduation in M.B.B.S., or such other Post-Graduate Degrees and it can be safely presumed that the members holding such

Degrees are persons of erudition and form a distinct class by themselves and are entitled to be appointed members solely on the strength of their academic achievements. It is sorry to see that the appointment of such persons has resulted in litigations only because such people are sought to be painted with a political brush 49 irrespective of their academic excellence. It can be safely presumed that eminent people, as mandated in the provisions, would remain eminent and their eminence would not be diminished by their political affiliations or by the fact that they have been identified as member of any political dispensation or party.

37. In the course of hearing, nothing has been placed before this Court to demonstrate that the persons who have replaced the petitioners are of pre-eminence or more eminent than the petitioners. Today, the learned Additional Government Advocate files a memo enclosing therewith a file notice/note sheet of the file bearing No.MED128RGU2020 The relevant note sheet is dated 23-10-2020, that is the day on which the impugned proceedings have been issued. The reading of the notes would give a picture that the Pro-Chancellor has recommended for removal of the petitioners. The note sheet does not disclose any reasons why the petitioners are to be removed or why the private respondents are required to be 50 appointed. The learned Additional Government Advocate would submit that the removal has been recommended in the interest of administration. The phraseology is too wide a term and an ambiguous one. It is not that there are any complaints of misbehaviour or lack of competence or inefficiency against the petitioners. If that be the state of affairs, this Court is forced to wonder what else is the administrative reason that is alluded to by the Pro- Chancellor. It appears to be a farcical exercise and a lame duck excuse to get rid of persons who probably are not of the same feather but are appointed by a dispensation bearing different colours. If that be so, it becomes apparent that the Members, who are defined as eminent people are sought to be treated with disdain. As noted above, the manner in which eminent people are sought to be treated, merely because of a change of guard in the political dispensation and people at the helm of the ruling dispensation and not apparently because of any incapacity, incompetence or disqualification on the part of the 51 petitioners, renders such action arbitrary and whimsical and one coloured by considerations other than the merit.

38. In all probability the Legislature deemed it fit not to vest a right of removal of a member, who is otherwise not disqualified, keeping in mind the standing of the persons, who even in the opinion of the Legislature are experts or people possessing knowledge in the said field or whom it consider as eminent personalities in the said field and probably this fact became the consideration for the Legislature to ensure that such persons with experience and persons who are eminent personalities in the field are not treated like dirt and are not subjected to the whimsical attitude of the powers that be or the ruling dispensation. Probably, the Legislature in its wisdom, thought it necessary to ensure a continuous functioning of the bodies.

39. In the light of the reading and interpretation of Section 31 placed by this Court as hereinabove, this Court is of the considered opinion that the arguments and 52 submissions canvassed with regard to the appointments of the petitioners being subject to pleasure doctrine is wholly unfounded and misconceived. Even assuming that the pleasure doctrine is applicable for arguments sake, the law is no more res integra, where there is security of tenure then the removal cannot be at the sweet will and pleasure of the Government or the authorities but only for reasons recorded.

40. It would not be out of place to revisit the observations of the Division Bench of this Court in the case of B.K.UDAY KUMAR vs. STATE OF KARNATAKA AND OTHERS reported in 2020(1) AKR781 that in the light of the law laid down by the Hon'ble Apex Court in the case of DHYNAESHWAR DIGAMBAR KAMBLE vs. STATE OF MAHARASTRA, the withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. Moreover, the power of withdrawal of pleasure can be used reasonably and only for public good. Neither is there a public good, nor it is 53 demonstrated that the administration has faltered on account of these persons. If the appointment is for a definite tenure, that is till the reconstitution the members could not have been removed by the competent authority or by the State Government without recording valid reasons. It is not pointed out by the respondents, either by the University or the State Government as to how the administration suffered on account of the appointment of these petitioners. In the absence of any valid and reasonable ground, the

removal on the ground of exercise of pleasure Doctrine is rendered arbitrary. That apart, it is apparent that the removal came about and after the change in the Ruling dispensation and hence a political bias also cannot be ruled out. In that view of the matter, the same amounts to colourable exercise of power and stands vitiated on that ground also.

41. Accordingly the writ petitions are allowed. The order impugned vide Annexure-A in Writ Petition No.13414/2020, Annexure-E in Writ Petition 54 No.12650/2020 and Annexure-E in Writ Petition No.12652/2020 are quashed. The appointments of the private respondents are set-aside. The plea of the University that in view of the fact that short term remains, the petitioners not to be granted reinstatement cannot be appreciated for the reason that the petitioners who have been unceremoniously removed, should be allowed to leave with their heads held high. Hence, this Court deems it appropriate to direct the respondent University to ensure reinstatement of the petitioners in their posts and allow the petitioners to complete their term in a dignified manner. Before parting with the writ petitions, this Court expressed anguish in the manner in which even the educated and professional class, who are not only highly educated but professionals are treated like chattels. Mere political exigencies or clamor for positions of power by the supporters of the ruling dispensation should not be a ground to disturb or revoke the appointment of qualified persons, 55 who even in the opinion of the Legislature, are persons of distinction and who have distinguished themselves in their respective fields. The problem lies in the fact that even academics are being enslaved to the delusions of so-called power in posts, which demand academic excellence. Appointments are sought to be changed to suit political considerations resulting, even in eminent persons being treated with disdain. If institutions of excellence are being run in such a manner, it only speaks of volumes about the state of affairs in such institutions and is a reflection of the civil society. The institution should have been the first to stand up and tell the ruling class to eschew such arbitrariness and the damage such whimsical actions causes to such institutions, whose only endeavour is excellence. It is hoped that this order would be seen and appreciated in true spirit. No order as to costs. Sd/- JUDGE Rsk/dn