

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4357 of 2015

Ashish Kumar Sharma, S/o Shri B.P. Sharma, aged about 35 years, R/o Masanganj, Eidgaah Road, In front of Press Club, P.S. Civil Lines, Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Higher Education, Mantralaya, Naya Raipur (CG)
2. The Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Raj Bhawan, Civil Lines, Raipur (CG)
3. Indira Gandhi Krishi Vishwavidyalaya, Through the Registrar, Krishak Nagar, Raipur (CG)
4. Vice Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur (CG)
5. Sanjay Kumar Patil, Presently posted as Vice Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Krishak Nagar, Raipur (CG)

---- Respondents

For Petitioner: Mr. N. Naha Roy, Advocate.

For State/respondent No.1: -

Mr. J.K. Gilda, Advocate General, on advance copy.

For respondents No.2 and 3: -

Mr. J.K. Gilda, Advocate General with Mr. B.D. Guru, Advocate, on advance copy.

For respondent No.4: Mr. B.D. Guru, Advocate, on advance copy.

For respondent No.5: Mr. Neelabh Dubey, Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

10/12/2015

1. Seeking issuance of a writ of quo warranto directing 5th respondent Sanjay Kumar Patil to show cause under what authority he continues to hold the Office of Vice Chancellor, Indira Gandhi Krishi Vishwa Vidyalaya, Raipur, Ashish Kumar Sharma – the petitioner herein, has filed this writ petition.
2. Factual matrix of the case requisite to resolve the controversy is as follows: -
3. The Indira Gandhi Krishi Vishwa Vidyalaya Adhiniyam, 1987 (for short 'the IGKVV Adhiniyam, 1987') has been enacted by the State Legislature to establish and incorporate Agricultural University for Krishi Tatha Sambandh Vigyan at Raipur to provide for education and prosecution of research in Agriculture and Allied Sciences, extension and other matters ancillary thereto. "IGKVV" known as Indira Gandhi Krishi Vishwa Vidyalaya, an Agricultural University, constituted by virtue of Section 3 (1) of the IGKVV Adhiniyam, 1987 is a body corporate having perpetual succession and common seal and shall sue and be sued by the said name. Chapter-III of the IGKVV Adhiniyam, 1987 provides for Officers of the University. By virtue of sub-section (2) of Section 11 of the IGKVV Adhiniyam, 1987, the Vice Chancellor shall also be the officer of the University and by virtue of Section 14, the Chancellor of University is appointing authority for the post of Vice Chancellor. Powers and duties of Vice Chancellor has been provided in Section 16 of the said Adhiniyam.

4. The Chancellor of Indira Gandhi Krishi Vishwa Vidyalaya, Raipur (for short 'the Agricultural University'), in exercise of the power conferred under Section 14 (1) of the IGKVV Adhiniyam, 1987 on 1-11-2011 has appointed 5th respondent as Vice-Chancellor of the Agricultural University and since then 5th respondent is holding the post of Vice-Chancellor of the Agricultural University.
5. The petitioner herein seeks a writ of quo warranto mainly on the ground that as per the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (for short 'the UGC Regulations, 2010'), a person to be appointed as Vice Chancellor should be a distinguished academician, with a minimum of ten years experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic administrative organization, and 5th respondent Sanjay Kumar Patil does not satisfy the said eligibility criteria and, therefore, he is an usurper of public office of the Vice Chancellor, as admittedly, he does not have eligibility to be appointed on the post of Vice Chancellor and his continuance is unlawful and unauthorized in law.
6. Mr. N. Naha Roy, learned counsel for the petitioner, would submit that appointment of 5th respondent Sanjay Kumar Patil

on the post of Vice-Chancellor of the Agricultural University is contrary and violative to the statutory regulations known as the UGC Regulations, 2010, as he does not have the requisite eligibility qualification for the post of Vice-Chancellor as prescribed in clause 7.3.0 of the said Regulations, 2010 and as such, he is usurper of public office of the Vice-Chancellor, as he is holding the office against the law and, therefore, it is a fit case where the writ of quo warranto deserves to be issued against him.

7. I have heard learned counsel for the petitioner on the question of admission.
8. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned inter alia in the event the appointment is violative of statutory provision and unquestionably a writ of quo warranto can be issued inter alia when the appointment is contrary to statutory rules and lacks eligibility criteria.
9. Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**¹ while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question

1 AIR 1965 SC 491 : (1964) 4 SCR 575

is a public office and is held by usurper without legal authority
by observing as under: -

“7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office, in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

10. Similarly, in the matters of **High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others**²
and **R.K. Jain v. Union of India**³ similar proposition of law has
been propounded with regard to writ of quo warranto.

