
(2019) 02 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 3592, 3919 Of 2015, Writ Petition Stamp No. 34785 Of 2015

College Of Engineering, Pune

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Maharashtra Universities Act, 1994 — Section 89
Constitution Of India, 1950 — Article 14, 16, 311, 311(2)

Citation : (2019) 02 BOM CK 0096

Hon'ble Judges : S.C. Dharmadhikari, J; Bharati H. Dangre, J

Bench : Division Bench

Advocate : Amit Borkar, L.M. Acharya, S.D. Vyas, A.V. Anturkar, Prathamesh Bhargude, Ajinkya Udane, Kalyani Tulankar, S.B. Deshmukh, Mihir Desai, Swaraj S. Jadhav

Judgement

Bharati H. Dangre, J

1 The Three Writ Petitions revolve around a pivotal issue of autonomy granted to the College of Engineering, Pune and the scope of interference in the affairs of the said College at the instance of the State Government.

Writ Petition No.3919 of 2015 is instituted by the College of Engineering, Pune itself, praying for quashing and setting aside the decision of the State of Maharashtra, thereby disapproving the appointments effected by it on several grounds and declaring 54 candidates to be not qualified to hold the post of lecturer in the Institute and resultantly directing their termination.

Writ Petition Stamp No.34785 of 2018 is filed by the persons who are aggrieved by their discontinuation on the respective post of teaching faculty and their grievance is about the manner in which their services have been discontinued without any act attributed to them individually. Another Writ Petition 3592 of 2015 is filed by the Abhiyantriki Mahavidyalay Rajpatrit Adhyapak/Adhikari Sangh which is a Government recognized Association and it seeks relief of issuance of

writ in the nature of mandamus, directing the College of Engineering, Pune to forthwith take steps for the purpose of implementing the decision of the State Government, thereby removing 54 persons as recommended in the enquiry.

2 With the consent of the parties, we have heard all the three writ petitions together and since they were to be finally heard, we issue Rule in all the writ petitions and proceed to hear the same finally since the pleadings in the petition are completed.

3 The College of Engineering, Pune (hereinafter referred to as "CoEP") is a technical institute which was started in the year 1854 and the said Institute claims to have produced alumni like Bharat Ratna, Vishweshwaram. The said Institute imparts education in various faculties of technical education and there is no dispute amongst the parties that it is one of the acclaimed institution in the field of technical education.

In the year 2002, the Government of India decided to implement the Technical Education, Quality Improvement Programme (TEQIP)/sub-sector development programme for improving the quality of technical education in India. A substantial amount in form of loan of Rs.Five thousand crore was made available from World Bank for the said purpose. The project primarily aimed at making India a developed and confident nation by producing world class engineers through qualitative changes in the technical education system. The Ministry of Human Resources and Development undertook the process of selecting various engineering colleges and polytechnics for the said purpose and it set out certain criteria and it was held out that the institutes fulfilling the said criteria will be entitled for a substantial financial support of Rs.50 crore for the lead institute, Rs.10 crore for a network institute and Rs.Five Crore for the lead polytechnic. It was expected that the engineering colleges, by implementation of the said programme would be brought on par with the IITs. The said Government Resolution identified three engineering colleges in the State and eight polytechnic colleges for being conferred with the said privilege. The list of engineering colleges included the petitioner college i.e. Government College of Engineering, Pune.

The said Government Resolution categorically approved the changes in the field of administrative matters, academic matters and financial matters on the autonomy being conferred on the Institutes selected by the said Government Resolution. It is the case of the petitioner that the petitioner Institute was selected under the programme and this conferred an academic, financial and administrative autonomy on the college which was a means to attain higher standards and creativity in future. The autonomous institutions, according to the petitioner, were themselves entirely responsible for the education, other concerned matters and the quality of education and this extended its autonomy to the examination and evaluation systems. According to the petitioner, in terms of the said Government Resolution, the Government was responsible for giving the consolidated salary grant (block grant) for all the approved teaching and

