

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 28th DAY OF FEBRUARY, 2013

BEFORE

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

WRIT PETITION No.75821 OF 2013 [S-RES]

BETWEEN:

DR.SANGAMESH A.PATIL
S/O LATE AMARAPPA PATIL
AGE: 56 YEARS, OCC: REGISTRAR,
R/O."PALLAVI" PLOT NO.23,
FIRST MAIN ROAD, FIRST CROSS
ULAVI CHANNABASAVESHWAR NAGAR
DHARWAD

... PETITIONER

(BY SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE FOR
SRI. V R DATAR & V G BHAT ADVs.)

AND:

1. STATE OF KARNATAKA
BY ITS SECRETARY OF HIGHER EDUCATION
(UNIVERSITIES), GOVERNMENT OF KARNATAKA
M.S.BUILDING, BANGALORE
2. KARNATAK UNIVERSITY,
DHARWAD,
BY ITS REGISTRAR

3. DR.G.B.NANDANA
AGE: MAJOR, CHAIRMAN, DEPARTMENT OF
POLITICAL SCIENCE, KARNATAKA UNIVERSITY
DHARWAD, R/O.SRINAGAR, FIRST CROSS
DHARWAD
4. VICE CHANCELLOR
KARNATAKA UNIVERSITY
PAWATE NAGAR
DHARWAD

... RESPONDENTS

(By Sri.K.M.NATARAJ, ADDL.ADVOCATE GENERAL FOR
SMT.MEGHA C.KOLEKAR, HCGP FOR R1;
SRI. M.S.HIREMATH ADV. FOR R2 & R4;
SRI.B.B.BIRADAR, ADV. FOR C/R3;
SMT. SUMANGALA C.CHAKALABBI, ADV. FOR R3;
SRI. M.B.NARAGUND ADV. FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

A. QUASH THE ORDER DATED:29/01/2013,
PASSED BY THE FIRST RESPONDENT, THE COPY OF
WHICH HAS BEEN PRODUCED HERewith AT
ANNEXURE-A.

B. CALL FOR THE ENTIRE RECORDS RELATING TO,
CONCERNING AND CONNECTED WITH THE
IMPUGNED ORDER DATED:29/01/2013, PASSED BY
THE FIRST RESPONDENT, THE COPY OF WHICH
HAS BEEN PRODUCED HERewith AT ANNEXURE-A,
PERUSE THE SAME AND CALL UPON THE THIRD
RESPONDENT BY ISSUE OF WRIT OF QUO
WARRANT TO SHOW THE AUTHORITY OF LAW, IF
ANY, UNDER OR BY VIRUE OF WHICH, HE IS
SEEKING TO USURP THE OFFICE OF REGISTRAR
OF THE KARNATAKA UNIVERSITY, DHARWAD.

This Writ Petition coming for *FURTHER HEARING* this day, the Court made the following:

ORDER

An order passed by the 1st respondent, as at Annexure-A, appointing the 3rd respondent, in exercise of power conferred under Section 17(1) of the Karnataka State Universities Act, 2000, (hereinafter referred to as 'the Act', for short) as the Registrar of the 2nd respondent-Karnataka University (for short, referred to as 'University') has been assailed in this writ petition.

2. Writ Petition No.63899/2012 filed by the petitioner, questioning the appointment of Dr.S.B.Hinchigeri, as the Registrar of the University was allowed on 05.09.2012 and the impugned order therein was quashed. The 4th respondent therein was directed to be relieved from the post of Registrar and, in his place, the petitioner was directed to be taken on duty as

Registrar, in terms of an Official memorandum bearing No.ED 55 UKV 2012 dated 30.05.2012. Writ Appeal No.30956/2012 filed by the State of Karnataka, as against the said order was disposed of as withdrawn on 11.02.2013, in view of the statement made on behalf of the appellant therein, that the petitioner has filed the present writ petition.

