

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 555/2003

Mr. Uttam Bhikaro Naik,
son of Bhikaro Naik, aged 45 years,
service, resident of Flat No.103,
Harmony "B" Voddlem Bhatt,
Taleigao, Panaji, Goa.

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Petitioner.

Versus

1. The Goa University,
Taleigao Plateau, Goa,
represented by the Registrar.

2. The Government of Goa,
through the Secretary,
Higher Education,
Secretariat, Panjai, Goa.

3. Damodar J. Naik,
Finance Officer, Sub Post Office,
Goa University,
Taleigao Plateau Goa.

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Respondents.

Mr. Sudin Usgaonkar, Advocate for the petitioner.

Ms. A. A. Agni, Advocate for respondent No.1

Ms. Susan Linhares, Addl. Govt. Advocate for respondent No.2.

**CORAM : A.P. DESHPANDE &
N.A. BRITTO, JJ.**

Date : 7th October, 2008.

ORAL JUDGMENT : (A.P. DESHPANDE, J.)

Heard. The petitioner was working as a Deputy Finance Controller in the Department of Accounts, Kadamba Transport Corporation Ltd., since the year 1981 till the year 1998. In the year 1998, respondent No.1 University of Goa issued an advertisement inviting applications for various posts, including the post of Finance Officer. The Petitioner applied for the post of Finance Officer. The petitioner came to be selected and was issued an order of appointment. The appointment order dated 17.9.98 clearly mentions that “The appointment is for a term of 5 years or till the age of 60 years whichever is earlier”. The petitioner chose to resign from the post that he held with Kadamba Transport Corporation Ltd., and joined the post of Finance Officer with the University with effect from 20.11.1998 pursuant to a joining report submitted by the petitioner to the Registrar of Goa University.

2. Prior to the expiry of the term of appointment of the petitioner, the University issued a letter dated 14.10.2003, informing the petitioner that the term of his appointment would expire on 19.11.2003. The said letter was issued pursuant to a decision taken by the Executive Council of the University in its meeting dated 11.10.2003. The petitioner sought renewal of his appointment, but his representation came to be rejected and the post came to be advertised, afresh. Aggrieved by the so called termination of the services,

the petitioner has filed the present writ petition under Article 226 of the Constitution of India, a few days before the term of his appointment was to expire.

3. According to the petitioner, sub-section (2) of Section 23 of the Goa University Act, 1984 suffers from vice of excessive delegation and is a clear case of abdication of power by the Legislature in favour of the Executive Council. Section 23 reads thus :

“ 23. **Statutes how made.** - (1) the first Statutes are those set out in the Schedule.

(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1):

Provided that the Executive Council shall not make, amend or repeal any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the approval of the Visitor who may assent thereto or withhold assent or remit the same to the Executive Council for consideration.

(4) A new Statute or a Statute amending or repeal-

ing an existing Statute shall have no validity unless it has been assented to by the Visitor.

(5) Notwithstanding anything contained in foregoing sub-sections, the Visitor may make new or additional Statutes or amend or repeal the Statutes referred to in sub-section (1) during the period of three years immediately after the commencement of this Act:

Provided that the visitor may, on the expiry of the said period of three years, make, within one year from the date of such expiry, such detailed Statutes as he may consider necessary and such detailed Statutes shall be laid before the Legislative Assembly.”

In the scheme of Section 23, the first Statutes were framed by the Legislature and are set out in the schedule. The Executive Council has been vested with the jurisdiction to make new or additional Statutes, so also with power to amend or repeal the Statutes referred to in sub-section (1). The said power and jurisdiction is capable of being exercised by the Executive Council from time to time. The only rider placed on the Executive Council in the matter of making, amending or repealing a Statute is that if the same affects the status, power or constitution of any authority of the University, then such authority is given an opportunity of expressing its opinion, in writing, on the proposed changes and any opinion so expressed has been considered by the Executive Council. The new Statutes so framed and/or amended, require approval of the Visitor and till such approvals is

granted, the Statutes newly framed and/or amended are not valid.

