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DR. UMRAO SINGH CHOUDHARY

v.

STATE OF M.P. AND ANR.

MAY 2, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Constitution of India : Articles 136, 226—Notification under s.52 of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973—Vice-Chancellor to vacate office—Held, when State Government was satisfied as contemplated by s.52 court would not be justified in interfering in exercise of power under Article 136 or Article 226.

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Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 : Sections 13, 14, 52—Vice-Chancellor—Notification under s.52 providing that Vice-Chancellor ceased to be operative with immediate effect—Held, State Government was justified in issuing notification as it was satisfied that a situation had arisen in which administration of University could not be carried on in accordance with provisions of Adhiniyam,

E

Administrative Law : Judicial review—Notification under s.52 of M.P. Act No. 22 of 1973—Vice-Chancellor to vacate office—Held, action under s.52 statutory and subject to judicial review as envisaged by Articles 136 or 226 of the Constitution—However, Court would not sit in appeal over opinion of State Government.

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Natural Justice : Vice-Chancellor—Notification under s.52 of M.P. Act 22 of 1973—Held, s.52 by necessary implication excludes application of principles of natural justice.

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The petitioner was appointed as Vice-Chancellor under s.13 of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 on 5.9.1992. The Governor, issued a notification under s.51 of the Adhiniyam whereby the petitioner ceased to be the Vice-Chancellor w.e.f. 21.1.1994. The petitioner filed a writ petition before the High Court contending that the notification besides being *mala fide*, illegal and arbitrary, was violative of principles of natural justice as the action of the Governor was administrative and the petitioner was not afforded any opportunity. The High Court dismissed the writ

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petition. The petitioner filed the special leave petition.

Dismissing the special leave petition, this Court

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HELD : 1. The State Government was justified in issuing the notification under s.52(1) of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. [847-C]

2.1. The condition precedent to exercise the power under s.52(1) is the satisfaction as contemplated thereby of the State Government, i.e. the Governor with the aid and advice of the Council of Ministers, and recording of the reasons as mentioned therein. In the instant case, the State Government was satisfied that a situation had arisen in which the administration of the University could not be carried on in accordance with the provisions of the Adhiniyam and for better administration and to prevent detriment to the interest of the University, it issued the Notification 'for the reasons mentioned therein' and directed that ss.13 and 14 of the Adhiniyam would not apply. [pp. 846-F-H; 847-A]

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2.2. The action under s.52 is only statutory action, but subject to judicial review. However, the court would not sit in appeal over the opinion of the State Government. When, in the facts of the case, the State Government was satisfied of the situation contemplated by s.52(1), though the court may differ from the formation of that satisfaction, if questioned in an appeal, and may come to a different conclusion, it would not be justified to differ from the conclusion in exercise of the power of judicial review under Article 136 or under Article 226 of the Constitution. [p. 846-F; 847-A-B]

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S.R. Bommai v. Union of India, [1994] 3 S.C.C. 1, followed.

3. The principle of natural justice does not supplant the law, but supplement the law. Its application may be excluded, either expressly or by necessary implication. Section 52, in juxta-position to s.14, by necessary implication, excludes the application of the principles of natural justice. In view of this statutory animation it cannot be said that the petitioner is entitled to the notice and an opportunity before taking action under s.52(1). [846-B-C]

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 6800 of 1994.

From the Judgment and Order dated 21.2.94 of the Madhay Pradesh High Court in M.P. No. 125 of 1994.

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A A.K. Goel and Mrs. Sheela Goel for the Petitioner.

Satish K. Agnihotri for the Respondent.

The following Order of the Court was delivered :

B The pritioner was appointed as Vice Chancellor of Devi Ahilya Vishwavidalaya (University) on September 5, 1992 under s.13 of Madhya Pradesh Vishwavidayala Adhiniyam, 1973, for short 'Adhiniyam' for a period of four years and he had joined on September 17, 1992. The Governor exercising the power under s.52(1) of the Adhiniyam issued a notification on January 21, 1994 and by operation thereof the petitioner had ceased to be the Vice-Chancellor with effect from the said date. On January 22, 1994 the petitioner had moved a writ petition in the High Court of Madhya Pradesh to declare the action as *mala fide*, illegal, arbitrary, impinging his right to continue in office till September 17, 1996 and was violative of principles of natural justice. The division bench, by its order dated February 21, 1994, in Misc. Petition No. 125 of 1994 dismissed the petition. Thus this special leave.

E Two contentions were raised in the High Court as well as before us that the action of the Governor is administrative and omission to give opportunity to the petitioner is violative of principle of natural justice, apart from being a *mala fide* exercise of powers by the State Government. Since the Misc. Petition was taken up for hearing at the admission stage, records had been called for by the High Court and were made available by the Government. As stated in the judgment, the High Court felt it expedient to dispose of the case at the hearing stage itself. In those circumstances no counter affidavit was filed on behalf of the State Government. With a view to satisfy the tenability of the contentions raised vis-a-vis the material made available by the Govt. in support of the impugned order and to satisfy ourselves independently, we sent for the records and the counsel today placed the records before us. We have carefully gone through the record and also the note said to have been submitted to the Governor for consideration before issuing the notification. We have heard the counsel on both sides.