non-teaching post in the autonomous institutions and this amount was liable for enhancement by 8% every year and the Government was entitled for taking a review of the block grant after five years and make necessary changes. The Government expected the institutions selected under the programme to achieve international standards and as a necessary measure, different funds/ endowments were created in the autonomous institutions in form of corpus fund or endowment fund as well as the fund required to replace the obsolete, non-functional machinery by advance machinery and also arranging of funds for the maintenance of machinery and facilities. Thus, according to the petitioner, financial autonomy was also conferred. Further, it is the contention of the petitioner that for the smooth functioning of the institute, Board of Governors was appointed by the Government of Maharashtra with representation of members from the Government i.e. Principal Secretary, Higher and Technical Education Department, Principal Secretary, Finance Department and the Director of Technical Education, Government of Maharashtra in their capacity as ex-officio members and they played an important role in prescribing the policies of the college of engineering. According to the petitioner, this was one of the rarest phenomenon to have occurred in the country in form of the active role of Board of Governors for taking the institute towards excellence. It is the further stand of the petitioner that being a first experiment of granting autonomy in the State, based on the model of IITs which are autonomous institutes at the Government of India level, it was expected to follow the same pattern in letter and spirit. According to the petitioner, the institute and the Board of Governors followed the reservation policy of the State Government and it prepared the faculty roster based on percentage of reservation for different categories on the basis of the norms prescribed by the Government of Maharashtra. One of the powers vested in the Board of Governors was to create academic, administrative, technical, clerical and other posts and make appointments with a view to strengthen the faculty and the staff position. However, since an acute shortage of faculty was felt, the Board of Governors took certain decisions and the copy of extract of Minutes of 9th and 10th meeting of Board of Governors have been annexed to the petition. According to the petition, the Board deemed it desirable to appoint faculty on regular basis based on Recruitment Rules and Service Conditions approved by the Board of Governors and the appointments were effected initially on probation of two years and it was decided to confirm them on satisfactory completion of period of probation. Accordingly, the advertisement for faculty positions came to be released in the newspaper, both at State and National level and was also displayed on the web-site of the institute.

4 It is the case of the petitioner that the Government vide Resolution issued in the year 2002 and 2004 while conferring autonomy on the petitioner had empowered the Board of Governors to carry out the recruitment process and it was conferred the sole authority to make such recruitment without any interference at the hands of the State Government or the Director of Technical Education. The petition also highlights the academic standards achieved by the

petitioner Institution in the last decade and which has been acknowledged by the regulatory bodies like the AICTE, UGC, World Bank, TEQIP, etc. It is further asserted that the performance of the petitioner's Institute post autonomy has been assessed by the NBA (an accreditation body of AICTE) and by the TEQIP on 7 occasions and on each of these audits, the performance of the institute has been applauded.

5 In this background, it is then stated that a writ petition came to be filed in the High Court by the respondent no.3 and it resulted into issuance of direction to the respondent State Government to take note of the complaint filed by the said Sangh and this Court directed the State Government to exercise its power to ensure discipline and quality of education in the petitioner institute. In pursuance of the said direction, Committee was constituted on 3rd March 2014 and the said Committee submitted its report to the Director of Technical education and based on this report, a show cause notice was issued to the petitioner Institute alleging that 71 appointments made by the Institute are not in order. The said show cause notice highlighted several deficiencies in the appointment orders issued in favour of 71 candidates and it was alleged that these appointments which were not in accordance with the prevailing rules, were liable to be declared as illegal. In response to the said show cause notice, the petitioner Institute filed a detailed reply on 12th November 2014 and it sought to justify the appointments by stating that all the appointments were effected in the best interest of the institute and the students and there is no illegality committed by the petitioner institution. The said reply, according to the petitioner, contained a vivid clarification on each and every objection raised by the respondent no.2. In ignorance of the said submission advanced by the petitioner institution, an order came to be issued on 23rd January 2015 by the Director of Technical Education, Mumbai by which the appointments of 54 candidates out of 71 candidates under scanner, for the period commencing from 2007-08 to 2010-11 were held to be illegal and direction was issued to initiate appropriate action in respect of the said appointments. It is this order issued by the Deputy Secretary, State of Maharashtra against which the petitioner College has instituted the present petition.

6 The thrust of the arguments advanced by Shri Borkar appearing for the petitioner College is that by virtue of grant of autonomy and the implementation of TEQIP funded by the World Bank with an object to attain the progress in technical education, scope for interference at the instance of the State Government is minimal. Shri Borkar would submit that the State Government itself while conferring the autonomy had empowered the Board of Governors to undertake the recruitment process and any interference at the instance of State Government in the recruitment so effected deprives the petitioner of its autonomy. Shri Borkar would emphasize on the various parameters of autonomy conferred by the State Government as contained in the resolution of 19th July 2002. He submits that as far as autonomy in administrative matter is concerned, the Government Resolution specifically contains a provision to the effect that all

recruitment of teachers and other employees after commencement of new governance will be according to the rules of the respective institutes and since the employees are not going to be the employees of the Government, pension and provident fund schemes of the Government is not applicable to them. The appointments were thus governed by the rules of respective institutions. For the purposes of exercising the said autonomy, in respect of recruitment, the Board of Governors was conferred with powers under the said Government Resolution. Shri Borkar submits that in such matters, the autonomy conferred on the institution permitted it to decide or change the curriculum/course/ structure examination systems, conduct the examinations, declare the results etc. As far as financial matters are concerned, according to Shri Borkar, the petitioner Institute was empowered to increase and retain the tuition fees and only expenditure on salaries was to be borne by the State Government whereas the non-salary and other recurring expenditure was to be met from the tuition fees and other sources. Shri Borkar would also invite our attention to the mandate contained in the Government Resolution where it was expected to bring the institution on par with the IITs and this permitted the institution to create any essential additional infrastructure at the institute and contained direction to the State Government to consider any such proposal which was sent by the Institute in that regard on its merit for non- recurring grant. Shri Borkar would also invite our attention to Appendices annexed to the said Government Resolution which deals with the various facets of autonomy financial, administrative and managerial autonomy. As far as the responsibility of the Board of Governor is concerned, Shri Borkar has invited our attention to Appendix-2 which sets out the authorities and the responsibility of the Board.

7 In the backdrop of the scheme evolved by the State Government as contained in the two Government Resolutions, by which the petitioner College was selected for conferment for autonomy and the Government Resolution by which the autonomy is conferred on the petitioner Institute, Shri Borkar makes a categorical statement that the interference by the respondent nos.1 and 2 in its functioning and in its decision to declare 54 appointments as illegal amounts to undue interference in autonomy. According to Shri Borkar, the direction issued by this Court on 27th November 2013, has been completely misconstrued and it has been stretched too far to the extent of declaring 54 appointment as illegal. According to Shri Borkar, this interference by the State Government in the decision of the experts in the field on whose recommendation the recruitment process was implemented, the entire scheme of autonomy and its implementation is at stake and in the wake of such an interference, it is impossible for the petitioner institute to attain excellence in the field of education like IITs which was the basic purpose of conferring autonomy on the petitioner institute.

8 Shri Borkar has taken us through Inquiry Committee Report in detail and has pin-pointedly invited out attention to the objections raised in the said report as against the appointments effected by the petitioner and his specific submission is

to the effect that the decisions were taken in the larger interest of the institute and none of the teaching staff was conferred with benefits of permanency unless and until they satisfied the eligibility criteria. According to him, the Board of Governors were of the specific view that the success of petitioner institution in its wide achievements leading to its present status as a modern institution was largely due to the various pro-active steps taken by it within the framework of powers and duties assigned to it in the Government Resolution of 31st March 2004. The submission of Borkar is that all the steps that were taken were bonafide and taken in larger interest of the Institute. Shri Borkar would thus pray for quashing and setting aside the impugned communication dated 23rd January 2015 issued by the State Government whereby direction was issued to the Director to take appropriate steps to deal with the 54 illegal appointments.