4. Perusal of the Schedule which includes the first Statutes at Clause 5 deals with the post of Finance Officer. The first proviso to Clause 5(2) lays down that the Finance Officer shall retire on attaining the age of sixty years and the second proviso stipulates that the Finance Officer shall, notwithstanding his attaining the age of 60 years, continue in office until his successor is appointed and enters upon his office, or until the expiry of a period of one year, whichever is earlier. Thus, the first Statutes contemplated appointment of Finance Officer as a whole-time salaried officer of the University who would retire on attaining the age of 60 years.

In exercise of powers under Section 23 of the Act, the Executive Council framed Statute No.SA.9 which deals with the Finance Officer. The said Statute has been framed on or about 12.1.96 and has been duly approved. The said Statute SA.9 goes to deviate from the first statute in regard to the tenure of appointment of the Finance Officer inasmuch as clause 1(c) provides "The Finance Officer shall be appointed for a term of 5 years which may be renewed for a similar term, till the age of 60 years."

5. What is required to be noted is that the petitioner was appointed in pursuance of the conditions of appointment laid down in Statute SA.9 in

the year 1998 knowing fully well that the appointment was for a period of 5 years. The petitioner had chosen to accept the same. The petitioner did not question the correctness of the appointment order till the completion of his term of 5 years. Not only that, but the petitioner also requested the University to grant him a renewal and only after the request for renewal was turned down, this writ petition came to be filed. In the above set of facts, the learned Counsel for the petitioner has submitted that the Legislature could not have delegated the power to frame subordinate legislation in favour of the Executive Council. In his submission, the same is wholly impermissible in law and is a case of abdication of power by the legislature in favour of the Executive Council.

6. Per contra, the learned Counsel appearing for the University has submitted that the petitioner cannot be permitted to question the legality of Statute SA.9 as the petitioner was appointed under the said Statute and the petitioner had accepted the appointment and enjoyed benefit thereunder. It is contended that the Petitioner cannot be permitted to approbate and reprobate. The Petitioner's services are brought to an end under the terms of contract and hence there is no illegality.

7. The settled position of law that emerges touching the question

of excessive delegation or abdication of legislative power from the various Judgments of the Supreme Court, including the Judgments in the case of AIR (38) 1951 SC 332; *Rajnarain Singh, vs. Chairman, Patna Administration Committee, Patna and another*, reported in AIR 1954 SC 569; and *Ramesh Birch and ors. vs. Union of India and ors.*, reported in 1989 Supp (1) SCC 430, is briefly stated hereunder:

Delegated legislation has become a present day necessity and it has come to stay – it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the details and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject.

It is enough if legislature declares its policy laying down the principles and it is enough if an intelligent guidance is given to the subordinate authority. The Court can only interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court, except in clear cases of abuse.

The legislature, as a part of its legislative functions, can confer

power to make rules and regulations for carrying the enactment into operation and effect, after the legislature lays down the policy and the principles. Thus, it can delegate the authority to frame subordinate legislations. When the legislative policy and guidance are contained in the Act, the delegating provision would save it from vice of excessive delegation. Essentially legislative functions are those which cannot be delegated. However, other ancillary and incidental matters could be left to the subordinate authority to fill in details with a view to carry out the policy. If guidance is provided by the legislature to the delegated authority, the delegation is valid. Once policy principles or standards for guidance are provided in the Act, then, conferring of power on a subordinate authority to make subordinate or ancillary legislation would be valid.

8. In the light of the position of law which emerges from the above decisions, let us examine the scheme of the Goa University Act to find out as to whether the legislature has laid down definite principles and policy in the matter of university education and what is the extent of delegation. The Act establishes an University in the Union Territory. The object of the Act is spelt out in Section 4. It provides that the University shall disseminate and advance knowledge by providing instructional, research and extension facilities in such branches of learning as it may deem fit and by the

example of its corporate life, and, in particular – to pay special attention to the improvement of social and economic welfare of the people of the Union territory by developing suitable programmes in community development and human relations; to establish schools of studies in disciplines relevant to the life, needs and aspirations of the people of the Union territory; to provide adequate facilities for the educational and professional advancement of socially and educationally backward and under-privileged community from rural areas; to create opportunity for appropriate academic and professional education for women; to promote interest in physical efficiency and excellence in sports, and social service among the youth of the Union territory; to provide higher education, extension and research facilities in Latin studies, mining and marine sciences.