3. Government having issued an order dated 29.12.2012 and appointed the third respondent as the Registrar of the Karnataka University at Dharwad, petitioner filed W.P.No.75002/2013. When the matter came up for consideration, a statement was made by the learned Additional Advocate General, that the appointment of the 3rd respondent as Registrar of the University would be reconsidered in the light of the provision of Section 17 of the Act and in accordance with law,

within a period of two weeks, recording the submission, writ petition was accepted and the impugned order appointing the 3rd respondent as Registrar of the University was set aside. State of Karnataka was set at liberty to reconsider the appointment to the post of Registrar of the University in accordance with the provisions of Section 17 of the Act and in accordance with law within a period of two weeks. It was made clear that the State of Karnataka shall consider the petitioner, 3rd respondent and such other eligible candidates for appointment to the post of Registrar of the University. The petitioner was allowed to continue to hold the post of Registrar of the University till the exercise, as directed, is completed. Contentions urged in the writ petition were kept open and the writ petition was accordingly disposed of on 16.01.2013. Petitioner filed W.A.No.30109/2013 questioning the said

order, insofar as the direction issued, to reconsider the case of the 3rd respondent for appointment to the post of Registrar of the University. The said writ appeal, upon consideration was dismissed by a judgment dated 22.01.2013.

4. Having undertaken the process of said appointment, the 1st respondent by a letter dated 22.01.2013, requested the Vice-Chancellor of the University to forward a list of eligible Professors for considering them for the appointment to the post of Registrar of the University. The 4th respondent by a communication dated 24.02.2013 forwarded the list of eligible candidates for appointment as Registrar of the University. The 1st respondent considering the said list, has passed an order bearing No. ED 218 UKV 2012 dated 29.01.2013, as at Annexure-A, appointing the 3rd

respondent as the Registrar of the University, in exercise of the power under Section 17(1) of the Act and simultaneously, relieving the petitioner from the post of Registrar.

5. Shri. H.Subramanya Jois, learned Senior Advocate appearing for the petitioner made two-fold submission. The first one is with regard to the alleged ineligibility of the 3rd respondent for being appointed as Registrar of the University and the second one is with regard to non-consideration of the case of the petitioner in the manner directed in the order dated 16.01.2013 passed in W.P.No.75002/2013. In the view I would be taking, it is unnecessary to consider the submission with regard to the alleged ineligibility of 3rd respondent, since, it will be for the 1st respondent to consider the said aspect when the process of appointment is again taken up.

6. Sri.K.M.Nataraj, learned Additional Advocate General appearing for the 1st respondent and Shri. M.B.Naragund, learned advocate appearing for the 3rd respondent, on the other hand, by taking me through the writ petition and the statement of objections filed to the writ petition, submitted that the 3rd respondent has the eligibility for being appointed as Registrar, since, he is working as a Professor for a period of more than five years and that the case of the petitioner as well as the 3rd respondent having been lawfully considered, the order as at Annexure-A has been issued, which, according to the learned counsel is flawless and hence, no interference is warranted.

7. Having heard the learned counsel on both sides, the point for determination is,

Whether the order passed by the 1st respondent as at Annexure-A suffers from any arbitrariness and illegality?

8. Section 17(1) of the Act confers power on the State Government to appoint an Officer not below the rank of Group-A Officer of the super time scale or a member of the faculty of any University working as a Professor for at least five years, to be a Registrar of a University. The provision is plain and simple. The said provision came up for consideration in the case of *SRI.P.M.PARAMESHWARAMURTHY AND OTHERS vs. STATE OF KARNATAKA AND OTHERS* in *Writ Petition No.4340/2012 (S-RES)*. By an order dated 21.11.2012, while allowing the writ petition and ousting the 6th respondent therein from the post of Registrar of Bangalore University *inter alia* it has been held as follows:-

“39. If the statute prescribes a procedure for appointment, the said procedure has to be strictly followed. Otherwise, the order appointing the person to the public post would be vitiated as held in the case of both Kannadasan as well as Centre for PIL case. The question is, if the statute does not prescribe any procedure for appointment of a person to a public office, what is the procedure to be followed by the Government. It does not mean that the Government is under no obligation to follow any procedure and has unbridled power to exercise the power in the manner they like. The rule of law inhibits arbitrary action and also make it liable to be invalidated. Procedural fairness is implied. Where statute confers wide power coupled with wide discretion on the authority, if the procedure adopted by the authority offends the fundamental fairness or established ethos, the order stands vitiated. The decision making process remains bad. Absence of arbitrary power is the first essential of rule of law upon which our whole Constitutional system is

based. The rule of law from this point of view means that decisions should be made by the application of known principles of rules. If a decision is taken without any principle or without any rule, such a decision is antithesis to a decision taken in accordance with the rule of law.

