
(1969) 12 BOM CK 0013
In the Bombay High Court
Case No : First Appeal No. 5 of 1969

Bhaskar Narayanrao Band

APPELLANT

Vs

Dr. Vishnu Bhikaji Kolte

RESPONDENT

Date of Decision : 05-12-1969

Acts Referred:

Nagpur University Act, 1963 — Section 31

Citation : (1971) 73 BOMLR 361

Hon'ble Judges : Madon, J

Bench : Single Bench

Judgement

Madon, J.—This is an appeal against the order of the learned Civil Judge, Senior Division, Chanda, vacating an ex parte ad interim injunction which was earlier granted by him, on an application made by the appellant in a suit filed by him against the respondent. The appellant is the Principal of a College known as the Janata Mahavidyalaya situate at Chanda, conducted by the Chanda Shikshan Prasarak Mandal, Chanda, which is a society registered under the Maharashtra Co-operative Societies Act, 1960. It is also registered as a public charitable trust under the Bombay Public Trusts Act, 1950, The said college is affiliated to the Nagpur University. In 1964, the Charity Commissioner filed a suit in the Court of the District Judge at Chanda, being Civil Suit No. 2 of 1964, against the said Society. The fourteen members of its Managing Committee were also impleaded as defendants Nos. 2 to 15 to the said suit. In the said suit, the Charity Commissioner made allegations against the members of the Managing Committee of having mismanaged the property of the said Trust, of having committed various breaches of trust, and of having caused loss to the said Society by acts of misappropriation and negligence. The suit was for removal of the said Managing Committee from the office as trustees, for rendition of accounts, for a permanent injunction restraining all the said trustees from acting as trustees, and for settling a scheme for managing the said Trust. In the said suit, on an application made by the Charity Commissioner an Interim Receiver was appointed by the learned District Judge on December 21, 1964. The Interim

Receiver is respondent No. 8 to this appeal.

2. In exercise of the powers conferred by Section 31 of the Nagpur University Act, 1963, the Executive Council of the Nagpur University has framed certain Ordinances. Ordinance No. 4, which is entitled "College Code", applies, by virtue of clause 2 of the said Code, to all colleges admitted to the privileges of the University which are not maintained by the University, as also in certain respects to colleges maintained by the State Government and admitted to the privileges of the University. The College Code provides for the setting up of a Governing Body for the management of every college. The Chairman and the Secretary of the Foundation Society are to be the ex-officio Chairman and the ex-officio Member respectively of such Governing Body, and the Principal of the college is to be the ex-officio Secretary. It is the appellant's case that by reason of the appointment of the Interim Receiver in the said Civil Suit No. 2 of 1964, the District Court has taken over the functions of the Managing Committee and the Governing Body and is administering the said Trust through the Interim Receiver.

3. Prior to July 6, 1968, the appellant was working as the Vice-Principal of the said College. Thereafter he acted as Principal in place of the previous; Principal J. E. Patil who had resigned his post. By an order made by the learned District Judge, Chanda, on July 6, 1968, the appellant was confirmed in his post as Principal of the said College. The Executive Council of the Nagpur University approved such appointment. Respondents Nos. 5 and 6, who are also members of the teaching staff of the said College, were also applicants for the said post. Respondent No. 7 is also a member of the teaching staff of the said College. According to the appellant, being vexed at his confirmation as Principal, respondents Nos. 5 to 7 carried on a malicious propaganda against him and resorted to various attempts and devices to remove the appellant from his office as Principal. With a view to achieve this design, they sought the assistance of respondent No. 1, Dr. V. B. Kolte, who is the Vice-Chancellor of the Nagpur University. On September 28, 1968, a public function was held at Chanda for celebrating the 61st birth anniversary of respondent No. 1. Another function was arranged to felicitate respondent No. 1 in the College on the morning of September 29, 1968. Respondent No. 5 also arranged a lunch party at his house in honour of respondent No. 1. To this party the members of the teaching staff of the said College and the members of the Governing Body were invited but the appellant was not invited. According to the appellant, respondent No. 5 availed of this opportunity to poison the ears of respondent No. 1 against the appellant by making several false and malicious complaints to him against the appellant and secured respondent No. 1's consent to bring about the removal of the appellant from the office of Principal. It is the appellant's case that what happened at that said lunch party amounts to a conspiracy between respondent No. 1, respondents Nos. 5 to 7, the Members of the Governing Body, as also the Interim Receiver who had attended the said lunch party, to remove the appellant from his office as Principal. On October 5, 1968, thirty three members of the teaching staff of the said College, including respondents Nos. 5 to 7 whose signatures

