

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 5442 / 2010

DR. MAHENDRA SINGH SIKARWAR

Vs.

THE STATE OF MP  
& 3 ORS.,  
\* \* \* \* \*

**ORDER**  
( 20/1/2011)

The petitioner before this court, a Member of Police Department, has filed this present petition being aggrieved by the recommendation of the Law Department dt. 29/4/2010 by which the Law Department has opined for initiation of action against the petitioner under the provisions of the Code of Criminal Procedure for allegedly committing an offence under the Indian Penal Code and the Prevention of Corruption Act. The contention of the petitioner is that he was selected by the M. P. Public Service Commission for the post of Dy. Superintendent of Police and was posted as City Superintendent of Police, in the year 1997 at Ujjain. The petitioner has further stated that while posted as City Superintendent of Police, Ujjain, he has

submitted an application to the Superintendent of Police, Ujjain to pursue Ph.D., Degree and thereafter reminder was also served and finally the Police Headquarters, vide order dt. 20/4/99 granted permission to the petitioner to prosecute a Ph.D., degree. The petitioner has further stated that later on he was transferred to Indore and continued to work under the Supervisor and has availed the benefit of earned leave from 11/5/98 to 30/5/98, 30/5/98 to 25/6/98 and from 8/9/96 to 30/9/96. The petitioner has also stated that as he was not able to complete the Ph.D., degree in time, he has submitted an application to the respondent University and the respondent University extended the period for submission of Thesis upto 16/2/06 (Annexure P/7). The petitioner has further stated that his Supervisor late Shri CS Pawar has also certified that the petitioner has completed the research work and has put in 200 days of attendance with him (supervisor). The petitioner was finally conferred with a Ph.D., degree on 9/11/05 and a notification was issued by the Vikram Vishwa Vidyalaya, Ujjain on 23/9/05. The petitioner thereafter keeping in view the executive instructions issued by the

State Government dt. 8/5/73 submitted an application for grant of two advance increments and an order was passed by the Superintendent of Police, Indore on 28/9/05 granting the benefit of 2 advance increments to the petitioner. The petitioner has further stated that one Arun Kumar Jain, intervenor, in the present case submitted a complaint which is enclosed as Ex.P/1 to the Director General of Police, MP stating therein that the petitioner has not completed 200 days under the Supervisor and has also obtained salary for 200 days while completing his Ph.D., work and therefore as he has obtained salary of 200 days, he has committed offences u/S. 409, 420, 467, 468 and 471 of the IPC. The petitioner has further stated that it was also alleged in another complaint of the intervenor that the petitioner has obtained the degree of Ph.D., by committing forgery and therefore an enquiry should be held in the matter. The matter was referred to the Dy. Inspector General of Police, Ujjain by the Inspector General of Police and after conducting an enquiry in the matter, the Dy. Inspector General of Police has informed the Police Headquarters that Dr. C S Pawar (the

Supervisor) is no more and the Ordinance governing the field framed under the provisions of M P Vishva Vidyalaya Adhiniyam, 1973 provides for 200 days attendance in the institution concerned or with the supervisor and as Mr. C S Pawar is no more, it cannot be verified whether the petitioner has completed 200 days of attendance while studying at Indore or whether the period of 200 days was completed on account of the fact that Dr. C S Pawar has stayed with the petitioner for some period while the petitioner was posted at Indore. The petitioner has further stated that after a report was submitted by the Dy. Inspector General of Police, the Inspector General (Vigilance) opined that the matter should be closed (page 22 and page 12 with the rejoinder). After the opinion of the Inspector General (Vigilance), the Director General of Police forwarded the matter for legal opinion and the Asstt. Director General of Police (CID) forwarded the matter to the Law Department for its opinion as well as the matter was forwarded to the Education Department of the State of MP. The petitioner has also stated that the Asstt. Director General of Police