x x x x x x

42. Therefore, in the absence of any express provision providing the procedure for such appointment, the action of the State would not only be fair, legitimate, it should be above board and should be exercised with great circumspection. Having regard to the importance of the Office, the duties attached to the Office and the institution in which the Office is held, sufficient care is to be taken by the Government before making such appointment. One such guarantee of exercise of fairness is that the antecedents, the character and the past records of the candidate should be taken into consideration. Verification of character and antecedents is one of the

important criterion before a person is appointed to a post under the statute and is a relevant factor. There should be proper application of mind to the material before it, before such an appointment is made. It has nothing to do with the candidate satisfying the requisite qualification prescribed for the said post. If the candidate do not possess the requisite qualification, he would not be in the zone of consideration at all. Merely because he possesses the requisite qualification, his appointment is not automatic. It is here that the Government should apply its mind. In cases of the candidate satisfying the qualification, is there any material by way of record which speaks about his character, conduct in the past, any adverse remarks or any outstanding performance of the officer, are to be considered. It is here the role of judiciary comes into operation. x x x x x The time has come where the appointment to an office holding sensitive and important post should be done in a

transparent manner giving no scope for any grievance.”

9. The core question is, whether *the 1st respondent has made appointment of 3rd respondent as a Registrar of 2nd respondent/University in conformity with the observations made in the order noticed supra and also the order dated 16.01.2013 passed in Writ Petition No.75002/2013?*

10. The 1st respondent in the statement of objections filed to the writ petition has stated that amongst others, the Principal Secretary to the Government, Department of Higher Education had sent a letter to the Vice Chancellor of the University requesting to send a list of eligible candidates and in the list submitted by the Vice Chancellor of the University, name of the 3rd respondent did not figure. It has been further

stated that, having regard to the eligibility criteria and suitability of 3rd respondent, who is having completed five years of service as Professor and in view of the observations made in W.P. No.75002/2013, the State Government considered the eligibility and suitability of the petitioner and 3rd respondent and came to the conclusion that 3rd respondent is eligible and suitable and thus, in exercise of discretionary power under Section 17 of the Act, appointed the 3rd respondent as a Registrar of the University. It has been further stated that, a meeting under the Chairmanship of the Minister in-charge of Higher Education, who is also Pro-Chancellor under the Universities Act, with *other members and academicians*, was convened and the said issue was discussed in detail and then only, considering the necessary aspects, decision to appoint 3rd respondent as

Registrar of the University was taken. It has been stated that the petitioner is though eligible in the matter of appointment to the post of Registrar of the University, his case need not be considered by the Government. That apart, it has been stated that the case of the petitioner, 3rd respondent and the names found in the list submitted by the Vice Chancellor of the University was considered without any bias or prejudice and with open mind and taking into consideration, all aspects, it was felt that it is desirable to appoint 3rd respondent as the Registrar of 2nd respondent/University and *such satisfaction is subjective decision.*

By filing counter, it is sought to be made out that a meeting under the Chairmanship of the Minister in-charge of Higher Education with *other members and academicians* was convened, the

issue was discussed and then the appointment of 3rd respondent was finalised.

11. Learned Additional Advocate General produced a file, which lead to the issuance of order as at Annexure 'A'. A perusal of the file shows that the same was opened on 21.12.2012. The orders passed in W.P. No.63899/2012 dated 05.09.2012 and W.P. No.75002/2013 dated 16.01.2013 have been taken note of. On 22.01.2013, it was decided that a letter should be sent to the Vice Chancellor to submit a list of eligible candidates. A list having been forwarded by the Vice Chancellor, after taking note of the same, the Under Secretary, Education Department (Universities), has put up a note on 23.01.2013. The 3rd respondent was decided to be considered, in view of the order dated 16.01.2013 passed in W.P. No.75002/2013, as is evident from the

notings at paragraphs 17 to 21, with date 24.01.2013. The note sheet maintained in the file does not indicate any decision having been taken to convene a meeting under the Chairmanship of Minister for Higher Education and any meeting having taken place also. Between 24.01.2013 till 28.01.2013, there is no issue of whatsoever nature which had come up for consideration and decision. The notes of 29.01.2013 appearing at paragraphs 22 and 23 shows that a meeting took place under the Chairmanship of Minister for Higher Education on 29.01.2013 and the proceeding was submitted for approval and the draft of the proposed Government Order to be placed for consideration. On the same day, the proposal having been submitted, was approved and the 3rd respondent was appointed as the Registrar of the University.