11. In the matter of **Centre for PIL and another v. Union of India**

² (2003) 4 SCC 712

³ (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

and another⁴, Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo warranto. Paragraph 51 of the report states as under:-

“51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.”

12. Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**⁵, it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo warranto* to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the appointment of 5th respondent Sanjay Kumar Patil is contrary to statutory rules and he lacks eligibility.

13. In order to bring home his case, the petitioner has relied upon the UGC Regulations, 2010 issued under the provisions of the University Grants Commission Act, 1956, clause 7.3.0 of which provides for qualification of Vice Chancellor. Sub-clause (i) of clause 7.3.0 of the UGC Regulations, 2010 reads

4 (2011) 4 SCC 1

5 (2013) 1 SCC 501

as follows: -

“Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic administrative organization.”

14. The question for consideration would be whether the UGC Regulations, 2010 is a statutory regulation applicable and having force of law qua the appointment of Vice-Chancellor of the Agricultural University under Section 14 of the IGKVV Adhiniyam, 1987, to decide as to whether appointment of 5th respondent is in violation of that Regulations. Clause 1.1.1 of the UGC Regulations, 2010 reads as follows: -

“For teachers in the Faculties of Agriculture and Veterinary Science, the norms/ Regulations of Indian Council of Agricultural Research; for Faculty of Medicine, Dentistry, Nursing and AYUSH, the norms/Regulations of Ministry of Health and Family Welfare, Government of India; for Faculty of Education, the norms/ Regulations formulated in consultations with National Council of Teacher Education; for Engineering and Technology, Pharmacy and Management/Business Administration, the norms / Regulations formulated in consultations with All India Council for Technical Education; and the qualifications in the field of rehabilitation and special education at Degree, PG Diploma and Masters level, the norms/ Regulations formulated in consultations with Rehabilitation Council of India, shall apply.”

15. From a careful perusal of aforesaid clauses of the UGC Regulations, 2010, it is abundantly clear that the UGC Regulations abstain from making regulation for the State

Agricultural University and authorizes Indian Council of Agricultural Research (ICAR) to make any regulation. Similarly, clause 7.4.0 of the UGC Regulations, 2010 reads as follows: -

“The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations.”

16. Thus, it is graphically clear that the UGC Regulations themselves recommended amendment in the respective Act by which the University has been established and, therefore, it has to be established that the amendment in the respective Act under which a particular University, in the case in hand, the Indira Gandhi Krishi Vishwa Vidyalaya, Raipur has been carried out and the corresponding statute under the Act in terms with clause 7.4.0 of the UGC Regulations, 2010

17. Very recently, nature and ambit of UGC Regulations, 2010 and its applicability to the University constituted by State Legislation came up for consideration before the Supreme Court in the matter of **Kalyani Mathivanan v. K.V. Jeyaraj and others**⁶ in which Their Lordships of the Supreme Court have clearly held that Vice-Chancellor is an officer of university and the post of Vice-Chancellor is not a teaching post. It has been held in paragraph 45 as under: -

“45. From the UGC Regulations, 2010, it is clear that the Vice-Chancellor should be a distinguished academician with a minimum of ten years of

6 (2015) 6 SCC 363

experience as Professor in a university system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organisation. Whereas the post of Vice-Chancellor under the University Act, 1965 and the Statutes made thereunder is not a teaching post but an officer of the university.”

18. Describing role and duty of the Vice-Chancellor of University, the Supreme Court in the matter of **Marathwada University v. Seshrao Balwant Rao Chavan**⁷, have held the Vice-Chancellor to be principal executive and academic officer of the University as under:-

“19. The Vice-Chancellor in every university is thus the conscience keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned [Section 11(3)]. The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University [Section 11(6)(a)]. He has also emergency powers to deal with any untoward situation [Section 11(4)]. The power conferred under Section 11(4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power.

7 (1989) 3 SCC 132

It is the magisterial power which is, in our view, plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations.”

19. Thereafter, in **Kalyani Mathivanan** (supra), Their Lordships further considered that the provisions regarding Vice-Chancellor have been made for the first time under the UGC Regulations, 2010 and the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government adopts and implements the Scheme subject to the terms and conditions therein, relying upon Regulation 7.4.0 of the UGC Regulations, 2010 by holding as under: -

“55. We find that the post of Vice-Chancellor under the University Act, 1965 is a post of an officer. The UGC Act, 1956 is silent about this aspect. The UGC Regulations, 2000 are also silent in regard to the post of Vice-Chancellor. The provisions regarding Vice-Chancellor have been made for the first time under the UGC Regulations, 2010.

56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p)(v) of Appendix I dated 31-12-2008 and Regulation 7.4.0 of the UGC Regulations, 2010.”