head the list, made a written complaint to respondent No. 1 against the appellant. The said complaint concluded by saying that the signatories were submitting their fate to the hands of the Vice-Chancellor, and as the situation was very explosive, they earnestly requested him to appoint an inquiry commission to inquire into the whole affair or to take any other befitting alternative action. According to the appellant, this complaint was followed by another complaint dated October 6, 1968. It is the appellant's case that these complaints were prepared by respondents Nos. 5 to 7 and pressure was brought to bear on other members of the teaching staff to join in the said complaints. Copies of the said complaints were forwarded to the District Judge. Though a copy of the complaint dated October 5, 1968 is on the record, a copy of the complaint dated October 6, 1968 is not on the record. There is, however, on the record a copy of the complaint dated October 12, 1968. The complaint dated October 12, 1968 is signed by thirty-five members of the teaching staff and is addressed to the Vice-Chancellor. This complaint refers to the earlier complaint of October 5, 1968 and also to a resolution passed by the members of the teaching staff to go on a token hunger strike from October 10, 1968 from 7 a.m. to 7 p.m. I will refer to the other contents of these two complaints later.

4. It is not possible to say today whether these complaints were sent in furtherance of the alleged conspiracy as suggested by the appellant. It is also not possible to say today whether the close proximity between the date of the lunch party held at the house of respondent No. 5 and the dates of these complaints and the threatened action to go on a token hunger strike is significant. These are matters of evidence to be decided at the hearing of the suit. In view of the issues actually arising in the suit, these questions, however, do not seem to be very material.

5. On receipt of the said complaints, respondent No. 1 requested the learned District Judge, Chanda, to have the matter investigated by an inquiry committee of which the Vice-Chancellor's nominee on the Governing Body of the College, K. P. Pulkar, should be the Chairman. In pursuance of this request, the learned District Judge appointed a committee of three persons, namely, the said Fulkar as Chairman, and Mr. Khajanchi and Mr. Kadukar, advocates, as two other members. It is the appellant's submission that this request made by respondent No. 1 to the learned District Judge shows that respondent No. 1 had no power to appoint an inquiry committee himself for inquiring into the complaints made by the teaching staff against the Principal of the said College, namely, the appellant, inasmuch as the inquiry was essentially and in substance a disciplinary inquiry which could only be held by the learned District Judge, as he had assumed the management of the said College by reason of the said interlocutory order in Civil Suit No. 2 of 1964. On the said committee being appointed, the appellant objected to the appointment of the said Fulkar on the ground that the Vice-Chancellor, who considered himself to be an aggrieved person, was prejudiced against the appellant and was in the position of the complainant and his nominee could not be a member of the committee, inasmuch as a complainant could not

be a Judge in his own cause and could not hold an inquiry through his own nominee. This objection was upheld by the learned District Judge, who removed the said Fulkar from the said committee. It appears that the District Judge communicated to respondent No. 1 his decision to drop the said Shri Fulkar from the said committee by his letter dated November 5, 1968. Respondent No. 1 sent a reply thereto by his letter dated November 9, 1968 in the Marathi language. This letter is of considerable importance in arriving at the determination of this matter and requires to be quoted as translated:

"Dear Shri Wankhede,

Received your letter dated 5th November, 1968 and read with surprise its contents. I am afraid there is likely to be a misunderstanding in the University circles if Sim Fulkar's name is dropped from the Committee. The Vice-Chancellor's nominee on the Governing Body of the College is ipso facto the Vice-Chancellor at all such places. Hence dropping of Vice-Chancellor's nominee may mean indirect disrespect to the Vice-Chancellor. For this reason only I had suggested the name of Shri Fulkar. The objection to Vice-Chancellor's nominee on the Committee raised by Shri Band is nothing but an act of disrespect to the Vice-Chancellor. It would have been desirable to consult me if Shri Band had any complaints against Shri Fulkar and then to substitute another name in his place. I regret to note that this has not been done.

