

Marathwada University

Vs

Seshrao Balwant Rao Chavan

Civil Appeal No. 3927 of 1986

(K. Jagannatha Shetty, Kuldip Singh JJ)

13.04.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by leave is from a decision of the Bombay High Court which allowed the respondent's petition for a writ of certiorari. In so doing the court quashed departmental proceedings initiated against the respondent and the resultant order terminating his services.
2. The facts are substantially undisputed and may briefly be stated as follows :

Respondent-Seshrao Balwant Rao Chavan was at the relevant time the Deputy Registrar of the Marathwada University. One Mr. Yelikar was working then as Controller of Examinations. In or about April 1976, Mr Yelikar proceeded on leave and the present respondent was directed to discharged the duties of the Controller of Examinations. Accordingly, he joined his new assignment and continued to hold that post when the controversy which culminated in his dismissal took place.

3. It is said that one Mr. Swaminathan from Madras was entrusted with the printing works needed to conduct annual examinations of the University for the years 1974 and 1975. Mr. Swaminathan submitted his bills amounting about Rs. 6,00,000 for the work performed by him. The bills were not cleared immediately, and Mr. Swaminathan complained to the University authorities. He also submitted a petition to the Prime Minister of India which was forwarded to the University for immediate action. This led to an enquiry to find out whether the bills were deliberately kept pending with any ulterior motive. The Executive Council of the University appointed a four-member committee including the Vice-chancellor to enquire into the matter. The committee after investigation submitted a report in November 1977 making some prima facie observations against the respondent. Thereupon, the Executive Council desired to have the matter thoroughly examined by another committee. It appointed Mr. N. B. Chavan for the purpose. Mr Chavan made a detailed enquiry but found nothing against the respondent. On December 23, 1978, he submitted a report stating inter alia that there was no delay in clearing the said bills and if there was any delay, it was justified in the circumstances. He has stated that the University utilised the time for internal audit in which it was found that the claim of Mr. Swaminathan was excessive to the extent of Rs. 48,000 and odd. The report of Mr. Chavan thus gave a clean chit to the respondent as to his conduct in discharging the duties as Controller of Examinations.

4. If the Executive Council had accepted the report and closed the matter that would have been better. But unfortunately, it was not done and another chapter was opened. On March 22, 1979, the

report of Mr Chavan was placed before the Executive Council which without taking any decision entrusted to question to the Vice-Chancellor. The Vice-Chancellor was present in that meeting and agreed to take a decision in about a month. But what he did was entirely different. Purporting to act under the powers given to him by the Executive Council, he directed departmental enquiry against the respondent. He appointed Mr Motale, advocate as an Inquiry Officer who framed three charges : First charge impeached the respondent of intentionally delaying the clearance of the bills of Mr Swaminathan and thus tarnishing the image of the University. Second charge alleged that the respondent did not place before the Executive Council, the letters addressed by the Chancellor of the University on July 23, 1976 and August 19, 1976. Third charge accused the respondent for not producing all the available papers for scrutiny by the one-man committee headed by Mr Chavan.

5. On October 26, 1979, Mr Motale submitted his enquiry report to the Vice-Chancellor holding the respondent guilty of the charges. After the usual procedure of giving show-cause notice and considering the reply thereto, the Vice-Chancellor decided to dismiss the respondent. On January 2, 1980, he accordingly made an order.

6. The matter did not rest there. The respondent moved the High Court under Article 226 of the Constitution challenging his dismissal. When the writ petition first came up for hearing in November 1985, the High Court took a very curious stand. It observed that the entire matter be placed before the Executive Council for taking an appropriate decision. As per this observation, the matter came up before the Executive Council in the meeting held on December 26/27, 1985. The Executive Council passed a resolution inter alia, ratifying the action taken by the Vice-Chancellor and confirming the dismissal of the respondent. This has added a new dimension to the case.

7. At the final disposal of the writ petition, the High Court, however, examined the merits of the matter. The High Court held that the action taken by the Vice-Chancellor was without authority of law. As to the ratification made by the Executive Council, the High Court held : "That the acts done by the Vice-Chancellor remain the acts without any authority or powers and that defects cannot be cured by the subsequent resolution." With the conclusion, the High Court quashed the departmental proceedings taken against the respondent and also the order of termination of his services.