(Vigilance) has observed that for the period w.e.f. 17/11/98 to 2/7/99 Grading of A+ was awarded to the petitioner and in the year 2004 – 2005 and in the year 2006 – 2007 again A+ grading has been awarded to the petitioner and therefore it is evident that the petitioner has not sacrificed his departmental duties while prosecuting the Ph.D., degree. The petitioner has also brought on record the findings arrived at by the Education Department and his contention is that the Education Department after conducting a detailed enquiry, vide letter dt. 15/9/10 has categorically stated that a candidate is not required to complete 200 days in an institution for obtaining a Ph.D., degree as per Ordinance 12, Clause 12(c) and the period of 200 days can be completed by staying with the Supervisor and attendance with the Supervisor is also sufficient for fulfillment of the conditions contained in Ordinance 12. It was also informed that after conducting a fact finding enquiry, the education department was of the conclusion that the petitioner has completed 200 days, as required under Ordinance 12. The petitioner has further stated that on account of a reference

made by the Addl. Director General of Police to the Law Department, the Law Department has opined for initiating appropriate action against the petitioner for committing alleged offence under the provisions of the Indian Penal Code as well as under the provisions of the Prevention of Corruption Act. The opinion of the Law Department was received by the Director General of Police and the Director General of Police vide letter dt. 4/5/10 directed for registration of a criminal case against the petitioner. The Asstt. Director General of Police (CID) vide letter dt. 4/5/10 raised a query whether action should be initiated against the petitioner without obtaining an opinion from the Administrative Department ie., Home Department as well as the Education Department. The petitioner, at this stage, has filed this present petition on 6/5/2010 and an interim order was passed by this court on 7/5/2010 staying the recommendation of the Law Department dt. 29/4/10.

2. An intervention application has been filed in the matter by one Arun Kumar Jain who has also attained the age of superannuation and prior to superannuation he was working

as Addl. Superintendent of Police, Narcotics, MP. The intervenor has stated in his application for intervention that the petitioner is guilty of committing offences u/S. 409, 420, 467, 468 and 471 r/w. S. 13(a)(d) and 13(2) of the Prevention of Corruption Act and has suppressed material facts before this court also. It has also been stated that he was registered for Ph.D., on 30/3/99 and leave availed by him prior to 30/3/99 cannot be taken into account for computing 200 days. It has also been stated that the subsequent leave availed by the petitioner of 45 days in the year 2000 and 16 days in 2002 cannot be looked into and the Law Department has rightly referred the matter for registration of Criminal case against the petitioner. He has prayed for dismissal of the writ petition. It has also been argued before this court that this court does not have the power to enquire into the matter and investigation cannot be done under Article 226 of the Constitution of India and the writ petition deserves to be dismissed.

3. A reply has been filed on behalf of respondent No.1 (Law Department) and it has been stated that a request was

made by the Addl. Director General of Police (CID) to render an opinion and the Law Department keeping in view the procedure as prescribed under the Departmental Manual has opined that a Criminal Case should be registered against the petitioner. It has also been stated by the learned Government Advocate that there is no provision to grant any opportunity of hearing to the concerned party before rendering any opinion and the legal opinion of the Principal Legal Remembrancer is just in the nature of advise and the opinion does not amount to an order, hence cannot be challenged by filing a writ petition. The Law Department has prayed for dismissal of the writ petition.

4. A reply has been filed by the respondent No.3 Director General of Police and the contention of the respondent No.3 is that the petitioner has availed 69 days of earned leave prior to his registration and 69 days of earned leave cannot be looked into and cannot be considered as utilised for Ph.D., studies. It has also been stated that the petitioner has subsequently availed 90 days of earned leave in the year 2000 and at the relevant point of time as he was not well, the



same leave cannot be looked into for computing 200 days. It has also been stated that on the basis of a complaint submitted by Mr. Arun Jain, an enquiry took place in the matter and as the report of the Dy. Inspector General of Police was not clear, therefore, the matter was handed over to the CID and a copy was also sent to Law & Legislative Affairs Department. The respondents have further stated that the Law Department in its opinion has recommended for registration of a criminal case and therefore no case for interference is made out in the matter.

5. A reply has been filed on behalf of the respondent University and the stand of the University is that the petitioner has submitted an application for registration of Ph.D., in Political Science on 17/11/97 and Fee was also deposited on 17/11/97. The respondent University has placed reliance upon Ordinance 12 and the contention of the University is that a candidate is eligible to submit his Synopsis after 6 months of his application which means that he is in consultation with his Guide and the same period is also included for computing 200 days. The University has

also stated that the petitioner has submitted a Synopsis and the subject selected by the petitioner was Lok Sabha Mid Term Election 1998. The subject was approved by the Research Degree Committee on 20/3/99 and the petitioner was registered on 17/5/99. The University has categorically stated that Clause 8(c) of the Ordinance provides for 200 days attendance in the institution concerned or with the Supervisor. The University has categorically stated that the petitioner was in touch / communication with his Supervisor constantly and he has completed 200 days of attendance with the Supervisor and a certificate was also issued by the Supervisor certifying that the petitioner has completed 200 days with the Supervisor and thereafter a Ph.D., degree was awarded to the petitioner on 23/9/05. The University in its reply which is duly supported by an Affidavit, has categorically stated that the Ph.D., degree awarded to the petitioner has been awarded in consonance with the provision of Ordinance 12 framed by the University under the provisions of M.P. Vishwa Vidyalaya Adhiniyam, 1973. Thus, the University has supported the case of the petitioner.

6. Heard learned counsel for the parties at length and perused the record.

7. In the present case, the petitioner before this court, a Member of State Police Services, has filed this present petition being aggrieved by the opinion rendered by the Law Department as contained in Annexure P/14 dt. 29/4/10 and the consequential action of the Director General of Police dt. 4/5/10 by which the Director General of Police based upon the opinion of the Law Department has directed registration of a Criminal Case against the petitioner. The petitioner while he was posted at Ujjain has submitted an application before the University for registration to obtain a Ph.D., degree and his application was forwarded by his Guide Dr. CS Pawar. The return of the University clearly reflects that the application was submitted on 17/11/97 and requisite fee was also deposited by the petitioner on same day, meaning thereby, on 17/11/97. The petitioner was transferred to Indore from Ujjain on 2/7/98 and thereafter also the petitioner has continued to work under his Supervisor. The petitioner has further stated that he has also submitted an

application to the authorities for obtaining permission to prosecute the Ph.D., degree and permission was accorded on 20/4/99 by the department to obtain a Ph.D., degree. It is also an admitted fact that the petitioner was formally registered by the Research Degree Committee on 17/5/99 and as he was not able to submit his thesis, the period was extended by the respondent Vikram Vishwa Vidyalaya, Ujjain on 23/2/05 (Annexure P/7) upto 16/2/06. The petitioner has finally submitted a Ph.D., Thesis and a degree was awarded to him vide Notification dt. 23/9/05. A certificate was also furnished by his Guide who is now no more namely; Dr. C S Pawar certifying that the petitioner has completed 200 days as required under the Ordinance governing the field. Clause 3 of the Ordinance 12, as approved by the Coordination Committee, on 12/8/1993, reads as under :

3. After six months of his application, the candidate shall be eligible to submit a synopsis (as per Appendix 1) of his proposed research work along with the title of thesis (in seven copies) duly forwarded by the supervisor and Head of the Institution where the candidate is working. He

shall be required to make an oral presentation of the proposed work before the Research Degree Committee consisting of the following members :

- (I) Kulpati or his nominee.
- (ii) Dean of the faculty.
- (iii) Head of the university Teaching Department / School of Studies of the subject.
- (iv) Chairman, Board of Studies, in the subject.
- (v) One external subject expert of the rank of University Professor to be appointed by the Kulpati, ordinarily out of a panel of 5 experts given by the Chairman of the Board of Studies concerned. The term of panel shall be conterminous with the Chairman, Board of Studies.

