

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.493 OF 2018

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Clause 15 of the Letters Patent arises out of the common order dated 19.12.2017, passed by a learned Judge of this Court in a batch of writ petitions, in so far as it relates to W.P.No.39496 of 2016. The said writ petition was filed by the respondents herein assailing the letter dated 25.06.2016 of the State of Telangana; the recommendations dated 03.11.2015 of the State Council of Higher Education, State of Telangana; and the consequential resolution dated 27.06.2016 of the Kakatiya University, Hanamkonda, Warangal District; and also seeking a consequential direction to the respondents to appoint them as Assistant Professors in the University. By the common order dated 19.12.2017, the learned Judge directed the State of Telangana to constitute the Executive Council for the Kakatiya University in accordance with Section 18 of the Andhra Pradesh Universities Act, 1991 (*for brevity*, 'the Act of 1991') within a time frame and further directed the said Executive Council to take up the matter relating to the selections pursuant to the Notification dated 21.12.2012 and to take a decision thereon, within a time frame. Aggrieved by these directions, the respondents in W.P.No.39496 of 2016 are in appeal.

The controversy arose in the context of Notification No.04/2012 issued by the Kakatiya University on 21.12.2012 inviting applications from eligible candidates for appointment to various teaching posts in University Colleges. The petitioners in all the writ petitions, covered by the common order under appeal, applied for these posts. Selections were held pursuant thereto. Challenge to the said Notification came to naught before this Court

and also before the Hon'ble Lokayuktha of the State. However, upon receiving some complaints, the State Government addressed a letter on 04.11.2013 to the State Council of Higher Education asking it to conduct a detailed enquiry into the allegations made in the complaints. Thereupon, the State Council constituted a Three-Man Committee, comprising the former Vice-Chancellors of Osmania University and Telangana University along with a retired Professor of Osmania University. The Committee submitted its report on 03.11.2015 recommending cancellation of the selections. By letter dated 25.06.2016, the Government forwarded this report to the Vice-Chancellor of the Kakatiya University to be placed before the Executive Council for taking an appropriate decision. Thereupon, the Executive Council of the Kakatiya University, in its meeting held on 27.06.2016, resolved to approve the cancellation of the Notification as recommended. This was the subject matter of challenge in W.P.No.39496 of 2015.

Perusal of the common order under appeal demonstrates that the learned Judge found that the Executive Council of the Kakatiya University was improperly constituted, even as per the findings of the Three-Man Committee. Further, the learned Judge observed that this very issue had been considered by this Court in GOWDA RAJENDER V/ s. DR.M.RADHA KRISHNA¹, wherein a Division Bench set aside the appointment orders issued pursuant to the approval granted by the improperly constituted Executive Council of the Kakatiya University and directed the selection committee recommendations to be placed before a properly constituted Executive Council. The learned Judge further found that the action of the Government in unilaterally instituting an enquiry into the matter of selections pursuant to the Notification dated 21.12.2012 behind the back of the

¹ 2016 (2) ALD 180 (DB)

Kakatiya University impinged upon its autonomy. Ultimately, as it was an improperly constituted Executive Council which had acted upon the recommendations of the Three-Man Committee forwarded by the Government, the resolution of the said Executive Council was set aside and directions were given to the State to constitute a proper Executive Council in terms of the statutory provision so that it could look into the matter afresh.

At the outset, it may be noted that despite the specific finding of the learned Judge that it was not open to the State Government to tread upon the autonomy of the Kakatiya University, this appeal has been filed by the State along with the University and the learned Government Pleader for Higher Education seeks to represent both of them. In the light of the conflict of interest between these two bodies in terms of the finding of the learned Judge, it is not open for both of them to be represented by one counsel.

That is one aspect of the matter.