8. Being aggrieved by the judgment, the Marathwada University by obtaining special leave has appealed to this Court.

9. Learned counsel for the appellant put his contention in two ways : First, he said that on the true construction of the relevant provisions of the Marathwada University Act, 1974, the termination of services of the respondent cannot be assailed for want of power or jurisdiction on the part of the Vice-Chancellor. Counsel next said that if the order was defective or without authority, the ratification by the Executive Council has rendered it immune from any challenge.

10. In order to appreciate these submissions, we must outline the statutory provisions of the Marathwada University Act, 1974 (called shortly "the Act"). Section 8 specifies the officers of the University. The Vice-Chancellor is one of the officers. Section 10 provides for appointment of the Vice-Chancellor. He shall be appointed by the Chancellor and shall ordinarily hold office for a term of three years. Section 11 reads, so far as material, as follows :

11(1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall in the absence of the Chancellor, preside at the meetings of the Senate and at any convocation of the University.....

(3) It shall be the duty of the Vice-Chancellor to ensure that the provisions of this Act, the statutes, ordinances and Regulations are faithfully observed. The Chancellor shall, for this purpose, have the power to issue directions to the Vice-Chancellor who shall give effect to any such directions.

(4) If there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, he shall take such action as he thinks necessary and shall, at the earliest opportunity, report in writing the grounds for his belief that there was an emergency, and the action taken by him, to such authority or body as would, in the ordinary course, have dealt with the matter.....

(6) (a) It shall be lawful for the Vice-Chancellor, as the principal executive and academic officer, to regulate the work and conduct of the officers, and of the teaching, academic and other employees of the University, in accordance with the provisions of this Act, the statutes, Ordinances and Regulations.....

(7) The Vice-Chancellor shall exercise such other powers and perform such other duties as are prescribed by the statutes, Ordinances and Regulations.

11. Section 19 enumerates the authorities of the University. The Executive Council is one of the authorities specified thereunder.

12. Section 23 to the extent necessary is in the following terms :

23 (1) The Executive Council shall be the principal executive authority of the University, and shall consist of the following members, namely : (i) the Vice-Chancellor-ex-officio Chairman.

13. Section 24 deals with the powers and duties of the Executive Council. These powers and duties are wide and varied and it is sufficient if we read sub-sections (1), (xxix) and (xli) of Section 24. They are as follows :

24(1) Subject to such conditions as are prescribed by or under this Act, the Executive Council shall exercise the following powers and perform the following powers and perform the following duties, namely, -

(xxix) appoint officers and other employees of the University, prescribe their qualifications, fix their emoluments, define the terms and conditions of their service and discipline and where necessary, their duties.....

(xli) delegate, subject to the approval of the Chancellor, any of its powers (except the power to make Ordinances), to the Vice-Chancellor, the Registrar or the Finance Officer, or such other officers or authority of the University or a committee appointed by it, thinks fit.

14. Two other provisions are material, namely, Sections 37 and 84. Section 37, omitting the unnecessary, is in these terms :

37. Subject to the conditions prescribed by or under this Act, the Senate may make

the statutes to provide for all or any of the following matters namely :

(xvi) The term of office, duties and conditions of service of officers, teachers and other employees of the University, the provisions of pension, insurance and provident fund and the manner of termination of their service and other disciplinary action and their qualifications, except those of teachers.

15. Section 84 is as follows :

84. Delegation of powers. - Subject to the provisions of this Act and statutes any officer or authority of the University may, by order, delegate his or its powers, except the power to make statutes, Ordinances and Regulations, to any other officer or authority under his or its control, and subject to the conditions that the ultimate responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating them.

16. With these provisions, we turn to consider the first question urged for the appellant. The question is whether the Vice-Chancellor was competent to direct disciplinary action against the respondent. In this context, we may make a few general observations about the position and powers of the Vice-Chancellor. The University Education Commission in its report (Vol. I December 1948 to August 1949) has summarised the powers and duties as follows (at 421) :

Duties of Vice-Chancellor. - A Vice-Chancellor is the chief academic and executive officer of his university. He presides over the court (Senate) in the absence of the Chancellor, Syndicate (Executive Council) Academic Council, and numerous committees including the selection committees for appointment of staff. It is his duty to know the senior members of the staff intimately and to be known to all members of the staff and students. He must command their confidence both by adequate academic reputation and by strength of personality. He must know his university well enough to be able to foster its points of strength and to foresee possible points of weakness before they become acute. He must be the 'keeper of the university's conscience', both setting the highest standards by example and dealing promptly and firmly with indiscipline and malpractice of any kind. All this he must do and it can be done as constitutional ruler; he has not, and should not have autocratic power. Besides this he must be the chief liaison between his university and the public, he must keep the university alive to the duties it owes to the public which it serves, and he must win support for the university and understanding of its needs not merely from potential benefactors but from the general public and its elected representatives. Last, he must have the strength of character to resist unflinchingly the many forms of pressure to relax standards of all sorts, which are being applied to universities today.

