

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 243 of 2017**

- Professor N.D.R.Chandra S/o Late Shri Dhansai Chandra, Aged About 57 Years Ex Vice Chancellor, Bastar Vishwavidhyalaya, Jagdalpur, R/o B-19, Central Avenue, Smriti Nagar, Durg (Chhattisgarh). ---- **Appellant**

Versus

1. State Of Chhattisgarh Through Principal Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Chancellor, Bastar Vishwavidyalaya (A State University Under C G Vishwavidyalaya Adhiniyam, 1973), Raj Bhawan Raipur, (Chhattisgarh)
3. Commissioner, Bastar Division, Jagdalpur, District Bastar, (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Kishore Bhaduri, Advocate with Shri Chandresh Shrivastava, Advocate
For Respondents 1 & 3	:	Shri Prafulla N. Bharat, Addl. Advocate General
For Respondent 2	:	Shri Neeraj Choubey, Advocate

Hon'ble the Chief Justice
Hon'ble Shri Justice Sanjay Agrawal, J

Order On Board

Per Justice Thottathil B. Radhakrishnan, C.J.

14/07/2017

1. This is an appeal against an order passed in the course of a writ petition, on an interlocutory application seeking stay of further proceedings towards the appointment of Vice-Chancellor to the Bastar Vishwavidyalaya, which University is governed by the provisions of the Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as 'the Act').
2. Heard learned counsel for the appellant/petitioner, learned Additional Advocate General and the learned counsel representing the Chancellor.

3. Proceedings were initiated in terms of Section 14 of the Act and an enquiry was held. That led to an enquiry report, on the basis of which, a show-cause notice was issued to the appellant, who was the Vice-Chancellor of the University. It appears that he had responded to the show-cause notice, with the request for documents etc. The State Government invoked the power under Section 52 of Act, which is among the Emergency Provisions in Chapter-X of the Act, and decided to issue a notification in exercise of power under that Section. Such notification was duly issued by the Governor, who is also the Chancellor of the University. Acting on the modified provisions of Section 14 in terms of third schedule to the Act, which would operate on a notification being issued under Section 52 of the Act, the appellant/petitioner was removed from the post of Vice-Chancellor and a Divisional Commissioner was put in charge. This was challenged by the appellant/petitioner by instituting the writ petition from which this appeal arises. Pending that proceeding, the authorities moved for selection of a person to be appointed as Vice-Chancellor. A Search Committee was activated by the issuance of notification inviting applications. The interlocutory application, on which the impugned order is passed by the learned Single Judge, was then filed seeking that further steps for appointing Vice-Chancellor on the basis of that notification be stayed. The learned Single Judge dismissed that application. Hence, this appeal.

4. The learned counsel for the appellant/petitioner argued that the case in hand is one where there is colourable exercise of authority under Section 52 of the Act and that it amounts to dubious attempt to get a person out of office, without following due procedure in terms of Section 14 of the Act. Making reference to the judgment of the Madhya Pradesh High Court in ***Prof. Narendra Kumar Gouraha v. State of M.P. and others***, AIR 1999 M.P. 122, he argued that recourse to such provision ought not to be made to get done something which cannot be had through normal procedure of law. He further argued that

the enquiry report, which is stated to have been relied upon by the Government is itself a material against which, the petitioner/appellant has serious criticism and that could not have been relied on for any action under the statutory authority referable under Section 52 of the Act. It is pointed out that the appellant ought not to have been denied an opportunity to contest the enquiry report, inasmuch as, the enquiry was initiated and carried forward initially under Section 14 of the Act.

5. Per contra, the learned Additional Advocate General argued that the present interlocutory order has been passed only on an application for staying the process of search and selection for appointment as Vice-Chancellor as against the vacancy that occurred as the result of the appellant being removed from that office. He argued that such relief is beyond the scope of the writ petition, and therefore, is not one could have been sought for through an interlocutory application. He pointed out that the notification under Section 52 of the Act not having been disturbed through any interlocutory order, the consequential exercise of the appropriate authority, either the Government or the Chancellor, cannot be prevented through any interlocutory order.

6. At the outset, we may caution ourselves that we are considering an appeal against an interlocutory order issued in writ jurisdiction. The quality and contents of the impugned order is such that it discloses the reasons for its making and has been passed after adverting to and considering the facts and factors, which are relevant to be considered for grant or refusal of interim relief. The learned Single Judge has also taken note of the fact that the notification issued by the Government under Section 52 of the Act continuing to hold, no consequential action following the removal of the appellant/petitioner from the seat of Vice-Chancellor can be stayed.

7. The learned Single Judge, apart from considering the different issues that

arise, also pointedly noted that the petitioner/appellant was actually removed from service following the State Government's exercise of power under Section 52 of the Act. That was some time in 2016. Though the writ petition from which this appeal arises was filed in 2016, no interlocutory relief was obtained by the petitioner against the exercise of authority under Section 52 of the Act or the petitioner's removal from office and the Divisional Commissioner being put in charge of the office of the Vice-Chancellor. The learned Single Judge is justified in taking the view that it would not be advisable in the interest of the University to pass an interlocutory order when the search proceedings for a new Vice-Chancellor has already been carried forward by the issuance of notification. The final result of the writ petition and the consequences that may follow, could be enjoyed, in accordance with law, as may be ordered in the writ petition, if the petitioner ultimately succeeds.

8. The power of the State Government under Section 52 of the Act is essentially a power to make a modification to the operation of the legislative provisions in the Act. That is more potent than a delegated rule making power. The said section is a legislative device which ensures that the governance of the University is put in its due track and place by the State Government and the Chancellor. Viewed in this angle, we do not find any illegality in the impugned decision of the learned Single Judge refusing interim relief, relying on the decision of the Hon'ble Supreme Court in ***Dr. Umrao Singh Choudhary vs. State of M.P., (1994) 4 SCC 328*** in preference to ***Prof. Narendra Kumar Gouraha v. State of M.P. and others*** (supra).

9. For the aforesaid reasons, we do not find any ground to interfere with the impugned order, but would preserve all contentions as may be open for decision in the writ petition.

10. In the result, this writ appeal fails and is accordingly dismissed.

11. We record the request of the learned counsel for the petitioner/appellant that the learned Single Judge may sympathetically consider the appellant's request for early final hearing of the writ petition. That request may be made at that end.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge