CASE COMMENT: DR. K.S CHANDRASHEKHAR & ORS VS THE CHANCELLOR OF KERALA UNIVERSITY & ORS 2023 SCC ONLINE KER 1794

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INTRODUCTION

The Doctrine of Pleasure has its origin in the English Law, according to which the tenure of civil servants is at the pleasure of the crown.[1] Before the advent of Democratic institutions, the crown had absolute and unfettered powers to act according to its whims, owing an explanation or the necessity of reason to none. The position of the English Law was that this power exercised by the crown was for the sake of public policy[2], wherein if it was found by a jury that a civil servant was not fulfilling his duties towards the masses or was detrimental to the state, he is to be dismissed.[3] With the advent of Democratic institutions, this position took a significant shift. The Supreme Court of India, through its several rulings laid down that this doctrine has limited application in a democratic nation and therefore its exercise should align with the Rule of Law, as the whole conception of 'unfettered discretion or unaccountable action' is a myth.[4] It is prescribed in the very foundation of our country that the civil servants of the center will remain in office, at the pleasure of the president, and that of the state, at the pleasure of the governor.[5]

The office of the governor wasn't novel to this country, given the colonial past. During those times, the office acted for the British Parliament and defended English laws.[6] But in Post-Independent India, the governor is viewed as a bridge between the state and the center and a facilitator of the system of checks and balances.[7] The tussle between the elected governments of states and their respective governors is a part of Independent India's history, the recent events being reported in various states including Kerala, Delhi, Tamil Nadu, West Bengal,

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[1] *B.P Singhal v Union of India and Another* LNIND 2010 SC 468
[2] *Dunn* v. *R.* (1896) 1 QB 116
[3] *Shenton v. Smith [1895] UKPC 5*
[4] Supra Note 1
[5] Constitution of India 1950 Art.310
[6] Kanchan Lavania, 'Revisiting the Indian Constitutional Law: The Role of Governor and the Grey Area in the Doctrine of Pleasure in the Indian Constitution' (2016) 3(2) RSRR <https://www.scconline.com/Members/SearchResult.aspx> Accessed 14 April 2023
[7] *Ibid.*

Telangana, Chattisgarh, Maharashtra etc.[8] One such scenario that arose in the State of Kerala is being discussed here where too, the executive head of the state invoked during the course of accomplishing his statutory duties, which led to a series of events, the climax of which was presided over by Justice Sathish Ninan's single bench at the High Court of Kerala, Ernakulam.[9]

THE BACKDROP

According to the Kerala University Act, 1974, The Governor of the State is the Chancellor of the University of Kerala.[10] As chancellor, he is conferred upon duties including the appointment of the vice chancellor for the University, for which a Search and Selection Committee, consisting of three members is to be constituted.[11] The members of the committee are to be nominated by the Kerala University Senate, the University Grants Commission, and the Chancellor himself (one each). According to the prescribed procedure, after the formation of the committee, the chancellor should appoint the convenor and then within a period of three months, the committee is to recommend the candidate for the post of Vice-Chancellor.[12]

The Kerala University comprises the Ex-officio members, Elected Members, Life Members, and Other Members. An important thing to be noted is that, as per the Empowering Act, the Senate of the Kerala University consists of members nominated by the chancellor (ex-officio members and other members), who shall be entitled to hold office during only during his pleasure.[13]

FACTUAL BACKGROUND

Four Months before the retirement of the Vice-Chancellor of the University, an official communication was made by the office of the chancellor to the Senate as well as the University Grants Commission to duly elect their nominee, to constitute the Search cum Selection Committee. While the Governor and the University Grants Commission conformed to their statutory loyalty by electing their nominee, the senate failed, given the person elected by it declined to accept the stance, despite reminders from the office of the chief executive. Further,

[8] Mukund Jha, 'Recent Rise in Conflict Between Governor- Non- BJP Govts Worrying for Democracy' Newsclick (New Delhi, 20 January 2023) < https://www.newsclick.in/Recent-Rise-Conflict-Between-Governor-Non-BJP-Govts-Worrying-Democracy> Accessed 14 April 2023
[9] *Dr. K.S Chandrashekhar & Ors vs The Chancellor of Kerala University & Ors* 2023 SCC OnLine Ker 1794
[10] Kerala University Act 1974 (Act 17 of 1974) s 7 (1)
[11] Kerala University Act 1974, (Act 17 of 1974) s 10 (1)
[12] *Ibid.*
[13] Kerala University Act 1974, (Act 17 of 1974) s 18 (3)

the Search cum Selection Committee was notified with just two members, along with a consensus to indict the nominee of the senate on completion of the nomination process, contrary to the underlying statute. Also, the member nominated by the governor was designated as the convenor. The Senate finding it a procedural error, requested the chancellor to withdraw the notification. In response, a notification was released which said that the failure to elect a nominee in the next meeting would amount to utter disregard for the interests of the university and non-compliance to the lawful directions of the University head. Further, a special meeting of the Senate was convened at short notice, due to which many members were absent, the consequence being the failure to the realization of the meeting's agenda (to elect their nominee). After the failure of the second special meeting, the governor suspended 15 ex-officio members, nominated by him to the Senate for a term of two years, exerting on his doctrine of pleasure conferred by the fourth proviso of Section 18 (3) of the Act.

ISSUES

The issues being dealt with in the present case are:

1. Whether the court has the jurisdiction to interfere in this matter.
2. Whether the nominated members are mere agents or mouthpieces of the nominator.
3. Whether the exercise of the Doctrine of Pleasure was arbitrary, capricious, or malafide.

REASONING

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The court here, while examining the list of the petitioners, divulges into a discussion on the Doctrine of Pleasure. It states that this doctrine is no more res integra, India being a constitutional republic, though here its judicial exercise of review is limited to examining whether the exercise of it was arbitrary. To prove its point a case is referred to wherein it's laid down that the court can interfere in such matters wherein the chancellor, as the head of the University, while a dismissing nominated member, acts capriciously.[14] Thus, the employment of the 4th proviso of S/18(3) of the impugned Act will be subjected to the rule of law and the action stemming out of its exercise will require the backup of a compelling reason. By citing cases such as the Deepak v University of Kerala[15], the court reiterates that principles of natural justice wouldn't apply to this scenario.

[14] *Deepak v. University of Kerala* 2014 (1) KLT 520
[15] *Ibid.*

Further court indulges in the examination of the 'nature/ capacity/ status of nominations and nominees.' The bench here progresses to examine definitions proposed in various sources such as Black's Law Dictionary, Oxford Advanced Lawyer's Dictionary, etc to understand the scope of the word. These definitions suggest that nominations are acts of recommendation or proposals of names of persons entitled to preside over an office. Concerning the impugned section of the Act, that talks about the nominations of members to the University Senate by the chancellor, the honorable court rightly concludes that nomination, instead of creating an agency, is 'exercising the power to name a person from a particular category/class as mentioned in the Section.'

To answer the third issue, the court at the outset delves into pinning out the meaning and scope of the words- arbitrary and capricious. This time the reference points are Corpus Juris Secundum- an encyclopedia, Oxford Advanced Learner's Dictionary, Stroud's Judicial Dictionary, and a case named Sanchit Bansal v. Joint Admission Board.[16] The bench raises that both words are synonymous or identical in nature. Thus arbitrariness indicates employment of free will or discretion, without due consideration to facts and circumstances and absence of a compelling reason, while a capricious action would not be backed by reason. Further, it observes that the impugned act requires the chancellor to take steps for the appointment of the VC, only within a month of the occurrence of a permanent vacancy to the post.[17] In addition, Chapter 1 of Kerala University's First Statutes mandates the serving of notice, 10 days prior to the convention of the Kerala University Senate, especially when the agenda is to elect a member to the Committee.

Condemning the actions of the chancellor the bench puts forth the illegality in the constitution of the committee, the appointment of its convenor, owing to non-compliance to the relevant provision of the Act, and the withdrawal of the nominated members of Kerala University Senate. It notes that the absence of the nominated members in the meeting convened by the Senate to elect its nominee cannot suffice as a valid reason for the dismissal of the nominated members. Before concluding, the misconception of the respondents concerning the role of a nominee is pointed out, once again. The quest of the court thus reaches its climax when the court in this regard, probes into the facts of this case.

[16] *Sanchit Bansal v. Joint Admission Board* (2012) 1 SCC 157
[17] Kerala University Act, (Act 17 of 1974) s 10 (19)

ANALYSIS

From the facts stated and the reasoning given, it is clear that the chancellor was at loggerheads with the University Senate, and as the bench rightly points out, this the chancellor took as a challenge to his statutory power and position as the state's chief executive. Hadn't the chancellor been provoked, this case wouldn't have arisen. Every role of constitutional and statutory importance is designed is safeguard and advance the effective functioning of a Democracy. Our system is that of checks and balances. Whenever one of the three hands of the state is in conflict with the other or is in conflict within itself, a threat is to this system, eventually harming the nation's very foundation. The nation in its past had witnessed and had borne, the consequences of such conflicts, the declaration of emergencies serving as the best instance. If a Democracy should remain as that of the people, by the people, and for the people for real, the people at the highest echelons should uphold the dignity and maintain the highest of standards suiting their respective roles. Hasty decisions can cost hefty payments, thereby undermining the quality and credibility of legislative prudence and rationality. Moreover, Procedural Fairness has been read into the basic structure of the Constitution.[18] Theocracy and autocracy are antithetic to democracy and therefore such conduct is unfathomable and unacceptable, particularly because of its impact on legislative credibility and upon an apparatus meticulously effectuated.

JUDGEMENT AND CONCLUSION

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Based on the facts and circumstances listed above, the court interpreted the relevant rule to deliver a verdict that the actions of the chancellor were arbitrary. The reason substantiated is that even though the chancellor's act vide his statutory capacity was not malafide, the order lacked a valid ground with regard to the facts and circumstances of the whole issue. The bench also doesn't fret in voicing out its anguish at the fact that despite the official communication delivered to the office of the chancellor, on the reasons for the delay in electing the nominee of the University Senate, after each meeting convened for this purpose, such orders were sanctioned by the office of the chancellor. Therefore, the court ruled that the order was misconceived and prejudicial and since it suffers from a vice of arbitrariness, it is to be interfered with. Thus, the orders that constituted the search cum selection committee, that appointed the convenor and that dismissed the nominated members of the senate were quashed

[18] *Maneka Gandhi v Union of India* (1978) 1 SCC 248

and the fact that the doctrine of pleasure cannot be exercised arbitrarily or capriciously in a republic was emphasized.

It's rather unfortunate that the Senate failed to discharge its statutory obligation, though it seems that the circumstances were the actual villain. It's worth noting that the requirement of coordination and cooperation among various institutions of the government is an important aspect of this case. It is true that such conflicts are the reality of a democracy, but power comes with colossal responsibilities and the obligation to deliver. To conclude, the series of hasty decisions that gave blood and flesh to this case was neither statutory nor based on prudence or scrupulousness and thus was rightly called off.

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