Teachers' representation is addressed to the Vice-Chancellor. Since you look after all the affairs of the Chanda Shikshan Prasarak Mandal and reside at Chandrapur itself, I had requested you to appoint a Committee on behalf of the University. But now I cannot give you my consent to all the names for the aforesaid reasons. I regret for the same. To find out a way to get over these difficulties, I myself in the capacity of the Vice-Chancellor am appointing a Committee. I hope you will not misunderstand for this.

With best regards,

Yours friendly, (Sd) V. B. Kolte.

6. On November 14, 1968, some members of the teaching staff, including respondents Nos. 5 and 7, addressed a letter to the Vice-Chancellor on behalf of themselves and their colleagues who were away from Chanda during the holidays intimating to him their decision to go on a chain hunger strike outside the college building from the opening day of the coming term, namely, from November 25, 1968, unless their request made to the authorities was accepted; their request being to appoint an inquiry committee to inquire into their complaints against the appellant; and a copy of this letter was sent to the District Judge. The threat to go on a hunger strike was subsequently carried out. I can only say that it is a matter of regret that those charged with the duty of imparting education to the youth of this country and of inculcating discipline in them should have instead set them such a sorry example. It may also be mentioned that there was no justification for this action as the District Judge had not refused to hold an

inquiry but had merely removed the name of the Vice-Chancellor's nominee from the inquiry committee and the inquiry would have proceeded either with the two other members of the committee or with a third independent member appointed by the District Judge in place of the said Fulkar. It appears somewhat significant that this memorandum should have come very soon after the Vice-Chancellor's letter dated November 9, 1968, to the District Judge, stating that he would himself in his capacity of the Vice-Chancellor appoint an inquiry committee, A copy of this memorandum of November 14, 1968 was also sent to the Chairman of the Governing Body of the said College who was the Chairman in ex-officio capacity by reason of his being the Chairman of the Managing Committee of the said Society. As appears from the letter dated November 18, 1968 from the said Chairman to the Vice-Chancellor, the said Chairman directed the appellant in his capacity as the ex-officio Chairman of the Governing Body to convene an emergent meeting of the Governing Body of the College on November 16, 1968. At the said meeting two resolutions were passed. These resolutions are in the following terms:

Resolution No. 3 :

To consider the affairs of Janata Mahavidyalaya and the complaints from teachers. The Chairman placed before the meeting the copies of the complaints-cum-applications of the teachers against the Principal, sent to the Vice-Chancellor (for example dated S-10-68 and 12-10-68). The applications dated 26-10-68 to the Hon. Interim Receiver and copies of letters dated 14-10-63 to the Interim Receiver, so also copies of notice dated 14-11-68 given by the teachers regarding chain fast, addressed to the Chairman, Governing Body, Janata Mahavidyalaya, Chandrapur. The statement of the Principal B. N. Band, Janata Mahavidyalaya, Chandrapur, made before the Press Conference on 12-10-68, was also placed before the meeting.

Taking into consideration all aspects of the circumstances this meeting of the Governing Body passes a resolution that the Nagpur University should oblige the Governing Body by appointing an Enquiry Committee. As far as possible, the Governing Body of the College requests the University to appoint the Enquiry Committee before 25th November 1968. This resolution was passed unanimously.

Resolution No. 4 :

The meeting of the Governing Body considered sympathetically the notice dated 14-11-68 given by the teachers to the Chairman, Governing Body, Janata Mahavidyalaya, Chanda, regarding their chain fast. This meeting of the Governing Body requests the teachers that the Governing Body had already passed a resolution to request the Nagpur University to appoint an Enquiry Committee before 25th November 1968. A copy of that resolution is sent herewith for information. As such this meeting requests unanimously to the teachers to suspend their chain fast proposed to be started from 25th November 1968.