9 Shri Acharya, learned Special counsel had put an appearance on behalf of the State Government and advanced his submission. He relied on the affidavit filed on behalf of respondent nos.1 and 2 through the Director, Technical Education on 12th September 2016. In the affidavit, it is stated by the respondent that though the autonomous status was granted to the college of Engineering, Pune, it was not denuded of its status as a Government Institute and it was bound to adhere and abide by the instructions, rules and regulations and the relevant statute as framed by the University from time to time. It is further stated in the affidavit that the post of teaching faculty in the Government Engineering Colleges falls under the Maharashtra Engineering College Teachers Services Group-A and therefore, the procedure for recruitment of such post was by selection and recommendation through the Maharashtra Public Service Commission. It is further stated that the teachers who were appointed prior to grant of autonomy to the petitioner Institute were selected in a unified cadre at the State level and were governed by the Maharashtra Civil Services Rules and even were subjected to transfer according to Maharashtra Act. It is further stated in the affidavit that the Principal Secretary and the Deputy Secretary of Higher and Technical Education Department and also the Director of Technical Education were representing the Board of Governors of the College of Engineering, Pune but they were not involved in the day to day functioning of the Institute. It is also stated that in the capacity of the Director, it is his responsibility to ensure smooth functioning of the institute and also to ensure that the policies framed by the State Government are properly adhered to and implemented by the Institute. It is then categorically stated that taking the Institute towards excellence as what is sought to be done by the petitioner Institute, does not mean that the policies framed by the Government are trammelled or thrown to air and specifically the policy as regards maintenance of roster point. The affidavit further highlights the lacunae in the recruitment like the bunching of post in the same cadre and also relaxation of the minimum requirement of qualifications and experience and particularly when the Institute claims to be marching towards excellence.

Shri Acharya has also tendered the copy of the report to this Court which is accompanied by several annexures in support of the said report. On the basis of

the said report, it is the submission of the learned Special Counsel that the said Committee has gone into the deficiencies in 204 appointments effected between the period commencing from 2007-2011 and the said report highlights the deficiencies seratim. On taking into consideration the said deficiencies in the appointment to be effected in the petitioner institute, the State Government expected the petitioner institute to be conscious of the financial repercussions and the approach of the Institute was criticized on the ground that it was done under the guise of the so-called autonomy conferred on it. According to Shri Acharya, the institute had faulted in not issuing an advertisement which would clearly carve out the qualification, pay scales applicable to the post advertised, non-approval of the roster, holding the candidates to be eligible in absence of the necessary qualifications being possessed by them and several other lacunae like relaxing the educational qualification and experience criteria and appointing the candidates who were not qualified to be appointed on the date on which the appointment orders were issued. Shri Acharya would deal with the submission advanced by Shri Borkar as regards non-observance of the principles of natural justice by making a submission that the whole process suffered from the vice of arbitrariness and is vitiated. The whole process being vitiated as above, in the backdrop of the report of Meshram Committee, the State Government issued direction to the Director of Higher and Technical Education to take appropriate steps implementing the said report by which 54 appointments were declared to be illegal. According to Shri Acharya, the petitioner College had no power to make appointments in the Government sanctioned post without following the process prescribed by the Government and under the umbrella of autonomy, they did not possess any licence to act arbitrarily and in the submission of Shri Acharya, the illegality in the appointment was so apparent that no amount of hearing to any of the parties would have yielded any different result and the conclusion which the State Government had arrived at. Shri Acharya would place heavy reliance on the judgment of this Court in case of Hitendra Singh Vs. Dr.Punjabrao Krishni Vidyapeeth & ors (2012) 6 ALL MR 794, which was subsequently upheld by the Hon'ble Apex Court. Shri Acharya would submit that in somewhat similar situation, the Hon'ble Apex Court did not show any indulgence in the appointments which were made de hors the Rules, but only issued a direction to the University to take necessary steps for constituting the selection board in terms of the Maharashtra University Act and advertise the vacancies available together with the posts that were held by the appellants for recruitment in accordance with the procedure prescribed in law.

Shri Acharya, learned Special Counsel would therefore, pray for dismissal of the writ petition and to uphold the decision of the State Government.

10 A Writ Petition is also filed by the affected appointees of the petitioner Institute who were recruited as teaching faculty and have rendered services ranging from 7 to 20 years. In the writ petition filed by such teachers, a relief is sought to issue a writ in the nature of certiorari for quashing and setting aside the impugned order and permit the petitioners to continue to discharge their

duties as regular appointed teachers.

