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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.9037/2011

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29th October, 2013

DR. M.S. FRANK

..... Petitioner

Through: Mr. Jayant Bhushan, Senior Advocate
with Mr. Sunil Mathews, Advocate
and Mr. Aditya Shukla, Advocate.

Versus

DELHI UNIVERSITY & ORS.

... Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate
for respondent Nos.1 and 2.
Mr. Rajiv Nayyar, Senior Advocate
with Mr. Romy Chacko, Advocate for
respondent Nos.3 to 5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner seeks quashing of the action initiated by the employer/St. Stephen's College (represented by respondent nos. 3 and 4) of initiating, continuing and concluding departmental proceedings pursuant to the Memorandum of Charges dated 01.12.2011 issued against the petitioner.

2. In sum and substance what the petitioner argues is that since the respondent no. 5/Principal is the main complainant with respect to the articles of charges, the departmental proceedings initiated by the disciplinary authority/governing body to which respondent no. 5 was a party is illegal. What is also argued is that since respondent no. 5 was part of the governing body which passed the resolution dated 25.11.2011 deciding to initiate departmental proceedings against the petitioner, and since respondent no. 5 is admittedly a witness with respect to all the charges, consequently the departmental proceedings are being violative of principles of natural justice as no one can be a judge in his own cause i.e respondent no. 5 cannot be the complainant, could not thereafter consequently be part of the governing body/disciplinary authority and thereafter could not have issued the articles of charges dated 22.12.2011.

3. The following admitted facts appear on the record:-

(i) There did take place meeting of the governing body/disciplinary authority on 25.11.2011 to which respondent no. 5/Principal was a party and the governing body/disciplinary authority decided to initiate disciplinary action against the petitioner.

(ii) The articles of charges which have been issued against the petitioner dated 22.12.2011 were issued by respondent no. 5 pursuant to the resolution of the governing body dated 25.11.2011.

(iii) The respondent no. 5/Principal is a witness in the list of witnesses with respect to most of the article of charges.

4. I may state that it is settled law that a person cannot be a part of the disciplinary committee which initiates inquiry against a chargesheeted official although that person is the complainant as also the witness in the case. I need not set out the case law in this regard inasmuch as it is an undisputed legal position that no one can be a judge in his own cause i.e no one can be a complainant, a witness in the proceedings and also the judge to decide those very proceedings. Therefore, if we look at the issue strictly on account of the fact that respondent no. 5 was admittedly part of the governing body which passed the resolution for initiating disciplinary action against the petitioner, and since respondent no. 5 was very much a witness in all the charges, and since the articles of charges were also issued by the respondent no. 5 as a disciplinary authority, consequently, if only these facts are looked into, the departmental proceedings initiated against the petitioner cannot stand. However, that conclusion does not follow in the present case because actually the resolution of the governing body dated 25.11.2011 was

specifically ratified by the governing body/disciplinary authority by its resolution dated 13.01.2012, and while ratifying the earlier resolution to take departmental action against the petitioner, the respondent no. 5 specifically recused. The relevant portion of the resolution dated 13.1.2012 of the governing body of the college reads as under:

“VIII. THE REPORT OF THE MEMBER SECRETARY ON THE ACTION TAKEN IN RESPECT OF THE RESOLUTION OF G.B. NO. 225 TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST DR. M.S. FRANK.

The member secretary informed the Governing Body that the following steps have been initiated in pursuance of the Governing Body resolution at its meeting held on 25 November 2011.

1. Show cause notice was served on Dr. M.S. Frank on 1.12.2011.
2. The reply to the show cause notice being found unsatisfactory, a Charge Sheet was served on Dr. M.S. Frank on 22 December 2011.
3. An Independent Board of Inquiry headed by Justice S.K. Mahajan (Rtd.) was constituted.
4. The Inquiry proceedings began on 12.1.2012.

The Member Secretary then informed the Governing Body that he would not be involved any further in handling the matter concerning the disciplinary proceedings against Dr. Frank, despite the authorization under the Governing Body Resolution at the 225th meeting or discussion on the subject in the Governing Body.

One of the teacher members sought to raise some concerns, according to him, of the teachers in this regard. However, the other members objected to this on the ground that the matter was sub judice.

The Chairman thereafter proposed the required arrangements in the form of the following resolution:

“The Governing Body had by its Resolution passed unanimously at its 225th meeting held on November 25, 2011 authorized the Principal to initiate disciplinary proceedings against Dr. M.S. Frank based on his conduct since September 2008 and Dr. M.S. Frank was directed to cooperate fully with the proceedings. Pursuant to the authorization given to the Principal, the Principal had issued a Show cause Notice dated December 1, 2011 and Articles of Charges dated December 22, 2011 to Dr. Frank. The Principal has also constituted an independent Board of Inquiry comprising Justice S.K. Mahajan (Retd.) as the Inquiry Officer. The Governing Body thereby resolves to ratify all acts done by the Principal pursuant to the authorization given to the Principal on November 25, 2011 and in particular the following:

1. The Show Cause Notice issued to Dr. Frank dated December 1, 2011.
2. The Articles of Charges issued to Dr. Frank dated December 22, 2011, and
3. The Constitution of an independent Board of Inquiry comprising Retired Justice S.K. Mahajan (Retd.) as the Inquiry Officer.