External experts and two other members shall form the quorum.

Note – 1. On the request of the Supervisor Kulpati may permit him to be present as an observer during the oral presentation of his candidate.

2.No T.A. and D.A. shall be payable to candidate and supervisor for attending the Research Degree Committee meeting.

8. The aforesaid clause permits a candidate to start his research work under his Supervisor from the date he submits an application for registration and he becomes eligible after 6 months of his application to submit a Synopsis. Clause 8 of the Ordinance reads as under :

8. (a) The candidate shall pursue his research at the approved place of research under the Supervisor / co-supervisor on the approved subject. The candidate shall be permitted to submit his / her thesis not earlier than 24 months and not later than 4 calendar years from the date of registration. In case a candidate does not submit his / her thesis within 4 calendar year from the date of registration and does not apply for extension in time, his / her registration shall stand automatically cancelled.

Provided that the period for submission of thesis can be extended by one year by the Kulpati, if he / she applies for extension at least 1 month before the expiry of registration period together with a fee of Rs.1000. In case the candidate does submit his / her thesis within the extended period, his / her registration shall stand automatically cancelled.

Provided also that Kulpati may permit a candidate to get re-registered on the same topic on payment of a re-registration fee of Rs.750. The minimum period of 24 months and attendance shall not apply to such re-registered candidate.

(b) The candidate possessing M.Phil. Degree or a teacher with 5 years teaching experience at the time of registration can submit his / her thesis after 18 months instead of 24 months as provided in Sec. 8 (a) of the Ordinance.

(c) The candidate shall put in at least 200 days attendance in the

institution concerned or with the Supervisor.

9. The aforesaid statutory provision provides that a candidate is required to put in 200 days of attendance in the institution or with the Supervisor. Thus, the Ordinance governing the field provides for 200 days attendance with the Supervisor also. The aforesaid statutory provision of law nowhere states that a candidate has to complete 200 days of attendance with the Supervisor at the institution, meaning thereby, it does not mean that 200 days of attendance at Vikram Vishva Vidyalaya, Ujjain, is mandatory. The petitioner submitted his Ph.D., Thesis and a certificate was issued by late Dr. C S Pawar, stating categorically that the petitioner has completed 200 days as per the Ordinance with the Supervisor. Dr. CS Pawar is no more and therefore the certificate issued by late Dr. CS Pawar has to be accepted as it is as no further clarification can be obtained from Dr. CS Pawar. The record of the case reveals that the matter was enquired on the basis of complaint submitted by one of the petitioner's colleague, namely Mr. Arun Kumar Jain and the

same was inquired by the Dy. Inspector General of Police, Ujjain. The Dy. Inspector General of Police has also after recording the statement of the petitioner has formed an opinion that, at this stage, it is not possible to arrive at a categoric finding in respect of the fact whether late Dr. CS Pawar has visited the petitioner at the place of his posting or not.

10. The matter was referred to the Education Department also and the Education Department after conducting again a detailed fact finding enquiry vide letter dt. 15/9/10 has categorically stated that the Ph.D., awarded to the petitioner is in consonance with the provisions of Ordinance 12 framed under the provisions of MP Vishwa Vidyalaya Adhiniyam, 1973 and no case for prosecuting the petitioner is made out in the matter.