In support of the said petitioners, we have heard the learned Senior Counsel Mr. Mihir Desai who makes a categorical submission that the petitioners came to be appointed by the College of Engineering, Pune which has been conferred with autonomy by the State Government. According to Shri Desai, the managerial and administrative autonomy permitted the Board of Governor to recruit the teaching faculty and it was the prerogative of the Board of Governors to effect such recruitment in the College. It is the submission of the learned senior counsel that the Institute was required to fill in two set of posts which were governed by two different set of rules which resulted into a confusion and at times, discrimination. Shri Desai would submit that the Board of Governors which were facing anomalies in the Institute was constantly corresponding with the State Government and the University of Pune to which the Institute is affiliated seeking a bifurcation and preparation of a fresh roster for the Institute. However, no reply was received and hence, the common roster applicable to all the Government Engineering Colleges was continued. A serious grievance is raised by Shri Desai about the Meshram Committee report which recommended to the State that all 54 appointments which were found to be irregular or ineligible should be cancelled and it carved out an exception only in favour of those appointees whose application was received by the Screening Committee before the Advertisement or after the last date of tendering applications and recommendations were made to regularize the appointments. According to Shri Desai, the State Government based on the said report directed the respondent no.2 to declare the 54 appointments illegal and to put an end to such appointments. Shri Desai would submit that the petitioner ought to have been afforded an opportunity of hearing since the directions in the impugned order directly affects the petitioners prejudicially and also affect their future prospects. According to Shri Desai, there is no major illegality in the appointments of the petitioners and the appointments according to him, in some cases may be construed as irregular and he makes a specific submission that whatever concession was granted in favour of the appointees was permissible under the AICTE guidelines and there was no serious legal objection as such on the basis of which the said appointments could be snapped as illegal. Shri Desai has further asserted that the entire process adopted by the respondents resulting into termination of their services is in utter violation of the principles of natural justice and therefore, needs to be set aside. In order to buttress his submission, learned Senior Counsel places reliance on the judgment of the Hon'ble Apex Court in *Dharampal Satyapal Limited Vs. Dy. Commissioner of Central Excise, Gauhati & ors*, (2015) 8 SCC 519 where the Hon'ble Apex Court has held that though every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void, but the validity of the order has to be decided on the touchstone of prejudice and the ultimate test is always the same i.e. the test of prejudice or the test of fair hearing. He would further place reliance on the observations of the Hon'ble Apex Court where it has held that the

decision making authority cannot itself dispense with the requirements of principles of natural justice on the ground that affording such an opportunity will not make any difference that no prejudice will be caused to the person against whom the action is contemplated. It is not permissible for the authority to jump over the compliance with the principles of natural justice.

11 A third petition in the group of aforesaid petitions is Writ Petition No.3592 of 2015 which is filed by the Abhiyantriki Mahavidyalaya Rajpatrit Adhyapak/ Adhikari Sangh, College of Engineering Pune which is an association of the Gazetted Officers of the College of Engineering and is affiliated to the Maharashtra Rajya Gazetted Officer Federation. It is this association which had approached this Court by filing Writ Petition No.4046 of 2012 in which the Division Bench had passed an order which empowered the Government to appoint the Committee and look after the alleged illegal appointments made by the College of Engineering, Pune from 2007 to 2011. It is this association which raised a grievance before the Court that the College of Engineering, Pune has made several appointments of persons who are either over-age or not qualified and that some persons appointed as Associate Professors are drawing a salary of post of Professor, resulting into complete mis-utilization. The petitioners claim that in pursuance of this order, the State Government appointed Meshram Committee to inquire into the alleged illegalities and in spite of the report of the said Committee being received, no action was taken. This petition, therefore, prays for issuance of writ in the nature of mandamus directing the Director of College of Engineering, Pune to take steps for the purpose of removing 54 persons whose names are included in Schedule-A to the Government of Maharashtra letter dated 23rd January 2015.

In support of the said writ petition, we have heard learned senior counsel Shri Anturkar, Shri Anturkar has dealt with the submission of Shri Borkar that the State Government had no right to deal with the autonomy of the College of Engineering and according to the learned Senior counsel, the subject Education including Technical Education, and Universities fall within the concurrent list and this enables the State Government to deal with the said institutions. He invites our attention to the Maharashtra Universities Act 1994 and he would also submit that the University is empowered to lay down the conditions of affiliation of colleges and recognition of Universities taking into account the credibility of management and norms of academic performance of the colleges, faculties and subjects made from time to time. Shri Anturkar also invites our attention to the Maharashtra Public Universities Act, 2016 which prescribes the powers and functions of the Council. According to Shri Anturkar, the concept of autonomy has been completely misconstrued by the petitioner and in the scheme of the policy of the State Government as contained in Government Resolution by which the autonomy was conferred on the college of Engineering, Pune. The submission of Shri Anturkar is that the said autonomy cannot be bereft of compliance of the bare minimum rules and regulations formulated by the State Government. According to him, even assuming for a moment that the autonomy is construed