17. This has been approved by the Education Commission, 1964-66. In the report of the Education Commission, 1971 (at 610-11 para 13.32) it was stated :

The person who is expected, above all, to embody the spirit of academic freedom and the principles of good management in a university is the Vice-Chancellor. He stands for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. His selection should, therefore, be governed by this overall consideration.

18. Dr A. H. Homadi in his wise, little study about the role of the Vice-Chancellor in the university administration in developing countries has this to state (at 49) :

The President or the Vice-Chancellor :

The President must be willing to accept a definition of educational leadership that brings about change to the academic life of the institution. He must be fired by a deep concern for education. He should instil a spirit and keenness about growth and development in such a way that the professoriate feels that their goals are interlinked with those of the University, that their success depends upon the success of the University. The professors should be given detailed information about the jobs that they to perform and their good performance should be given due recognition by administration leadership. Even such small encouragement will boost their morale to greater heights. The President should have faith in his own abilities as well as on the abilities of other professors and administrators and should provide guidelines about the kind of efforts he would like his professors and administrators to make, setting an example by his own actions and exercises. The negative force of fear, when used and no one denies that an element of hardheadedness is sometimes required as a persuasive inducement to professors and administrators of university should be employed judiciously. Under no circumstances should the apathy and belligerence of the professors and administrators be aroused. These call for strong but sympathetic leadership in the President.

19. The Vice-Chancellor in every university is thus the conscience keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, statutes, ordinances and Regulations are observed by all concerned [Section 11(3)]. The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University [Section 11 (6)(a)]. He has also emergency powers to deal with any untoward situation [Section 11(4)]. The power conferred under Section 11(4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is, in our view, plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations.

20. Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24 (1) (xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th

end., para 32) summarises these principles as follows :

32. Sub-delegation of powers. - In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind.

21. The counsel for the appellant next submitted that the Executive Council in the instant case had delegated its disciplinary power to the Vice-Chancellor and the Act provides for such delegation. In support of the contention he relied upon the following resolution of the Executive Council :

Full Power be given to the Vice-Chancellor to take a decision on this question and the Vice-Chancellor informed the Executive Council that he will take decision in about a month. On this decision, Shri Gangadhar Pathrikar gave his opinion that the Executive Council should take a decision on the note dated January 16, 1979 submitted by him and other two members and since it was not accepted, he does not agree with the above decision.

22. This resolution, in our opinion, is basically faulty at least for two reasons. It may be recalled that the Executive Council without considering the report of Mr Chavan, wanted the Vice-Chancellor to take a decision thereon. It may also be noted that the Vice-Chancellor was present at the meeting of the Executive Council when the resolution was passed. He was given "full power to take a decision" which in the context, was obviously on the report of Mr Chavan, and not on any other matter or question. He said that he would take a decision in about a month. In our opinion, by the power delegated under the resolution, the Vice-Chancellor could either accept or reject the report with intimation to the Executive Council. He could not have taken any other action and indeed, he was not authorised to take any other action.

23. The other infirmity in the said resolution goes deeper than what it appears. The resolution was not in harmony with the statutory requirement. Section 84 of the Act provides for delegation of powers and it states that any officer or authority of the University may by order, delegate his or its power (except power to make Ordinance and Regulations) to any other officer or authority subject to provisions of the Act and statutes. Section 24 (1)(xli) provides for delegation of power by the Executive Council. It states that the Executive Council may delegate any of its power (except power to make Ordinances) to the Vice-Chancellor or to any other officer subject to the approval of the Chancellor. (emphasis ours) The approval of the Chancellor is mandatory. Without such approval the power cannot be delegated to the Vice-Chancellor. The record does not reveal that the approval of the Chancellor was ever obtained. Therefore, the resolution which was not in conformity with the statutory requirement could not confer power on the Vice-Chancellor to take action against the respondent.

