

Shri Ishwar Chandra

Vs

Shri Satyanarain Sinha and Others

Civil Appeal No. 243(N) Of 1971

K. S. Hegde, P. Jagmohan Reddy, J, M Shelat JJ)

14.03.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This is an appeal by special leave against the summary dismissal of a Writ Petition filed by the appellant against the order of the Chancellor of the Saugar University, dated June 15, 1970, by which his appointment as Vice-Chancellor of that University was cancelled.
2. It may at the outset be mentioned that the appointment of the Vice-Chancellor of the Saugar University is made by the Chancellor of that University under Section 13 of the University of Saugar Act, 1946 (hereinafter referred to as "the Act") from a panel of not less than three persons recommended by the Committee constituted under sub-section (2) of that section. The Committee to be constituted under sub-section (2) was to consist of three persons, two of whom shall be elected by the Executive Council by single transferable vote from amongst persons not connected with the University of a College and the third shall be nominated by the Chancellor who also empowered to appoint one of them as Chairman of the Committee. It is unnecessary to refer to other provisions of this section because these are not relevant for the purpose of this appeal. It appears that under the above provisions a Committee to submit a panel of names for the appointment of a Vice-Chancellor for the University was duly constituted consisting of two persons elected by the executive Committee of University, namely, G. K. Shinde, Retired Chief Justice T. P. Naik of the Madhya Pradesh High Court while the third member Shri C. B. Agrawal, Retired Judge of the Allahabad High Court was nominated by the Chancellor, Rajmata Vijaya Raje Scindia who also appointed G. K. Shinde as the Chairman of the Committee. The Chairman thereafter appears to have carried on a correspondence to fix a convenient place and time for the meeting, which was ultimately fixed at Indore on April 4, 1970. Justice Naik was, however, unable to attend the meeting and in his absence the other two persons, Shri Shinde and Shri Agrawal met as a Committee and submitted a panel of names from which the Chancellor appointed the appellant on April 7, 1970, as a Vice-Chancellor with effect from June 22, 1970, for a period of five years. The appellant at the time of the appointment, it seems, was acting as Vice-Chancellor.
3. On April 9, 1970, the Governor of Madhya Pradesh, Shri K. C. Reddy promulgated Ordinance No. 1 of 1970, by Section 2 of which sub-section (1) of Section 11 was substituted by a new sub-section (1) where under the Governor of Madhya Pradesh was made an ex-officio Chancellor of that University. By Section 3, it was provided that as from the date of the coming into force of that Ordinance, the Chancellor in office immediately before the date aforesaid shall cease to hold office of the Chancellor and the Governor of Madhya Pradesh shall assume the said office. By virtue of this Ordinance Rajmata Vijaya Raje Scindia ceased to be the Chancellor. On April 23, 1970, the

Governor again passes another Ordinance by Section 2 of which he substituted Section 43 of the Act by a new Section 43. By Section 3 a new Section 43-A was also added. Section 4 made the amendments made by Sections 2 and 3 to operate retrospectively as from the commencement of the original Act. The amended Section 43 and 43-A are as follows.

"43. If any question arises whether any person has been duly appointed, elected, nominated or co-opted as, or is entitled to be, a member of any authority or other body of the University or any officer of the University, the matter shall be referred to the Chancellor whose decision thereon shall be final.

43-A. The Chancellor may, either on his motion or on the application of any interested, review any order passed by himself or his predecessor in office if he is of the opinion that it is not in accordance with the provisions of this Act, the Statutes, the Ordinance or the Regulations or is otherwise improper and pass such orders in reference thereto as he may think fit."

4. After the above Ordinances were promulgated, the Secretary to the Governor of Madhya Pradesh wrote on May 20, 1970, to the appellant as follows :

"The question has come up before the Chancellor whether the meeting of the Committee constituted by his predecessor under Section 13(2) of the Act held on April 4, 1970, at Indore at which only two members out of the three were present was legal, and whether the recommendations made by the Committee at that meeting were legally valid. The Chancellor has been advised that the meeting held on April 4, with only two members present and the decisions taken at the meeting were not legal. As consequence, the orders issued by the University office, dated April 14, would have to be rescinded.

Before the Chancellor takes action in accordance with legal advice, he has desired that you should be asked if you have anything to state why such action should not be taken. I am desired to request you to send your reply as early as possible, and at the latest within a week."