in broad terms as is intended to be conveyed and understood by the petitioner, the contours of its powers would not permit relaxation of the essential qualifications. According to him, the autonomy which is conferred is for academic matters which would enable it to achieve the standards in excellence. The learned Senior Counsel would plead that the appointments which were effected in utter violation of the rules and regulations of the State Government, were void and it is not possible to regularize them and specifically when the clear mandate of the State Government was to comply with its direction of affording concession to the backward classes and the policy decision of the State Government conferring the autonomy on the petitioner Institute retained such protection to the backward class. Mr. Anturkar would further pray that the decision of the State Government based on the Meshram Committee Report be implemented forthwith and according to him, the illegal appointments cannot be saved by feigning a plea of it being violative of principles of natural justice. He further submits that in the wake of patent/mass illegality being noticed by the Specially appointed Committee in the process of appointment adopted by the College of Engineering Pune, the entire selection process needs to be set aside and in such a contingency, the individual show cause notice to each of the persons selected as claimed by the learned Senior Counsel Mihir Desai is also unwarranted. He place reliance on the judgment of the Hon'ble Apex Court in case of Hitendra Singh s/o Bhupendra Singh & ors Vs. Dr. Punjabrao Krishni Vidyapeeth & ors (supra) which affirms the judgment of Division Bench of this Court to which one of us (J. Dharmadhikari) is a party, which dealt with an almost similar canvass of facts.

12 With the assistance of the learned counsel for the parties, we have perused all the three writ petitions along with its annexures and also the affidavit in reply filed by the State in Writ Petition No.3919 of 2015. We have also gone through the report of the Meshram Committee which has been placed before us by the Special Counsel Shri Acharya appearing on behalf of the State Government.

The issue involved in all the aforesaid three Writ Petitions is about the scope of autonomy conferred on the College of Engineering, Pune and whether this autonomy permitted the State Government to make it imperative on the Institute on whom the autonomy has been conferred to abide by its norms/policy decisions prescribing the criteria for eligibility and also its policy of reservation. In the backdrop of the said issue, we would also be required to delve into the sustainability of the decision of the State Government as contained in the impugned order dated 23rd January 2015, thereby directing the CoEP to take action against all the 54 appointees whose appointment is found to be vitiated on account of gross illegalities and whether the illegalities are of such magnitude and nature which would warrant the quashing of entire process of selection. The third question which is required to be adverted to after answering the second question is whether the persons who have taken benefit of a fraud, unfairness, arbitrariness at the source can assail the process by alleging that the process adopted was unfair and in violation of the principles of natural justice.

13 The Government of India decided to implement the TEQIP (Technical Education Quality Improvement Programme) for improving the quality of technical education and a loan was made available by the World Bank for the said purpose. The said project envisioned making India a developed and confident nation by producing world class Engineers through qualitative changes in technical education system. The Ministry of Human Resources Development undertook the task of selecting the Engineering Colleges and Polytechnics under the said Programme and it set out bench-mark to select the Institutes who were held to be eligible for financial support of Rs.50 crores in case of an engineering college and Rs.10 crores for a network institute. The object of implementing the said programme was to bring the engineering colleges on par with the IITs. It was proposed that this could be achieved only if the Institute was conferred with complete autonomy.

Resultantly, the Government of Maharashtra appointed an Expert Committee under the Chairmanship of Shri F.C. Kohli, Vice Chairman of Tata Consultancy Services for according total autonomous status to engineering colleges. The autonomy which was sought to be conferred was held to be directed to three areas i.e. academic, administrative, financial and managerial autonomy. The State Government by issuing a Resolution on 19th July 2002 accorded its approval to implement the Technical Education Quality Improvement Programme (for short "TEQIP") in the Engineering colleges and Polytechnics in the State of Maharashtra subject to the three major stipulations i.e.

"No transfer of Government property will be allowed.

Centralized Admission process will apply.

Currently available benefits to the socially backward class will continue.