11. The matter was also referred to the Law Department by the Addl. Director General of Police and the respondents have enclosed Departmental Manual which deals with the procedure in the matter of References to the Principal, Legal Remembrancer. Clause 85 provides for making a Reference



and the person who can make a Reference and it provides that the Minister, Secretary or Addl. Secretary or any other Officer authorised by the Government can make a Reference to the Law Department. In the present case, a Reference to the Law Department was made by the Addl. Director General of Police (CID) (Annexure P/13). The Law Department in its opinion has opined for registration of a Criminal Case against the petitioner. It is pertinent to note that a document is on record dt. 2/8/10 wherein under the Right to Information Act the Asstt. Public Information Officer has informed the petitioner that the matter was never forwarded by the Home Department to the Law Department for obtaining any opinion on the contrary, the matter was directly forwarded by the Crime Investigation Department to the Law Department. This Court has carefully gone through the documents on record and the allegation of the intervenor that the petitioner has availed his salary for 200 days and has played a fraud with the University as well as with the State Government by obtaining his salary, is of no substance. No statutory provision of law has been brought to the notice of

this court wherein it is reflected that a person enrolled for Ph.D., has to obtain 200 days leave and cannot avail the benefit of salary while computing the period of 200 days. The Ordinance does not restrict a serving employee to get himself registered for a Ph.D., degree while serving the State Government and the only requirement for a candidate under the Ordinance is to complete 200 days attendance in the institution or with the Supervisor. A detailed and exhaustive enquiry has been conducted by the Director General of Police who has also recorded the statement of the petitioner and thereafter a detailed and exhaustive enquiry has been conducted by the Education Department. The opinion of the Law Department is dated 29/4/10 and the report of the enquiry conducted by the Education Department is dt. 15/9/10 meaning thereby, an enquiry has been concluded by the Education Department after the opinion of the Law Department. The opinion of the Education Department reads as under :

मध्यप्रदेश शासन  
उच्च शिक्षा विभाग, मंत्रालय  
वल्लभ भवन, भोपाल

प्रति,

प्रमुख सचिव,  
मध्यप्रदेश शासन  
गृह पुलिस विभाग  
मंत्रालय

विषय : श्री महेन्द्र सिंह सिकरवार तत्कालीन पुलिस अधीक्षक, इंदौर के विरुद्ध प्राप्त शिकायत।

संदर्भ : आपका कार्यालय पत्र क्र. 2423/2185/2010/बी-4/दो दिनांक 28.05.2010.

1. उपरोक्त विषयांकित, संदर्भित प्रकरण में आयुक्त उच्च शिक्षा एवं कुलसचिव विक्रम विश्वविद्यालय, उज्जैन से प्रतिवेदन प्राप्त किया गया।
2. प्रतिवेदन के अनुसार श्री सिकरवार ने विक्रम विश्वविद्यालय, उज्जैन के राजनीति विज्ञान विभाग में अध्यादेश क्र. 12 के अनुसार अपना आवेदन पत्र निर्धारित फार्म 'क' में दिनांक 17.11.1997 को निर्धारित शुल्क के साथ प्रस्तुत किया। इसी तिथि को जिस तिथि पर शोधार्थी फार्म जमा करता है उसे शोधार्थी की पंजीयन तिथि माना जाता है।
3. श्री सिकरवार द्वारा शोध का विषय "लोकसभा मध्यावधि निर्वाचन-1998 एक सामाजिक, आर्थिक विश्लेषण" प्रस्तावित किया गया। शोध विषय एवं शीर्षक का अंतिम निर्धारण विश्वविद्यालय अध्यादेश क्र. 12 के तहत गठित शोधोपाधि समिति द्वारा किया गया तथा 17.05.1999 को पंजीयन की विधिवत सूचना जारी की गई।
4. अध्यादेश क्र. 12 की कंडिका 8 (सी) के प्रावधान के अनुसार शोधार्थी को न्यूनतम 200 दिन की उपस्थिति शोध निर्देशक के पास देनी होती है, जिसका आशय यह है कि शोधार्थी न्यूनतम 200 दिन शोध निर्देशक के संपर्क में रहकर शोध कार्य करेगा। श्री सिकरवार के प्रकरण में अध्यादेश की कंडिका का पालन पाया गया है।
5. श्री सिकरवार प्रशासनिक दायित्वों के कारण निर्धारित समय पर अपना शोध प्रबंध प्रस्तुत नहीं कर सके, अतः उन्होंने अध्यादेश क्र. 12 की कंडिका 8 (ए) के प्रावधान अनुसार निर्धारित शुल्क के साथ शोध शीर्षक का पुनः पंजीयन कराने हेतु आवेदन दिनांक 28.12.2004 को प्रस्तुत किया जिसके आधार पर उन्हें विश्वविद्यालय द्वारा दिनांक 23.01.2005 को 01 वर्ष की अतिरिक्त वृद्धि (17.02.2005 से 16.02.2006) प्रदान की गई।
6. इस प्रकार प्रकरण की जांच एवं प्राप्त प्रतिवेदन के आधार पर श्री सिकरवार के प्रकरण में अध्यादेश क्रमांक 12 के प्रावधानों का पालन होना पाया गया है तथा पंजीयन विषय चयन, एवं उपस्थिति नियमानुसार पाई गई है। भ्रष्टाचार अथवा कोई आपराधिक कृत्य नहीं पाया गया है।