Along with the said letter of November 18, 1968, the said Chairman forwarded copies of these two resolutions signed by the appellant in his capacity as the ex-officio Secretary of the Governing Body, to the Vice-Chancellor. In the said letter it was stated that the main item of the agenda of the said meeting was to consider the representations from the Lecturers of the said College, dated October 5, and October 12, 1968, submitted to respondent No. 1 and the notice given by the teachers of their intention to go on a chain hunger strike outside the College building. In the said letter, an humble request was made to the Vice-Chancellor to appoint a University Enquiry Committee before November 25, 1968, so that the chain hunger strike proposed to be started from that date could be suspended.

7. On the same day, i.e. November 18, 1968, the District Judge wrote a letter to respondent No. 1 in reply to his letter of November 9, 1968. In this letter, the District Judge referred to the said memorandum of November 14, 1968 and stated that in view of the said memorandum, it seemed to him that if there was delay in the appointment of an inquiry committee, it would create complications in the college administration and requested the Vice-Chancellor to appoint an inquiry committee as early as possible.

8. On November 22, 1968 respondent No. 1 as the Vice-Chancellor purported to pass an order appointing an inquiry committee. The said order as translated is as follows:

The teachers of Janata Mahavidyalaya, Chanda, have submitted their statement of complaints. I have received in that respect a letter dated 18-11-68 from the Chairman, Janata Mahavidyalaya, Chanda, Shri L. K. Wasekar, accompanied with a resolution of the Governing Body, Janata Mahavidyalaya, Chanda. In that resolution the Governing Body has requested the Nagpur University to appoint an Enquiry Committee. Accordingly, I appoint the following Committee to enquire into the complaints in the statement submitted to me :-

1. Shri Gowardhan Agrawal,
2. Shri S. W. Dhabe, Chairman. 8, Shri W. M. Kalmegh.

The notice of the appointment of this Committee should be sent today to Shri L. K. Wasekar and he be informed that the Committee will start its enquiry in the next week. A copy of this letter should also be sent to the District and Sessions Judge, Chandrapur.

Copies of this order were sent to the Chairman of the Governing Body, the District Judge, and the Interim Receiver. The persons who were appointed to constitute the said inquiry committee are respondents Nos. 2 to 4, respondents No. 2 and 3 being advocates of this Court, and respondent No. 4 being a Header in the Laxminarayan Institute of Technology. It appears that in spite of the appointment of this committee, the members of the teaching staff of the college started a chain hunger strike, and by his letter dated November 27, 1968,

respondent No. 1 requested the teachers to give up this fast in view of the appointment of the said committee. Accordingly, by their reply of the same date, the teachers intimated to respondent No. 1 that they had decided to call off" their hunger strike but stated that they had undertaken the said strike due to the undesirable actions of the appellant. Along with the said letter, a copy of the resolution passed at a meeting of the teachers of the said College held on the same day was forwarded to respondent No. 1. By the said resolution, it was decided to call off the said hunger strike and it was further stated:

As we all have shown the gesture of co-operation, we request the authorities of the College to ensure as early as possible that Mr. Band is not in the Chair of the Principal till the commissioner"s report is out

The said Committee held its first meeting on December 9, 1968, at Nagpur. At the said meeting, certain preliminary directions were given which I will refer to later while discussing the nature of the inquiry which was being conducted. From the minutes of the said meeting of the inquiry committee, it appears that a further complaint was made by the teachers of the College on October 26, 1968. This complaint was addressed to the Interim Receiver and copies thereof were forwarded to the District Judge, the Vice-Chancellor, the Chairman of the Governing Body, and the Vice-Chancellor"s nominee on the Governing Body. By consent a copy of this complaint has been put in and made part of the appeal paper-book. The appellant did not attend the said meeting. He, however, submitted an application requesting for an adjournment for a fortnight on the ground that he had sent a representation to the Vice-Chancellor for reconsideration and stay of the proceedings.

9. The second meeting of the committee was held on December 26, 1968 at which also the appellant remained absent. From the minutes of the said meeting it appears that the appellant"s application for stay made to the Vice-Chancellor was rejected by him. The minutes of the said meeting also refer to a letter dated December 26, 1968 sent by the appellant to the members of the said Committee, in which he disputed the legality of the constitution of the said Committee and contended that the same was not validly constituted. This contention was rejected by the said Committee and the Committee held that it was properly constituted and was entitled to proceed with the inquiry. The Committee also decided to hold its next meeting at Chanda on January 8, 1969 and directed the appellant to file his statement within three days. The Committee also requested the Interim Receiver, to contact the District Judge to fix the time, so that the members of the Committee could meet him and also requested the Vice-Chancellor"s nominee to remain present at the next hearing.

10. The third meeting of the Committee was held on January 3, 1969, when the appellant appeared in person and submitted two applications. The first was a request for permitting him to appear through a lawyer and the other was for an adjournment of the hearing. Both these requests were rejected. The Committee proceeded to record the statement of the Chairman of the Governing Body, as

also the statements of some teachers, and thereafter the hearing stood adjourned to January 4, 1969. Meanwhile, the appellant filed the present suit, namely, Civil Suit No. 1 of 1969 on January 3, 1969, in the Court of the Civil Judge, Senior Division, Chanda. He also made an application for an ex parte ad interim injunction restraining respondents Nos. 2 to 4 from holding an inquiry against him. An ex parte ad interim injunction in these terms was granted by the learned Civil Judge on January 4, 1969 and a notice was directed to issue to respondents Nos. 1 to 4 to show cause why the said ad interim injunction should not be confirmed till the decision of the suit. The application for interim injunction was thereafter heard by the learned Civil Judge who, by his order dated January 23, 1969, vacated the said) order of ex parte ad interim injunction. It is against this order that the present appeal is filed.

11. In the plaint, the appellant hits contended that respondent No. 1 as the Vice-Chancellor of the Nagpur University has no jurisdiction, power or authority to appoint any committee to inquire into any complaint made against the appellant. He has further contended that such an inquiry into the complaints against the Principal of the said College could only be held by the Managing Committee of the said Society or by the District Judge who had assumed the management of the said College. It is further submitted that in pursuing this inquiry through the Committee appointed by him, respondent No. 1 was acting as a judge in his own cause and the appointment of the said Committee was against the principles of natural justice. Charges of vindictiveness and harassment are also made against respondent No. 1 and the appellant has alleged that he is apprehensive that by reason of the vindictive attitude adopted by respondent No. 1, respondent No. 1 is out to ruin the appellant not only in his career but even in respect of his means of livelihood. He has further alleged that respondents Nos. 1 to 4 were already prejudiced against him and they would give some adverse findings against him and bring pressure on the Managing Committee or the District Judge to remove him or reduce his rank or otherwise punish him and that he would suffer loss and injury in his legal character and right in his office of Principal of the College and in the emoluments attached to his office. In the said suit, the appellant has prayed for a declaration that neither respondent No. 1 nor respondents Nos. 2 to 4 have any authority, power or jurisdiction to hold a disciplinary inquiry or any kind of inquiry against him and for a permanent injunction restraining the said respondents from holding an inquiry against him, and has also prayed for a permanent injunction against respondents Nos. 5 to 7 restraining them from making or pursuing in the said inquiry being held by respondent No. 1 through respondents Nos. 2 to 4. The application for interlocutory injunction made by the appellant prays for a temporary injunction in terms of the permanent injunction claimed in the suit.

12. At the hearing of the application for interlocutory injunction, respondents Nos. 5 to 7, even though no notice was issued to them by the learned Civil Judge, entered appearance and opposed confirmation of the ad interim injunction. As appears from the order, the learned Civil Judge directed his mind

only to two points: (i) whether the said Committee consisting of respondents Nos. 2 to 4 constituted by respondent No. 1 was a disciplinary inquiry committee, and (ii) whether the appellant had any cause to complain that irreparable loss would occur to him in order to justify the issue of injunction. At the hearing of the application, it was agreed before the learned Civil Judge that a disciplinary inquiry committee, as generally understood, means an inquiry committee leading to an order of punishment against an employee against whom the inquiry is conducted. It was conceded on behalf of respondent No. 1 that an inquiry of such a nature could be held only at the instance of a master against his own employee and that in the absence of a specific provision to the contrary, an inquiry of a domestic nature leading to the punishment of the appellant could only be held at the instance of the District Judge, Chanda. It was, however, contended that the impugned inquiry was not such an inquiry but was an inquiry into the affairs of the said College which the Vice-Chancellor was entitled to hold. In the alternative, it was contended that assuming it was a disciplinary inquiry, the Vice-Chancellor was justified in constituting the disciplinary inquiry committee, and in support of this reliance was placed upon the said letter dated November 18, 1968 from the Chairman of the Governing Body, the said resolutions passed by the Governing Body on November 16, 1968, and the letter dated November 18, 1968 from the District Judge to respondent No. 1. The learned Civil Judge held that respondent had no power or jurisdiction or authority to hold or cause to be held an inquiry of a domestic nature against the appellant. He further held that the said Committee was not a disciplinary inquiry committee or a committee to hold an inquiry of a domestic nature; and accordingly answered the first point in the negative. In view of this, the learned Civil Judge opined that there was no reason for issuing an injunction as prayed for by the appellant. The learned Civil Judge further placed reliance upon the statement made by respondent No. 1 in his reply that the Committee constituted by him was not a disciplinary inquiry committee and stated that as respondent No. 1 "was a high dignitary, there was no reason to doubt what he had given him to understand. He further held that the inquiry entrusted to respondents Nos. 2 to 4 was not likely to cause any irreparable loss to the appellant and that such an inquiry was justified under the provisions of the Nagpur University Act and therefore cannot be interdicted. For these reasons, the learned Civil Judge vacated the ad interim, injunction issued by him,

13. [His Lordship after dealing with some points not material to this report, proceeded].

14. I also fail to find any provision in the Nagpur University Act, 1963, conferring any power upon respondent No. 1 as claimed by him to appoint the impugned committee. In support of this claim of respondent No. 1, Mr. Masodkar learned advocate for respondent No. 1, has referred me to the various provisions of the said Act. Section 4 deals with the powers of the University. Reliance was placed upon Clauses (8), (13), (14), (22) and (32) of the said section. Clause (8) confers power upon the University to guide the teaching in colleges or recognised

institutions. Clause (75) confers power to admit educational institutions to the privileges of the University and to withdraw such privileges. Clause (14) confers power to inspect colleges and recognised institutions and to take measures to ensure that proper standards of instruction, teaching or training are maintained in them and that adequate library and laboratory provisions are made therein. Clause (22) confers power to supervise and control the conduct and discipline of the students of the University and to make arrangements for promoting their health and general welfare; and Clause (52) confers power to do all such acts and things whether incidental to the powers and duties aforesaid or not, as may be requisite in order to further the objects of the University, and generally to cultivate and promote the arts (including the fine arts), science and other branches of learning and culture. "University" is defined by Section 2(15) as meaning the Nagpur University as reconstituted under the Nagpur University Act, 1963. u/s 9 the Vice-Chancellor is one of the officers of the University. Albeit, he is the most important of all the officers. His powers are defined by Section 12. The office of the Vice-Chancellor is, therefore not synonymous with the Nagpur University, nor can the powers of the Vice-Chancellor be equated with those of the University. It is doubtful whether under any of the clauses above referred to which were relied upon by respondent No. 1, even the University has any power to appoint a committee to inquire into complaints against the Principal of a college not maintained by it. Even assuming it has such power, the same cannot be exercised by the Vice-Chancellor on his own and by himself, nor can the Vice-Chancellor arrogate such power to himself.

15. It was, however, contended on behalf of respondent No. 1 that such a power could be exercised by the Vice-Chancellor u/s 12(5), Section 12(5) provides that it shall be the duty of the Vice-Chancellor to ensure that the Act, the Statutes, Ordinances and Regulations are faithfully observed and confers upon the Vice-Chancellor all powers necessary for that purpose. It is not possible to construe Section 12(5) as canvassed on behalf of respondent No. 1. Even assuming the University has such a power, to construe Section 12(J) in this manner would be to equate the Vice-Chancellor with the University and to render wholly superfluous the various authorities of the University constituted under the said Act. Chapter IV of the Act deals with the Authorities of the University. u/s 15 these authorities are (i) the Court, (ii) the Executive Council, (iii) the Academic Council, (iv) the Faculties, (v) the Boards of Studies, (vi) the Board of University Teaching and Research, (vii) the Board of Extra-Mural Studies, and (viii) such other boards or bodies of the University as may be declared by the Statutes to be the authorities of the University, The other sections in Chapter IV provide for the constitution of the said authorities and prescribe their powers, duties and functions, Reliance was placed upon Section 20 which specifies the powers and duties of the Executive Council, and it was contended that the Executive Council, has the power to hold an inquiry into the affairs of a college affiliated to the University and by reason of Section 12(3) the Vice-Chancellor could, therefore, himself exercise such powers. This submission cannot be accepted. Section 19