On formation of the BoG and obtaining academic autonomy from the respective Universities, the Institutes Will function as total autonomous institute".

14 The Government College of Engineering, Pune received approval of the State Government as an Institute to participate in the TEQIP. Implementation of the said programme brought changes in the governance of the petitioner Institute and "The ownership of the properties of the petitioner college came to be vested in the Government with the right being conferred on the Society to use land, buildings, machinery, furniture, etc. comprising this property and an embargo being imposed that the Society will not be able to dispose of land and buildings without permission of the Government. "Council of Autonomous Institutes, Maharashtra State" was constituted as a State legal advisory body for the autonomous Institutes and the Hon'ble Minister, Higher and Technical Education was appointed as ex-officio Chairman of the said Council. Board of Governors also came to be constituted by the Government with a term of five years.

15 As far as the autonomy in administrative matters is concerned, the Government Resolution provided thus :

"Existing provisions of Pension and Provident Fund will be applicable to the employees of VJTI, Mumbai and SGGSC&T, Nanded who have joined the Institute before date of commencement of governance of the institute by the new societies, Similarly, their salaries and provident fund amounts will be paid from the Block Grants made available to these Institutes by the Government. The expenditure towards salaries of the teaching & non teaching staff of College of Engineering, Pune & 8 Polytechnics, who have joined the institute before the date of commencement of governance by the respective societies will be paid from the Block Grants made available to the institutes. Pension and Provident Fund schemes as on today will be applicable to these employees and this will be the responsibility of the State Government.

All recruitment of teachers and other employees after commencement of new governance will be according to the rules of the respective Institutes . Since these employees are not going to be the employees of the Government, Pension and Provident schemes of the Government will not be applicable to them. They will be governed by the rules of the respective Institutes in these matters".

In academic matters, the Government Resolution contemplated the autonomy in the following terms :

"After the grant of autonomy the above three Engineering Colleges will have the autonomy to decide or change the curriculum/ course structure/ examination systems, conduct the examinations, declare the results etc. The 8 polytechnics already have academic autonomy. The question of according academic autonomy to them again does not arise.

Permission is hereby given to Institutes to take necessary steps to apply for academic autonomy. Also, there is no objection for issuing the State Governments 'No Objection Certificate' to the University, AICTE and UGC. The grant of academic autonomy is recommended from the academic year 2002-2003.

In financial matters, it contemplated the autonomy in following terms :

"19 Powers to increase and retain tuition fees are being given to the above Institutes. Therefore only expenditure on salaries as shown below will be borne by the State Government. Non-salary and other recurring expenditure is to be met from the tuition and other resources. The State Government will take a review of the Block Grant Scheme after five years and make modifications, if necessary.

20 It is expected to bring these three Institutes on par with IITs. These Institutes are required to compete for World Bank support under TEQUP. If, for the purpose of competing for the Worlds Bank support, the Institutes are required to create any essential additional infrastructure at the Institute, the proposal made in that regard by the Institutes, will be considered by the State Government on its merit for non-recurring grant.

16 The Appendix appended to the said Government Resolution further clarified the aspects of academic, financial and administrative autonomy in the following manner :

1 Academic The Institutes will have enough freedom:

To start new Programmes, and change curriculum of existing programmes.

To implement Research and Development programmes.

To bring about academic development through networking with other academic Institutes.

To award Degree certificates.

To organize continuing education programmes/ Community services programmes according to the needs of the society.

The Institutes will have their own academic programmes and they should be able to award their own Degrees.

2 Financial

2.1 Release of Block Grant to the Institutes for their recurring expenditure, instead of present Grant-in-Aid release. The Institutes will have full autonomy to utilize the amount made available this way.

2.2 The Block Grant will depend on the approval of the Government to the Development programmes as recommended by the Board of Governors.

2.3 The Institutes will have freedom to disburse/re-appropriate the Block Grant amount. That is, there will be no effect of the Internal Revenue Generated on the Block grant amount. The IRG will be used for the development and maintenance of the institute.

2.4 Following funds will be created:

Corpus Fund or Endorsement Fund Replacement and Depreciation Fund
Maintenance & Repairs Fund Pension Fund

2.5 Expenditure will be audited by Chartered Accountant so as to enable quick and easy implementation of the programme. Wherever necessary, audit may be done by the office of the Accountant General.