5. To this letter the appellant sent a reply on June 9, 1970, after having earlier obtained an extension of time. In that reply he tried to make out a case that the recommendation of the Committee of two members out of three was perfectly valid and in support of it he cited various authorities and also a precedent of the same Governor who as the Chancellor of Indore University seems to have maintained the selection made by his predecessor in similar circumstances. The Governor did not, however, accept the appellant's plea but passed the following impugned orders on June 15, 1970 :

"Whereas, on applications made in that behalf, the Chancellor is of the opinion that order, dated April 7, 1970, passed by his predecessor in office appointing Shri Ishwar Chandra as Vice-Chancellor of the University of Saugar with effect from June 22, 1970, for a period of five years is not in accordance with provisions of Section 13 of the University of Saugar Act, 1946 (XVI of 1946) (hereinafter referred to as the said Act);

Now, therefore, in exercise of the powers conferred by Section 43-A of the said Act, I, the Chancellor of the University of Saugar, hereby -

(i) Cancel the aforementioned order, dated April 7, 1970, appointing Shri Ishwar Chandra as Vice-Chancellor; and (ii) Direct that the committee be constituted for submission of panel in accordance with the provisions of Section 13 of the said Act."

6. On July 1, 1970, a writ petition was filed in the High Court of Madhya Pradesh and it appears that on July 3, 1970, the Court directed the appellant to produce the correspondence between the Chairman and the members of the Selection Committee in respect of the meeting to be held to recommend the names for the appointment of a Vice-Chancellor. The appellant, it seems, produced the correspondence with an affidavit on July 25, 1970, stating that he had obtained the correspondence from the Chairman of the Committee, the former Chief Justice Shinde. On September 3, 1970, rule nisi was refused. On September 19, 1970, the application for leave to appeal to the Supreme Court was also rejected. In the latter order two facts had been stated which have been challenged as incorrect. The first one was that the Chairman had at first fixed Bhopal as the venue of the meeting and secondly that as the working Vice-Chancellor of the University, the petitioner had access to all the documents relating to the meeting and his detailed reply given to the Chancellor was grounded on some of them. Though there is some justification in these contentions what has to be seen is whether the order rejecting the writ petition was justified, and if so, now that the order of the Chancellor has been impugned, is that order valid. It is clear from the Governor's impugned order that the appellants' appointment was held to be invalid because only two members of the Committee were present at the meeting. The High Court while holding that in the absence of any provision in the relevant enactment or the rules or regulations made thereunder, a majority of members of a selection committee like the one in the case before than would constitute quorum, however, presumed that the question for consideration of the Chancellor was not merely one relating to the existence of the quorum requisite for a valid meeting but something different. On that assumption it examined the correspondence which ensued between the Chairman and Justice T. P. Naik to ascertain whether in fact a valid meeting had been called. According to the learned Judges, Justice Naik had written to the Chairman to say that he, the Chairman, was determined to hold the meeting presumably in his absence, and, therefore, the High Court thought that if the Chancellor, acting under Section 43-A of the Act formed the opinion that the meeting held on that date was not legal, it cannot be said that there was no prima facie material for the formation of that opinion, reached by him after giving to the petitioner an opportunity to state why the action proposed should not be taken.

7. The assumption in this order rejecting the Writ Petition is not warranted, firstly, because the correspondence does not show that there was any deliberate attempt made by the Chairman to exclude one of the members in this case, Justice T. P. Naik, and secondly, that the Chancellor had, because of this exclusion, declared the meeting held on April 4, 1970, as not being valid. We have already pointed out that the Chancellor was merely concerned with the legality of the recommendation made by two out of three members and not that any attempt was made by the Chairman to exclude one of the Neither the show-cause notice, nor the reply given by the appellant to that notice, nor even the Order of the Chancellor indicates any such ground as that assumed by the High Court to form the basis of the Chancellor's order. The correspondence shows that the Chairman had written a letter on February 12, 1970, in which he inquired of Justice Naik whether March 7 and 8, 1970, would suit him to meet at Bhopal to consider the names for the panel. Later on February 20, 1970, he wrote another letter saying that the other member was abroad, and therefore, the meeting which was proposed to be held on the 7th or 8th cannot be held and that he would let him know when a new date was fixed. In fact, Justice Naik replied on February 27, 1970, acknowledging these letters and asking him to let him know the date of the meeting as and when fixed. On March 8, 1970, Mr. Shinde again wrote to Justice Naik fixing the meeting on March 12,

1970, at 10.30 a.m. at Indore and also suggested that if necessary they may meet on the next day, March 22, 1970. On March 16, 1970, Shinde sent a telegram to Justice Naik asking him to wire if April 4, was suitable at Indore. On March 18, 1970, he again sent a telegram to him saying, "Doctors Forbid travel stop wire whether April 4 and 11, suitable for Indore." Justice Naik sent two telegrams, one on March 21, 1970, saying that 4th is suitable at Saugar or Bhopal and another on March 27, 1970, stating that both 4th and 11th suitable at Saugar or Bhopal. He also wrote two letters on the 26th and 27th to Shinde. Shinde had earlier written on March 24, 1970, to Justice Naik in which he said as follows :