specifies the constitution of the Executive Council. It is to consist of (i) the Vice-Chancellor as ex-officio Chairman, (ii) the Director of Education, or his nominee not below the rank of a Deputy Director of Education, (iii) the Chairman of the Vidarbha Board of Secondary Education, or his nominee, (iv) ten persons elected by the Court from amongst its members, six of whom are to be persons who are neither teachers nor Principals, two to be teachers who are not Principals and two to be Principals of affiliated colleges, (v) one of the heads of the University Departments not below the rank of Professor to be nominated by the Vice-Chancellor by rotation on the expiration of every second year, and (vi) five persons elected by the Academic Council from amongst its members, at least two of whom are to be Deans. The Executive Council is, by Section 19(1), made the executive authority of the University, Amongst its powers specified in Section 20(1) is the power under Clause (xiv) to recommend affiliation of the colleges to the State Government and to grant recognition to the institutions, under Clause (xvii) to supervise and control the conduct and discipline of the students of the University and to make arrangements for promoting their health and general welfare, under Clause (xxi) to recognise a member of the staff of an affiliated college or recognised institution as a Professor, Assistant Professor, Reader, Lecturer or teacher of the University, and withdrawn such recognition, under Clause (xxiv) to make, amend or cancel the Ordinance, under Clause (xxviii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, the Statutes, Ordinances and Regulations; and under Clause (xxx) to exercise all powers of the University not otherwise provided for in the Act or the Statutes and all other powers which are requisite to give effect to the provisions of the Act or the Statutes. It will thus be seen that the Vice-Chancellor is only one of the members of the Executive Council and is to be its ex-officio Chairman. The powers and functions of the Executive Council do not vest in the Vice-Chancellor, nor can he, u/s 12(5), by himself exercise the powers of the Executive Council without any authority from the Executive Council in that behalf. His duty u/s 12(5) is to see and ensure that the Nagpur University Act, the Statutes Ordinances and Regulations made thereunder are faithfully observed and his powers in that behalf are merely confined to ensuring the observance thereof. This is not the same thing as saying that all the powers of the various authorities under the Act are to be exercised by the Vice-Chancellor himself.

16. It was next submitted that since the University has the power to withdraw affiliation of a college, the Vice-Chancellor could cause the impugned inquiry to be held with a view to see whether the affiliation of the college should be withdrawn or not. From the order appointing the impugned Committee and the correspondence referred to above, it is clear that nothing was remoter from the mind of respondent No. 1 when he appointed the Committee than the question of withdrawing the affiliation of the said College. Apart from this, the Nagpur University Act confers no such power upon the Vice-Chancellor to conduct an inquiry in order to ascertain whether the affiliation of a college should be

withdrawn. Section 38 prescribes the mode in which the rights conferred on a college by affiliation may be withdrawn in whole or in part or modified. This is to be done in three cases: (i) if the college has failed to carry out any of the provisions of Sub-section (1) of Section 34, or (ii) if the college has failed to observe any of the conditions of its affiliation, or (iii) if the college is conducted in a manner which is prejudicial to the interests of education. It is nowhere alleged either in the written statement of respondent No. 1 or in any of the replies filed to the appellant's application for interim injunction that any of the above three contingencies had arisen. The question before the inquiry committee is not the manner in which the College is conducted but the personal grievances of the teachers against the Principal. Further, the procedure provided for withdrawing the affiliation totally excludes the Vice-Chancellor from exercising by himself any such power as claimed by him. Under Sub-section (2) of Section 38, a motion for withdrawal or modification of the rights conferred on a college by affiliation is to be initiated only in the Executive Council, of which prior notice is to be given accompanied by a statement in writing of the grounds on which such motion is made. Under Sub-section (3) of Section 38, before the motion is taken into consideration, the Executive Council has to send a copy of such notice and the written statement to the Principal of the college concerned, together with an intimation that any representation in writing submitted within a period specified in such intimation on behalf of the college will be considered by the Executive Council. If necessary, this period can be extended by the Executive Council. Under Sub-section (4) on receipt of the representation or on the expiry of the period granted for making the representation, the Executive Council,

after considering the notice of motion, statement and representation and after such inspection by any competent person or persons authorised by the Executive Council in this behalf, and such further inquiry as may appear to it to be necessary, and after consulting the Academic Council, shall make a report to the Court.