12. After the perusal of the file, when it was pointed out to the learned Additional Advocate General on 14.02.2013, that there is no record of any consideration and decision having been taken between 25th to 28th January 2013, he submitted that the affidavits of Personal Secretary to the Minister for Higher Education and that of the Principal Secretary, Department of Higher Education, with regard to convening of the meeting of *experts* by the Minister for Higher Education and with regard to the meeting having taken place in the evening hours on 29.01.2013 in the Karnataka State Higher Education Council Building at Bangalore would be filed. On the next hearing date i.e., on 19.02.2013, affidavits of Dr.Rajneesh Goel, Principal Secretary to Government, Department of Higher Education and Mr.K.C. Virupaksha, Private Secretary to the

Minister for Higher Education, was filed. The petitioner has filed counter affidavit.

13. The affidavit of Mr.K.C.Virupaksha, Private Secretary to the Minister for Higher Education, shows that the file relating to appointment of Registrar of the University was received by his office on 28.01.2013 and since the Minister was out of Station on that day, he brought it to the notice of Minister over phone, who instructed him to call the Principal Secretary and other officers of the Department and also Professor K.M.Kaveriayappa, Executive Director, Karnataka State Higher Education Council, to attend a meeting in the evening on 29.01.2013 at Karnataka State Higher Education Council, Palace Road, Bangalore to discuss *various matters including the matter in question*. He has further stated that the Minister who was out of station, on

29.01.2013, reached Bangalore in the evening and on that day attended the meeting at 6.00 p.m. and that the issue was discussed with officers of the Department and Professor K.M.Kaveriyappa, Executive Director of Karnataka State Higher Education Council and after some time, the Principal Secretary joined the meeting and discussed the issue.

14. The affidavit of Dr.Rajneesh Goel, Principal Secretary to Government, Department of Higher Education would show that his office submitted the file to the office of the Minister for Higher Education on 28.01.2013 to take up further action and that the Private Secretary to the Minister asked him on 28.01.2013 as well as on 29.01.2013 to attend the meeting scheduled at Karnataka State Higher Education Council, Palace Road, Bangalore, and that the Private Secretary

also instructed the concerned officers of the Department to attend the meeting to discuss *other issues including the issue in question*. His affidavit makes it clear that he was out of station on 29.01.2013 and reached Bangalore at 7.00 p.m. and participated in the meeting. According to him, his officers and Professor K.M.Kaveriyappa, former Vice Chancellor of Mangalore University and presently working as Executive Director and Member Secretary of Karnataka Education council, was present in the meeting.

15. In the statement of objections filed on behalf of the Government on 13.02.2013, in paragraph 8, it has been stated as follows:-

“8.In this regard, a meeting under the Chairmanship of Minister in charge of the Higher Education who is also the Pro-Chancellor under the Universities Act with

other members and *academicians* was convened and the said issue was discussed in detail and then only, considering the necessary aspects has taken a decision to appoint the 3rd respondent as the Registrar of the University.”

(emphasis supplied by me)

16. The impugned order shows that a meeting took place on 29.01.2013, in which the Higher Education Minister, Department officials and *Experts in Education* participated and as per the opinion of the *experts present in the meeting*, the decision was taken to appoint the 3rd respondent as Registrar of the University.

17. In the first instance, the file being with the Principal Secretary upto 24.01.2013 and 25th to 27th of January 2013 being non working days, if the file was sent to the Office of the Minister for Higher Education, a noting to that effect could have been made in the file. As already observed,

paragraph 21 containing the signature of the Principal Secretary bears the date of 24.01.2013. Paragraphs 22 and 23 are of the date 29.01.2013. No noting regarding the file having been submitted on 28.01.2013 to the office of the Minister by the Office of the Principal Secretary, Higher Education is appearing.