"The contents of your telegram were conveyed to me on the phone to-day. It appears that April 4 and 11, both are suitable to you at Saugar and Bhopal. As I told you before, I am recovering from the attack of virus fever and am, therefore, not strong enough to undertake a car journey of 120 miles to Bhopal. There is no convenient plane to come to Bhopal either. If I come by plane I shall have to stay over the night at the Circuit House and as I am still on diet, the Circuit House food will not suit me. As you can come up to Bhopal you can easily come to Indore either by Car or by Plane. The Plane leaves Bhopal at about 9.00 a.m. and reaches Indore at about 9.30 a.m. After attending the meeting you can leave by plane which leaves for Bhopal at about 2.00 p.m. As far as lunch is concerned, if you let me know if you are vegetarian or non-vegetarian, I can arrange to give you lunch at my place. If it is impossible for you to come to Indore I would request you to send me your suggestions regarding suitable names for the post of Vice-Chancellor of the Saugar University by April 3. I would, however, request you to make it convenient to attend the meeting at Indore. I have already sent you a telegram to the effect that the meeting is fixed on April 14 at Indore in the meeting Room of the University of Indore at 11.30 a.m.

Hoping to hear from you by the return of post and with kind regards."

8. Before this letter reached to the telegram received by him, Justice Naik wrote a letter to Shinde as follows :

"I am in receipt of your telegram intimating to me that you have fixed the meeting to consider panel of names for Saugar University on April 4, 1970, at 10.30 a.m. at Indore in the Indor University. I regret my inability to be present at Indore on the date and time specified, though I may be able to attend the meeting if the venue is changed to Bhopal.

It is very surprising that you should have fixed the meeting on April 4, at Indore, even though I had informed you by a telegram on March 17, 1970, that it would not be possible for me to attend it there on that date.

Anyway, knowing full well that it would not be possible for me to be present at Indore at 10.30 a.m. on April 4, 1970, you seem determined to hold the meeting there presumably in my absence. I can only regret your decision.

If you are still interested in having my presence for the meeting, you may fix it either on April 4 or 11, 1970, at Saugar or Bhopal, though Bhopal would be more convenient to me personally.

I hope you have recovered from the effects of your illness by now."

9. This letter shows that though Justice Naik knew about the illness of Shinde, he somehow seems to have assumed, and if we may say so, without justification that Shinde was determined to hold it there presumably in his absence. On March 27, 1970, the next day, he however, after the receipt of the letter of the 24th instant from Shinde did not take up the attitude that the meeting was being held presumably to keep him away from attending it. Justice Naik, however, tried to explain his difficulty.

He said :

"I am in receipt of your letter, dated March 24, 1970. I am sorry to note that you have not yet recovered from the effects of your illness. I do hope you shall soon get well.

As for my coming to Indore, I had considered the possibility of my going there by air from Bhopal but I am informed that the journey is very bumpy these days due to weather conditions and I do get terribly sick if the journey is bumpy. I had, therefore, to give up the idea of going by air and as I cannot spare more than a day for the meeting, I had intimated to you that it would not be possible for me to come to Indore for the meeting scheduled for April 4, 1970, at 10.30 a.m. in Indore University.

As for your kindly suggestion that I may by a letter suggest names to you for your consideration, I am of opinion that it would not only not be fair to the persons whose names I may suggest but also not be in keeping with the letter and spirit of the Saugar University Act.

With kind regards."

10. This letter clearly negatives the assumption in the High Court's order that Shinde was trying to keep out Justice Naik from the meeting. On the other hand, Shinde in that letter had requested Justice Naik to suggest names of persons to be considered which prima facie negatives any intention on his part to keep Justice Naik away from the meeting. There is also nothing in the materials on the record to show that the correspondence cited above was perused by the Chancellor either at the time when the show cause notice was given to the appellant or at the time of making the impugned order. It cannot, therefore, be assumed that the Governor was influenced by the above correspondence. It is rather unfortunate that the appellant's Writ Petition was dismissed in limine and without a proper appreciation of all the relevant facts. There is little doubt that the impugned Order made by the Chancellor was based entirely on the legality of the meeting where only two out three members were present when the name of the appellant was recommended. The High Court delved into the correspondences to sustain the order of the Chancellor on grounds other than those relied upon by him in that order for dismissing the Writ Petition in limine which, in our view, was not justified. It is also not denied that the meeting held by two of the three members on April 4, 1970, was legal because sufficient notice was given to all the three members. If for one reason or other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be invalid.

11. This proposition is well recognised and is also so stated in Halsbury's Laws of England, Third Edition (Vol. IX, page 48, Para 95). It is, therefore, unnecessary to refer to any decisions on the subject. In the view we have taken, the appeal is allowed with costs against respondent 3, the Order of the Chancellor revoking the appointment of the appellant is set aside and the appellant is declared to have been validly appointed as Vice-Chancellor of the Saugar University as from June 22, 1970.

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