It is not in dispute that the Executive Council of the Kakatiya University, as on the date of passing of the resolution on 27.06.2016 approving the cancellation of the Notification dated 21.12.2012, was not properly constituted in terms of Section 18 of the Act of 1991. What is required of the Government, under Section 18(1) of the Act of 1991, is that it should nominate Class II Members to the Executive Council of the Kakatiya University. Six categories of Members under Class II are to be nominated by the Government but surprisingly, the Government does not wish to do the needful in this regard. Under G.O.Ms.No.30, Higher Education (UE.I) Department, dated 09.04.2010, the erstwhile Government of Andhra Pradesh terminated the appointment of Members of the Executive Council of the Kakatiya University nominated under Class II of Section 18(1) of the Act of 1991 and thereafter, no Class II Member has been nominated. The quorum

for a meeting of the Executive Council under Section 18(6) of the Act of 1991 is one-third of the total number of Members or six Members, whichever is lesser. We are informed that as on date, there are only four Class I Ex-officio Members in the Executive Council of the Kakatiya University. In effect, there cannot be a quorum of just one Member. That is the reason why this improperly constituted Executive Council of the Kakatiya University cannot be permitted to take any decisions in terms of the Act of 1991. Though the learned Government Pleader would contend that it was the very same improperly constituted Executive Council which approved the Notification dated 21.12.2012, she is not in a position to demonstrate as to how the Executive Council of the University would play any role in the issuance of the said Notification. Neither the Act of 1991 nor the Statutes and Ordinances of the Kakatiya University demonstrate any requirement of a Recruitment Notification being placed before the Executive Council for approval, as a condition precedent, before its issuance.

As regards the contention of the learned Government Pleader that it is open to the State Government to interfere with the administration of the Kakatiya University and also institute an enquiry into its affairs through the State Council of Higher Education, it may be noted that the Act of 1991 itself delineates the parameters of interference by the State Government in the functioning of statutory Universities. Section 8 of the Act of 1991 authorises the Government to cause inspection of the University, its infrastructure and the institutions affiliated to such University, and also cause an enquiry into the teaching and other work conducted by the University. Even in exercise of such power, the Government is mandatorily required to give notice to the University of its intention to cause such inspection or enquiry and the University is entitled to be represented thereat. Even after forwarding a copy

of the inspection report to the University, the Government can, in the first instance, only tender advice to the University as it considers necessary and fix a time limit for action to be taken by the University thereon, in terms of Section 8(2). Section 8(4) provides that in the event the University does not take action to the satisfaction of the Government, it may then issue such directions as it thinks fit and the University is bound to comply with such directions. Section 49 of the Act of 1991 relates to restrictions in respect of financial matters and provides that the University shall not, without the prior approval of the Government, divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff or implement any scheme which involves any matching contribution from the Government or create a post or posts resulting in a recurring liability on the Government. The aforesaid provisions broadly indicate the permitted level of interference by the Government in the internal functioning of the Kakatiya University. Trite to state, a statutory University is an autonomous body and it would not be within the province of the State Government, ordinarily, to interfere in the University's day-to-day affairs. (See MAHARISHI MARKANDESHWAR MEDICAL COLLEGE AND HOSPITAL V/ s. STATE OF HIMACHAL PRADESH²).

In the case on hand, it may be noted that it was not the Government's case that it undertook an enquiry under Section 8 of the Act of 1991. It could not have been so, as the Government never put the Kakatiya University on notice. What the Government did was to unilaterally direct the State Council of Higher Education to cause an enquiry and the State Council, in turn, constituted a committee to enquire into the complaints. All this was done behind the back of the Kakatiya University and without notice to it. By

² (2017) 6 SCC 675

no stretch of imagination can this enquiry be categorized as one undertaken by the Government under Section 8 of the Act of 1991.

Therefore, notwithstanding the recommendations of the Three-Man Committee constituted by the State Council of Higher Education at the behest of the Government of Telangana, which were forwarded by the Government to the Kakatiya University, it was ultimately for a properly constituted Executive Council, in terms of Section 18(1) of the Act of 1991, to consider the matter independently and take a decision as to what has to be done with the Notification dated 21.12.2012 and the selections made pursuant thereto. The Government cannot force such recommendations upon the University, even in terms of Section 8 of the Act of 1991. It is therefore essential that the Government first wakes up to the fact that it cannot allow the Kakatiya University, a prestigious and renowned institution of learning, to be run with an improper Executive Council at its helm and takes steps accordingly. It is only thereafter that a properly constituted Executive Council can consider the matter independently on its own merits and take a decision. We therefore find no grounds to interfere with the order of the learned Judge holding to this effect.

The writ appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

12th APRIL, 2018
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