(डी.एस. परिहार)

अवर सचिव

म.प्र. शासन, उच्च शिक्षा विभाग

12. Learned counsel for the petitioner has placed reliance upon a judgment delivered by the apex court in the case of State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal & Ors., (2010) 3 SCC 571 and the apex court, in paragraph 70 of the aforesaid judgment, has held as under :

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

13. The apex court, while dealing with the question of exercise of powers conferred by Article 32 and 226 of the

Constitution of India has held that while passing any order in respect of issuing a direction to the CID to conduct investigation, the powers must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

14. Keeping in view the aforesaid and also keeping in view the report submitted by the Education Department which is in conflict with the report of the Law Department, this Court is of the considered opinion that the recommendations of the Law Department for registration of Criminal Case against the petitioner are perverse and are not based upon any cogent material and the Education Department has rightly directed closure of the case against the petitioner.

15. Learned counsel for the petitioner has also relied upon a judgment delivered by the apex court in the case of Divine

Retreat Centre Vs. State of Kerala and others (2008) 3 SCC

542 and paragraphs 50 and 51, reads as under :

49. It is evident from Sections 154, 156 and 157 of the Code that even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate under Section 156 CrPC. If the essential requirements of the penal provisions are not prima facie disclosed by a first information report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise.

50. Can the High Court set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence ? Setting criminal law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses.

16. It is true that the apex court in the aforesaid case has held that the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The apex court has also observed that the High Court cannot be converted into station houses. However, as in the present case there is a categorical finding of the Education Department subsequent to the opinion of the Law Department, the question of proceeding further against the petitioner in the peculiar facts and circumstances of the case, does not arise.

17. In the present case, keeping in view the totality of the circumstances as the Ordinance does not provide for staying at Vikram Vishva Vidyalaya, Ujjain, alone, on the contrary, it provides for attendance of 200 days with the Supervisor and a certificate was furnished by the Supervisor certifying that the petitioner has completed 200 days of attendance with him and also keeping in view the fact that the Supervisor is no more, this Court is of the considered opinion, that the enquiry conducted by the Education

Department and the report submitted by the Education Department dt. 15/9/2010 has to be accepted.

18. Resultantly, the respondent Nos. 2 and 3 are directed to take further action taking into account the report submitted by the Education Department dt. 15/9/2010 in the matter and to pass appropriate orders in accordance with law. It is needless to mention that the respondents shall not take any action against the petitioner on the basis of the opinion rendered by the Law Department dt. 29/4/10 (Annexure P/14) which is certainly prior to the report of the Education Department and will also not take any action on the subsequent consequential letter of the Director General of Police dt. 4/5/2010 which was based upon the legal opinion of the Law Department.

19. With the aforesaid this writ petition stands allowed. No order as to costs.

(S. C. SHARMA)  
J U D G E