H Undoubtedly the petitioner was appointed under s.13 of the Adhiniyam and s.14 thereof provides an elaborate enquiry and reasonable opportunity for removal of the Vice Chancellor (Kulapati) from office

before, expiry of the term, obviously as a measure of punishment. Section 52(1) of the Adhiniyam equally empowers the State Govt. in a modified form, to satisfy that "if the State Govt. on receipt of a report or otherwise, satisfied that situation has arisen in which the administration of the university cannot be carried out in accordance with the provisions of the Act, without detriment to the interest of the University, and it is expedient in the interest of the University so to do, it may by notification, for reasons to be mentioned therein, direct that the provision of ss. 13, 14, 20 to 25, 40, 47, 54 and 68 shall, as from the date specified in the notification, apply to the university, subject to the modification specified in the schedule". On issuance thereof the Vice Chancellor shall cease to hold office by operation of sub-s.(4) of s.52, Clause II thus :

"The Kulpati, holding office immediately before the appointed date, shall notwithstanding that his term of office has not expired, vacate his office."

By operation thereof the applicability of ss.13 and 14 stood modified and the need to conduct a regular enquiry against the petitioner was obviated. On issuance of the notification under s.52(1) and on and with effect from the said date the Vice Chancellor, by operation of S.52(4) shall, notwithstanding his term of office had not been expired, is required to vacate his office. In other words, he ceased to hold the office. It is found as a fact that the petitioner ceased to hold office with effect from January 21, 1994 and the new incumbent had assumed office.

Though the contention of *mala fides* has been repeated by the learned senior counsel, when we pointed out, that the petitioner had not made any specific allegation against any specified officer or holder of the office, nor impleaded any officer or holder of the office as a party respondent, in fairness, the learned Senior counsel did not pursue the line of argument. Nonetheless it was contended that the petitioner was entitled to be afforded an opportunity of being heard before passing the impugned notification and the order passed in violation thereof offends the principle of natural justice. We find no force in the contention. Section 14 engrafts an elaborate procedure to conduct an enquiry against the vice Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office. Section 52 engrafts an exception thereto. The condition precedent, however, is that the State Govt. should be satisfied,

A obviously on objective consideration of the material relevant to the issue, as on record, that the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interest of the University, and that it is expedient in the interest of the University and for proper administration thereof, to apply in a modified form, excluding the application of ss.13 and 14, etc. and to issue the notification under s.52(1). By necessary implication, the application of the principle of natural justice has been excluded. In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under s.52(1) would be self-defeating. The principle of natural justice does not supplant the law, but supplement the law. Its application may be excluded, either expressly or by necessary implication. Section 52 in juxtaposition to s.14, when considered, the obvious inference would be that the principle of natural justice stands excluded.

D Obviously for this reason, to satisfy ourselves whether the notification is founded upon any record and whether the reasons given in support thereof, are relevant to the issue, the record was summoned, and has been made available to us. The note placed before the Governor also was placed. It is an elaborate note, pregnant with material details touching the maladministration of the University. From the record we have seen that the Govt. considered the above material and the Governor after due satisfaction had exercised the power under s.52(1). Though the High Court held that the action under s.52 is legislative action, it is obviously illegal in the light of the decision of this court in *S.R. Bommai v. Union of India*, Civil Appeal No. 3645 of 1989, etc. decided on March 11, 1994 wherein this court considered the presidential proclamation under Art. 356 and held that the action is not beyond the ken of judicial review. The action under s.52 is only statutory action, but subject to judicial review. However, the court would not sit in appeal over the opinion of the State Govt. The statute gives power to the State Government. The Government exercised his power with the aid and advice of the Council of Ministers in issuing the notification under s.52. Therefore, though it was a statutory notification, the condition precedent is that the satisfaction of the State Govt., i.e. the Governor, with the aid and advice of the Council of Ministers is of the situation mentioned in s.52(1) and for reasons to be recorded therein, for better administration so the University, the State Govt. was satisfied that a situation had arisen in which the administration of the University could not be carried on in

accordance with the provisions of the Adhiniyam and for better administration whereof and to prevent the detriment to the interest of the University, the State Govt. issued the notification "for the reasons mentioned therein" and directed that the provisions mentioned therein under ss.13 and 14 shall not apply. When those facts are present and the State Govt. were satisfied of the situation contemplated under s.52(1), though the court may differ from that formation of satisfaction when the court is called upon in an appeal against the said satisfaction and may come to a different conclusion, we would not be justified to differ from the conclusion in our judicial review under Art. 136 or of the High Court under Art. 226 of the Constitution. Though the Academic Council etc, had been dissolved, the correctness thereof is not the subject matter of this special leave petition. We are not called upon to enter into that question. Therefore, from the records we are satisfied that the State Govt. were justified in issuing the notification under s.52(1) of the Adhiniyam.

The special leave petition is accordingly dismissed, but in the circumstances without costs.

R.P.

Petition dismissed.