In view of the fact that the Principal will be out of station for the next fortnight and thereafter may be preoccupied and travelling from time to time, it is hereby resolved, without prejudice to Clause 12 of the College Constitution, to appoint Mr. Deepak Mukarji, Member, Governing Body to act for and on behalf of the Governing Body in all matters concerning the inquiry proceedings being conducted by Board of Inquiry pursuant to the resolution passed by the Governing Body.

In this behalf, Mr. Deepak Mukarji is authorized to act as the Presenting officer for and on behalf of the Governing Body and file all application(s), documents, present evidence and witnesses and do all other acts as he may deem necessary for the proper conduct of the inquiry. It is also resolved that Mr. Subha Kumar Dash, the Administrator Officer of the college, be and is hereby appointed as the Representative of the Governing Body and St. Stephen's College in the inquiry proceedings being conducted by the Board of Inquiry comprising Justice S.K. Mahajan (Retd.). It was further resolved that the Chairman of the Governing Body, Respondent. Rev. Sunil Kumar Singh, be and is hereby authorized to provide all required further

authorization to the Presenting Officer and/or representative to enable the proper conduct of the inquiry proceedings by the Board of Inquiry.

The Inquiry Report shall be tabled at the meeting of the Governing Body as soon as may be possible by the Presenting Officer for appropriate action by the Governing Body.”

The above resolution was approved and duly signed by all members except the 2 University Representatives.

The Member Secretary recused himself from any discussion on these proposals as well as signing the resolution.”

5. It is clear from the aforesaid minutes of meeting that the respondent no. 5 specifically recused and therefore he cannot be said to be part of the decision to ratify the taking of action against the petitioner for the department action. The effect of ratification would be that though originally the governing body’s resolution and the issuing of articles of charges by the respondent no. 5 against the petitioner were illegal, however, the ratification in law will amount to passing of a fresh resolution in initiating action against the petitioner to which respondent no. 5 is not a party because he had recused himself. Therefore, the effect is that what was illegal by virtue of the resolution dated 25.11.2011 of the governing body, the same became legal by virtue of the subsequent resolution dated 13.01.2012.

6. The learned senior counsel for the petitioner sought to place reliance upon the judgment of Supreme Court in the case of *Marathwada University Vs. Seshrao Balwant Rao Chavan (1989) 3 SCC 132* to argue

the proposition that there could not be ratification as per the ratio of this judgment by the governing body of the college to bring validity to the action against the petitioner initiated in terms of the earlier resolution dated 25.11.2011 and the articles of charges dated 22.12.2011. The following paragraphs of the judgment in case of *Marathwada University (supra)* are relied upon and the same read as under:-

“22. This resolution, in our opinion, is basically faulty at least for two reasons. It may be recalled that the Executive Council without considering the report of Mr. Chavan, wanted the Vice-Chancellor to take a decision thereon. It may also be noted that the Vice-Chancellor was present at the meeting of the Executive Council when the resolution was passed. He was given "full power to take a decision" which in the context, was obviously on the report of Mr. Chavan, and not on any other matter or question. He said that he would take a decision in about a month. In our opinion, by the power delegated under the resolution, the Vice-Chancellor could either, accept or reject the report with intimation to the Executive Council. He could not have taken any other action and indeed, he was not authorised to take any other action.

23. The other infirmity in the said resolution goes deeper than what it appears. The resolution was not in harmony with the statutory requirement. Section 84 of the Act provides for delegation of powers and it states that any officer or authority of the University may by order, delegate his or its power (except power to make ordinance and Regulations) to any other officer or authority subject to provisions of the Act and Statutes. Section 24(1) (xii) provides for delegation of power by the Executive Council. It states that the Executive Council may delegate any of its power (except power to make Ordinance) to the Vice-Chancellor or to any other officer subject to the approval of the Chancellor, (underlying is ours). The approval of the Chancellor is mandatory. Without such approval the power cannot be delegated to the Vice Chancellor. The record does not reveal that the approval

of the Chancellor was ever obtained. Therefore, the resolution which was not in conformity with the statutory requirement could not confer power on the Vice- Chancellor to take action against the respondent.

24. This takes us to the second contention urged for the appellants. The contention relates to the legal effect of ratification done by the Executive Council in its meeting held on December 26/27, 1985. The decision taken by the Executive Council is in the form of a resolution and it reads as follows:

Considering the issues, the Executive Council resolved as follows:

1. The Executive Council at its meeting held on March 22, 1979' had by a resolution given full authority to the Vice-Chancellor for taking further proceedings and decision in both the cases of the defaulting officers.

2. In exercise of above] authority, the Vice-Chancellor appointed an Inquiry Officer and as suggested by the Inquiry Officer issued Show Cause notices, obtained replies from the Officers and lastly issued orders for terminating their services:

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It was further resolved that-

(i) There has been no inadequacy in the proceedings against both the officers;

(ii) The punishment ordered against both the officers is commensurate with the defaults and allegations proved against both the officers; and

(iii) The Executive Council, therefore, wholly, endorses the actions taken by the then Vice-Chancellor against both the officers.