20. In the case in hand, the petitioner has merely relied upon the UGC Regulations, 2010 to bring home his case to hold that the 5th respondent does not hold the eligibility criteria in terms of the UGC Regulations, 2010 which will not suffice. The petitioner has failed to demonstrate that whether the UGC Regulations, 2010 have been adopted by the State Government as provided under Regulation 7.4.0 of the UGC Regulations, 2010. Thus, there is no material to establish that the UGC Regulations, 2010 have been adopted by the State Government for its State University i.e. the Indira Gandhi Krishi Vishwa Vidyalaya, Raipur.

21. Further, in **Kalyani Mathivanan** (supra), Their Lordships have also held that the UGC Regulations, 2010 is a subordinate legislation under the Act of Parliament and cannot override the primary legislation enacted by the State Legislature and further held that Regulation 7.3.0 of the UGC Regulations, 2010, which provides for eligibility of Vice-Chancellor, has to be treated as recommendatory in nature insofar as it relates to the universities and colleges under the State legislation by observing as under in paragraph 61: -

“61. We do not agree with the finding of the Bombay High Court that Regulation 7.3.0 of the UGC Regulations, 2010 is not traceable to clause (e) or (g) of Section 26(1) of the UGC Act, 1956. We also refuse to agree that Regulation 7.3.0 of the UGC Regulations, 2010 being subordinate legislation under the Act of Parliament cannot override the preliminary (*sic* primary) legislation enacted by the State Legislature. However, the

finding of the Bombay High Court that Regulation 7.3.0 has to be treated as recommendatory in nature is upheld insofar as it relates to the universities and colleges under the State legislation.”

22. Thereafter, finally in paragraph 62.4, Their Lordships have authoritatively held that the UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Paragraphs 62.3 and 62.4 of the report state as under: -

“62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.”

23. Thus, from the aforesaid analysis and the law laid down by Their Lordships of the Supreme Court in the matter of **Kalyani Mathivanan** (supra) it is quite vivid that Vice-Chancellor of the Indira Gandhi Krishi Vishwa Vidyalaya, Raipur, an agriculture university established by State Legislature, is an Officer of the University under Section 11(2) of the Act being the principal executive and academic officer of the University and it is not a teaching post. It is also evident that Regulation 7.3.0 of the

UGC Regulations, 2010 is recommendatory in nature to the Agricultural University (University established by state legislation) and same are directory in nature to the Agricultural University. The UGC Regulations, 2010 have not been shown to be adopted by the State Government and are not applicable to the Agricultural University to which 5th respondent is Vice-Chancellor.

24. Thus, the petitioner has not placed any material on record to establish that the State Government (Government of Chhattisgarh) has adopted and implemented the UGC Regulations, 2010 in its letter and spirit and it has also not been established that the IGKV Adhinyam, 1987 has been amended in terms of UGC Regulations, 2010 and as such, the UGC Regulations, 2010, which prescribed the qualification for the post of Vice-Chancellor, are recommendatory and directory in nature so far as Indira Gandhi Agricultural University is concerned. Thus, the petitioner has failed to demonstrate that the appointment of the fifth respondent Sanjay Kumar Patil is contrary to the applicable statutory rules or statutory provisions and thereby, the petitioner has failed to demonstrate that the appointment of fifth respondent is in clear infringement of the statutory provisions having the force of the law. Consequently, the writ petition for issuance of writ of quo warranto would not lie.

25. Their Lordships of the Supreme Court in a Constitution Bench

judgment in the matter of **Statesman (Private) Ltd., v. H. R.**

Deb and others⁸ have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

“The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.”

26. The aforesaid judgments have been followed by the Supreme Court in the matter of **A. N. Shashtri v. State of Punjab and others**⁹.

27. Thus, on the basis of above-stated analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of 5th respondent Sanjay Kumar Patil as Vice-Chancellor of Indira Gandhi Agricultural University is in violation of the statutory rules. The petitioner has evidently failed to plead and establish the applicability of UGC Regulations, 2010 to 3rd respondent IGKVV, as the applicable statutory regulations particularly, clause 7.3.0 of the UGC Regulations, 2010, prescribed qualification for the post of Vice-Chancellor and as such, the law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a note of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case, which aptly and squarely applies to the factual score of the present case, as the petitioner has failed to establish clear infringement of law for the writ claimed in the

8 AIR 1968 SC 1495

9 1988 Supp SCC 127

nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

28. As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly, dismissed *in limine* but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4357 of 2015

Ashish Kumar Sharma

- Versus -

State of Chhattisgarh and others

HEAD NOTE

Writ of *quo warranto* lies only when the appointment is made contrary to statutory provisions.

अधिकार पृच्छा याचिका तभी पोषणीय होगी, जब नियुक्ति सांविधिक प्रावधानों के विपरीत की गई हो।