18. Further, the instruction of the Minister to convene a meeting on 29.01.2013 has not been recorded on the noting side, even by the private secretary. Even the meeting, members for the meeting, the venue of the meeting and subject for the meeting has not been recorded. In the counter the 1st respondent having stated that *members and academicians* participated in the meeting and the impugned order showing that *experts* participated and rendered opinion, except the name of Mr.K.M.Kaveriyappa, which can be found

only in the two affidavits filed, noticed *supra*, there is no '*other expert*' who has attended the meeting. The holding of meeting of the members, experts/academicians is doubtful. In my view, after 24.01.2013, nothing has taken place in a transparent manner. Procedural fairness is lacking. If the file has moved from the office of the Principal Secretary on 28.01.2013 to the office of the Minister and without there being any instructions given by the Principal Secretary to the Personal Secretary of the Minister, the Personal Secretary to the Minister had no occasion to obtain instruction of the Minister who was out of station and organised the things. The convening and holding of meeting dated 29.01.2013 being doubtful, the impugned order having been cleverly drafted, the same having no support from the notings made in the file, a devise of filing of the affidavits, noticed *supra*, has been adopted, to

sustain the arbitrary selection of the 3rd respondent to the post. As, the list forwarded by the Vice Chancellor of the University did not contain the name of the 3rd respondent, there was an obligation to record reasons in detail, in the proceedings with regard to the candidature of 3rd respondent. No doubt, this Court while passing the order dated 16.01.2013 in W.P. No.75002/2013, had directed the Government to consider the cases of the petitioner, 3rd respondent and other eligible candidates for appointment to the post of Registrar of the University. The 1st respondent, in the first instance, has not followed the ratio of law in the order passed by the Division Bench in Writ Petition No.4340/2012 (S-RES) dated 21.11.2012, more particularly, with respect to the observations made in paragraphs 39 and 42, reproduced *supra* and secondly, the meeting, if had been held, proceedings said to have been drawn do not form

a part of the file. What transpired in the meeting ought to have been a part of the file itself. The file is totally silent with regard to the convening of meeting and the out-come. To make it appear that, the experts were consulted, in the statement of objections filed, the stand as noticed *supra*, was taken and even in the impugned order an attempt has been made to appear as if the experts were consulted and their opinion was taken. The claim made having no support from the file, with regard to the convening and holding of meeting, the two affidavits filed can-not be accepted. In this connection it is appropriate to notice the decision of the Apex Court in the case of *MOHINDER SINGH GILL AND ANOTHER VS. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS [(1978) 1 SCC 405]*, wherein, it has been held as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji (Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16)*:-

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively

with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

19. This Court while passing the order dated 16.01.2013 did not direct that the consideration should be *limited* to the petitioner and 3rd respondent. It was made clear therein that the 1st respondent shall consider the cases of *other eligible candidates* for appointment to the post of Registrar of the University. Though, the Vice Chancellor of the University forwarded the list of eligible candidates, which has in it three other candidates, the Government while taking the impugned decision, has given a clear go-bye with regard to the three other candidates are concerned. Further, the Government has taken it for granted that, only the persons working in the Karnataka University are required to be considered

and not others having qualification and working in other Universities, in as much as this court on 16.01.2013 directed the Government to consider the other candidates also for appointment to the post of Registrar of the University. The consideration having been *limited only* to the petitioner and the 3rd respondent, the 1st respondent has not complied with the directions issued in the order passed on 16.01.2013 in W.P. No.75002/2013.

20. Even otherwise, there is a legal infirmity, in that, the case of the 3rd respondent has been considered not that of the petitioner i.e., in the same manner as that of the 3rd respondent. Discrimination in the matter of consideration is apparent. There is no proper evaluation of the cases of the petitioner, 3rd respondent and others.

In the circumstances, Annexure-A is vitiated and is liable to be quashed.

In the result, the writ petition is ***allowed*** and the impugned order, as at Annexure-A is quashed. The 1st respondent is directed to fill the post of Registrar of the 2nd respondent-University by keeping in view the ratio of law in the order dated 21.11.2012 passed in W.P. No.4340/2012 (S-RES), more particularly, at paragraphs 39 and 42 extracted supra and also the direction issued in the order dated 16.01.2013 passed in W.P. No.75002/2013.

The entire process be completed within a period of four weeks from the date a copy of this order becomes available to the 1st respondent.

However, keeping in view the fact that the 3rd respondent has taken charge of the post and has

been functioning as the Registrar of the 2nd respondent/University, I do not consider it to be expedient to disturb the working, as frequent change would hamper the functioning of the University. In the past three months, three persons have worked as Registrar of the 2nd respondent-University, which has not done any thing good to the University. Keeping in view the said circumstance, till the 1st respondent takes a decision, in the manner directed herein, *as an interim measure*, the 3rd respondent is permitted to function as the Registrar of the 2nd respondent-University. The 1st respondent is directed to complete the process expeditiously and within the time allowed.

No costs.

**SD/-
JUDGE**

KMS/RK/BVV/-