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 (Fifth Edition) 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 Ed.) 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."

7. In my opinion, the judgment in the case of *Marathwada University (supra)* relied upon by the petitioner does not help the petitioner

for various reasons. The first reason is that the judgment in the case of

Marathwada University (supra) was dealing with a statutory provision and statutory powers. Once we talk of statutory provisions and statutory powers, then surely those powers can only be exercised in terms of the statute and not by a delegated authority which is not provided for by the statute. In the facts of *Marathwada University's case (supra)* since valid delegation did not take place as per the statute, it was held that the action could only have been taken by the statutory authority. It is made clear from para-23 reproduced above which states that the executive council in the said judgment could delegate the powers to the Vice Chancellor only subject to approval of the Chancellor which was mandatory and since approval of the Chancellor was never obtained the resolution was held not to be in confirmation with the statutory requirement and hence invalidity of the delegation. Another reason why the judgment in the case of *Marathwada University (supra)* will not apply is because in facts of that case the issue of ratification came up after the enquiry proceedings were completed and the enquiry officer had given the report and the disciplinary authority had taken the action. In the present case, the issue of ratification is coming up right at the inception i.e even before a single witness has been examined in the proceedings. Therefore, ratification at this initial stage is not illegal because by ratification it is as if decision is taken afresh and for the first time for taking departmental action

against the petitioner. No prejudice in fact or law is caused to the petitioner by the act of ratification. Further, the judgment in the case of *Marathwada University (supra)* cannot apply to the facts of the present case because para 26 reproduced above shows that ratification is possible under certain circumstance i.e even an act originally itself is not under the totally unlawful category, then, the act of the agent can always be ratified by the principal subsequently. Whatever doubt which remains with respect to the ratio in the case of *Marathwada University (supra)* becomes clear from para 27 which states that the principles of ratification cannot have application with regard to exercise of powers under the statutory provisions and it was held that a statutory authority cannot travel beyond the power conferred and any action without power has no legal validity because there is violation of statutory provisions and consequently the action is taken as void ab initio on account of violation of statutory provisions. In the present case, we are not concerned with violation of statutory provision but purely factual issue of illegality of the resolution of the governing body on the first occasion on 25.11.2011 and the factual issue of ratification and consequently effectively of taking departmental action against the petitioner.

8. On behalf of petitioner, reliance was also sought to be placed upon the judgment of a learned Single Judge of this Court (A.K. Sikri, J as

he then was) in the case of *Ashwini Kumar and Ors. Vs. University of Delhi and Anr. AIR 2003 Delhi 304*. By placing reliance upon paras 13 to 19 of the said judgment it was sought to be argued that since respondent no.2 in the said case was a party to the decisions of holding disciplinary proceedings, issuing of the punishment and a party to all stages the departmental proceedings which were hence quashed with liberty to take fresh action without involvement of the respondent no.2 in that case and therefore the departmental proceedings in this case have also to be quashed.

There is no quarrel to the proposition of law laid down in the said case (and as already stated above) that a person cannot be a judge in his own cause by deciding to issue the articles of charges, then by appearing as a witness in the proceedings with respect to articles of charges, however, in the present case once we take note of the subsequent resolution of the governing body of the college dated 13.1.2012 and in which the respondent no.5 recused, I do not think that any further departmental proceedings would in any manner be vitiated more so because I have already stated above that departmental proceedings were at the initial stage.

9. Learned senior counsel for the petitioner has however validly brought out an important point that even after the resolution of the governing body dated 13.1.2012 by which the respondent no.5 had recused, thereafter

the respondent no.5 has still issued the additional chargesheet dated 30.1.2012 under his signatures, and it is argued that these additional articles of charges have been framed by the respondent no.5 resulting in illegality of the departmental proceedings. In my opinion, to this limited extent only the argument on behalf of the petitioner was valid because after the governing body decided that respondent no.5 could not be part of the disciplinary committee and take any action as the disciplinary committee including of issuing of articles of charges, respondent no.5 could not have issued the articles of charges dated 30.1.2012, however, I need not comment too much further on this aspect inasmuch as learned senior counsel for the college has made a statement before me on instructions that the enquiry proceedings will not be treated as having taken place with respect to the articles of charges dated 30.1.2012 and no disciplinary action would be considered pursuant to the articles of charges dated 30.1.2012. Of course, I may note that it was sought to be argued at one stage on behalf of the college that actually while issuing the articles of charges on 30.1.2012, respondent no.5 was only acting in an administrative capacity and not as part of the disciplinary authority, however, I need not examine this aspect in view of the stand taken by the college of not continuing with the disciplinary proceedings with respect to articles of charges dated 30.1.2012.

10. In view of the above, subject to the observations that there would be no departmental proceedings in terms of the articles of charges dated 30.1.2012, the writ petition is dismissed, leaving the parties to bear their own costs.

OCTOBER 29, 2013
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VALMIKI J. MEHTA, J.