24. This takes us to the second contention urged for the appellants. The contention relates to the legal effect of ratification done by the Executive Council in its meeting held on December 26/27, 1985. The decision taken by the Executive Council is in the form of a resolution and it reads as follows :

Considering the issues, the Executive Council resolved as follows :

1. The Executive Council as its meeting held on March 22, 1979, had by a resolution given full authority to the Vice-Chancellor for taking further proceedings and decision in both the cases of the defaulting officers.

2. In exercise of above authority, the Vice-Chancellor appointed and Inquiry Officer and as suggested by the Inquiry Officer issued show cause notices, obtained replies from the officers and lastly issued orders for terminating their services;

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It was further resolved that -

(i) There has been no inadequacy in the proceedings against both the officers;

(ii) The punishment ordered against both the officers is commensurate with the defaults and allegations proved against both the officers; and

(iii) The Executive Council, therefore, wholly, endorses the actions taken by the then Vice-Chancellor against both the officers.

25. By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's Law of Agency (5th edn.) Chapter 5 at p. 73, the principle of ratification has been explained :

What the 'agent' does on behalf of the 'principal' is done at a time when the relation of principal and agent does not exist : (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done. The interesting point, which has given rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification : it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorised from the outset to act as he did. Ratification is 'equivalent to an antecedent authority'.

26. In Bowstead on Agency (14th edn.) at p. 39 it is stated :

Every act whether lawful or unlawful, which is capable of being done by means of an agent (except an act which is in its inception void) is capable of ratification by the person in whose name or on whose behalf it is done..... The words "lawful or unlawful", however, are included primarily to indicate that the doctrine can apply to torts. From them it would follow that a principal by ratification may retrospectively turn what was previously an act wrongful against the principle, e.g. an unauthorised sale, or against a third party, e.g. a wrongful distress, into a legitimate one; or become liable for the tort of another by ratifying.

27. These principles of ratification, apparently do not have any application with regard to exercise

of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.

28. The counsel for the appellant, however, invited our attention to the case of Parmeshwari Prasad Gupta v. Union of India ((1973) 2 SCC 543 : (1974) 1 SCR 304). It was a case of termination of services of the Secretary of a Company. The Board of Directors decided to terminate the services of the Secretary. The Chairman of the Board of Directors in fact terminated his services. Subsequently, in the meeting of the Board of Directors the action taken by the Chairman was confirmed. In the suit instituted by the Secretary challenging the termination of his services, the court upheld on the principle that the action of the Chairman even though it was invalid initially, could be validated by ratification in a regularly convened meeting of the Board of Directors. Mathew, J. while considering this aspect of the matter, observed : (SCC pp. 546-47, para 14 : SCR pp. 307-08)

Even if it be assumed that the telegram and the letter terminating the service of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validity terminated on December 17, 1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim.

29. These principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. We were also referred to the decision of the Court of Appeal in Barnard v. National Dock Labour Board ((1953) 1 All ER 1113) and in particular the observation of Denning, L. J. : (All ER 1118 and 1119)

While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions, unless it is enabled to do so expressly or by necessary implication. In Local Government Board v. Arlidge ((1915) AC 120 : 84 LJKB 72) the power to delegate was given by necessary implication, but there is nothing in this scheme authorising the board to delegate this function and it cannot be implied. It was suggested that it would be impracticable for the board to sit as a board to decide all these cases, but I see nothing impracticable in that. They have only to fix their quorum at two members and arrange for two members, one from each side, employers and workers, to be responsible for one week at a time.

Next, it was suggested that, even if the board could not delegate their functions, at any rate they could ratify the actions of the port manager, but, if the board have no power to delegate their functions to the port manager, they can have no power to ratify what he had already done. The effect of ratification is to make it equal to a prior command, but as a prior command, in the shape of delegation, would be useless, so also is a ratification.

30. These observations again are of little assistance to us since we have already held that there was no prior delegation of power to the Vice-Chancellor to take disciplinary action against the

respondent. There was no subsequent delegation either. Therefore, neither the action taken by the Vice-Chancellor, nor the ratification by the Executive Council could be sustained.

31. In the result, the appeal fails and is dismissed with costs.

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