Powers of the University are set out in Section 5. Section 6 lays down the jurisdiction of the University. Section 7 declares the University open to all classes, castes and creeds. Section 8 appoints the Lieutenant Governor of the Union Territory to be the Visitor of the University and it also provides functions and powers. Section 9 defines the Officers of the University such as the Chancellor, the Vice-Chancellor, the Deans of Faculties, the Registrar, the Finance Officer and such other officers as declared by the Statutes to be the Officers of the University. Sections 10, 11, 12, 13, 14 and 15 deal with appointment of the Officers and the manner of

their appointment. Section 16 declares the authorities of the University and the same are the Senate, the Executive Council, the Academic Council, the Faculties, the Finance Committees and such other authorities as may be declared by the Statutes to be authorities of the University. Section 17 deals with the constitution of the Senate and the term of office of its members. Section 18 declares that the Executive Council shall be the principal academic body of the University. Sub-Section (2) of Section 18 lays down that the constitution of the Executive Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes. Section 19 establishes Academic Council. The other sections of the act deal with other authorities of the University and the Planning Board; whereas, Section 22 lays down that subject to the provisions of the Act, the Statutes may provide for all or any of the matters stipulated therein. The Statutes include the subject of appointment of teachers and other academic staff and their service conditions. Section 23 provides for framing of the Statutes. The main restriction, in framing of the Statutes is to be found in Section 22 and the same reads thus : “Subject to the provisions of this Act, the Statutes may provide for

8. Thus, while delegating the powers to the Executive Council to frame the Statutes, an impediment put in place is that the Statutes which are

to be framed by the Executive Council are subject to the provisions of the Act. Conjoint reading of Sections 22 and 23 would indicate that a policy is framed and definite principles are laid down in regard to the authority of the Executive Council in framing of the Statutes and the subjects touching which Statutes can be framed by the Executive Council. Section 24 thereafter provides as to how Ordinances are to be made. Broad principle in regard to conditions of service of employees is contained in Section 28.

9. A complete scheme in regard to the functioning of the University, its authorities and bodies are provided for in the Act and only the details are to be worked out by the Executive Council under the delegated powers in relation to the subjects specified in Section 22. There is absolutely no abdication of power as is contended by the learned Counsel for the petitioner. The control is retained by the legislature. The Executive Council is only empowered to frame subordinate legislation touching the aspects which are enumerated in Section 22 and no further, and that too within the framework of the Act.

10. In this view of the matter, it is crystal clear that the challenge of excessive delegation is devoid of any merit and wholly unsustainable. As a matter of fact, the petitioner cannot be permitted to challenge the action on

the part of the respondents in so called termination of his services for the reason that termination of the petitioner from the Post of Finance Officer is under the terms of appointment order. The appointment order categorically stipulates the term of the office to be of 5 years, renewable for the same period upto age of 60 years. Knowing fully well that the term is of 5 years stipulated in the appointment order itself, the petitioner has chosen to accept the appointment and only at the fag-end of the term has, in the first place, requested for a renewal and thereafter filed the present petition, calling in question the vires of Section 23(2) of the University Act. The learned Counsel for the respondent University is justified in contending that the petitioner is blowing hot and cold at the same time and cannot be permitted to approbate and reprobate. The petitioner has taken advantage of the benefit provided by the appointment order and after availing of the benefit in full, he is questioning the authority of the respondents in issuing the said order. The principle of approbation and reprobation is based on the *doctrine of election*, which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. To substantiate the said proposition, the respondent has placed reliance on a judgment in the case of **R. N. Gosain v.**

Yashpal Dhir, reported in (1992) 4 SCC 683. We accept the submission made on behalf of the respondents that the petitioner cannot be permitted to question the so called termination which is consequent upon the expiry of the term for which the petitioner was appointed. In this regard, the learned Counsel for the petitioner has submitted that there cannot be an estoppel against the statute. Though the proposition of law is correct, its application to the fact situation is wholly misplaced. In the facts of the present case, the petitioner cannot be permitted to question the action of the respondents in discontinuing the services of the petitioner on expiry of the term for which he was appointed and which he had accepted.

11. In the result, there being no merit in the petition, the same deserves to be dismissed and we dismiss the petition with no order as to costs.

A.P. DESHPANDE, J.

N.A. BRITTO, J.

ssm.