Under Sub-section (5), on receipt of the report, the Court is to record its opinion in the matter after such further inquiry, if any, as may appear to it to be necessary. This resolution of the Court is to be passed by 2/3rds of the members present, such majority comprising not less than one-half of the members of the Court. Thereafter, the Registrar is to submit the proposal and all proceedings, if any, of the Academic Council, the Executive Council and the Court to the State Government which, after such further inquiry, if any, as may appear to it to be necessary, has to make such order as it may deem fit. Thus, the three inquiries referred to in Section 38 are inspection by any person or persons authorised by the Executive Council in this behalf and such further inquiry as may appear to it to be necessary before making a report to the Court, a further inquiry by the Court after such report is made if such inquiry by the Court appears to it to be necessary, and a further inquiry by the State Government after the Registrar has submitted all the proposals and all proceedings to the State Government for its orders. Section 38 does not contemplate or envisage an inquiry by the Vice-

Chancellor on his own without any authority from the Executive Council. It was, however, submitted by Mr. Masodkar, learned counsel for respondent No. 1, that the Vice-Chancellor was entitled to hold or cause to be held a preliminary inquiry for making a motion to the Executive Council for withdrawing the rights conferred on a college by affiliation, and that he was holding the impugned inquiry for the said purpose. This submission is not borne out by the facts of the case, nor does Section 38 or any other provision of the Nagpur University Act contemplates any such preliminary inquiry nor confer any power upon the Vice-Chancellor by himself to set up any such inquiry committee. In this connection, a reference may also be made to Section 12(5) of the Nagpur University Act, which provides that the Vice-Chancellor is to give effect to the orders of the Executive Council regarding the appointment, dismissal and suspension of the persons in the service of the University or teachers of the University, or regarding the recognition or the withdrawal of the recognition of any such teacher and is to exercise general control over the affairs of the University and is to be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances. Thus, the Vice-Chancellor's powers under this sub-section are to be exercised in accordance with the Act, the Statutes and Ordinances only and it is his duty to see that the decisions and resolutions of the University authorities are, carried out and not to substitute himself in place of the University authorities.

17. Lastly reliance was placed upon Section 48 of the Nagpur University Act as conferring power upon the Vice-Chancellor to appoint the impugned inquiry committee. Section 48 provides that all the authorities of the University shall have power to appoint committees and such committees may include persons who are not members of the authority appointing the committee. Section 15 specifies the authorities of the University. I have already referred to the provisions of the said section, and the Vice-Chancellor is not one of the authorities of the University. u/s 9 of the Act he is an officer of the University. Thus, u/s 48 also the Vice-Chancellor would have no power to appoint a committee by himself.

18. Under the Nagpur University Act, the only inquiry which the Vice-Chancellor is authorised to make is provided for in Section 8(1). Section 8(1) is in these terms:

The Chancellor shall have the right to cause an inspection to be made, by such person or persons as he may direct, of the University, its buildings, laboratories, libraries, museums, workshops and equipment of any institution, college or hostel maintained or recognised by, or affiliated to, the University, of the teaching and other work conducted by the University, and of the conduct of examinations held by the University; and to cause an inquiry to be made in respect of any matter connected with the University. The Chancellor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

Now, the impugned inquiry is not with respect to any matter connected with the University but with respect to matters connected with the Principal of a college which is not maintained by the University. If a construction were given to the phrase "any matter connected with the University" so as to include in it every matter connected with a college which is not maintained by the University, the result would be to make the University virtually the owner and administrator of every private college affiliated to it and entitle it to interfere in every internal or administrative matter of such college.

19. [The rest of the judgment is not material to this report].