3 Managerial

3.1 Institutes will have autonomy to conduct research, academic programmes, consultation, seminars, continuing education programmes, industrial and community services, jointly in collaboration with world reputed Institutes/ Universities.

3.2 The Institutes will have full autonomy to frame policies and take decisions regarding distribution of the Internally Generated Revenue.

4 Administrative

4.1 The Engineering Colleges & Polytechnics will have autonomy in the following matters.

To charge fees as decided by the Council within the policy of the Government.

To purchase equipments and hire services as found necessary.

To hire security services, garden maintenance, vehicles and related services.

To decide the number of teaching and non-teaching staff as per requirements and rules.

17 It is pertinent to note that the policy decision of the State Government as contained in the resolution conferring the autonomy on the COEP made it imperative to continue the benefits applicable to the socially backward class and it is only on formation of the Board of Governors and on obtaining academic autonomy from the respective Universities, the Institutes were expected to function as total autonomous Institutes. Another Government Resolution issued by the State Government on 31st March 2004, State Government came up with an amended resolution granting its approval to the implementation of TEQIP in the technical institutes including the petitioner institute.

18 It is the submission of Shri Borkar, learned counsel for the petitioners, that in case of any unsatisfactory performance by the Institute, the concerned Ministry through the Vice Chancellor is empowered to appoint a Committee with reference to this and forward the report to the State Government and the decision taken by the Government shall be final. He submits that this does not in any way empower the State Government to constitute a Committee even if the University finds the academic standard of the institution unsatisfactory. With this autonomy in mind, the State Government conferred certain responsibilities on the autonomous institutions like the petitioner to improve its academic standards and to maintain the improved standards like evaluation being carried out by the National Board of Accreditation or to be subjected to the autonomy audit of the Institute, feed back from the students, alumni association and it expected the Institute to evolve a method for its own evolution.

The Government Resolution provides for Constitution of the Board of Governors who was entrusted with the responsibility of governing the autonomous institution. The chair persons of the Board of Governors were expected to reputed industrialist/scientist and to be appointed by the Government. The powers and duties of the Board of Governor empowered it to prepare the comprehensive development plan for the institution and to control and manage the Institute. It also included the power to decide the staff pattern (except the Government approved post) and the Human Resources Development policy and to decide the service conditions of the new employees.

19 The respondent no.3 approached this Court alleging certain irregularities in

the appointments made in the CoEP and it made a grievance that the State Government is not taking note of the complaints of the petitioner Sangh with regard to the appointments which have been effected from 2007 to 2011. It was specifically alleged that the appointments made by the Board of Governors in the COEP, 33 teachers did not possess requisite qualifications/experience or they did not meet the deadline of age limit on the date of their appointments. The Division Bench of this Court on 27th November 2013 disposed of the writ petition with the following observations :

"7 To our mind, it is therefore plain and clear that the Government retains such control as is requisite and necessary as to ensure quality education even after the autonomy is granted to the College of Engineering, Pune. It is not as if without any reference to the Government Resolution and decision taken in the interest of higher education that the autonomy can be enjoyed by the institute. It is bound to abide by such instructions, rules and regulations and relevant statute as are framed by the Government time to time.

8 In these circumstances, we do not find any merits in the submission of the learned A.G.P that since the Government granted autonomy it can only take note of the complaints but it is for the College to proceed against the concerned appointees. We are of the view that Government has enough powers which it can exercise and to ensure discipline and quality of education even after the autonomy is granted. Once the autonomy is controlled and is under supervision of the Government including making available finance and funds from public exchequer, then, the Government may take requisite steps and so as to proceed against not only the appointee but against the college as well. Let Government take requisite steps and measures as expeditiously as possible and in accordance with law within a period of three months from the receipt of this order.

9 We have clarified that the teachers and appointees being not before us, whenever action against such teachers are initiated or steps are taken which may result in prejudice to these employees then it is for the parties concerned to abide by and duly complete the proceedings in accordance with legal provisions. Our order only ensures that the Government acts in accordance with law beyond that we not want to make any order, leave alone expressing any opinion on merits of the contentions which have been raised by the Petitioners and equally by the State in the petition".

Based on the said order, the State Government constituted a Committee under the Chairmanship of Shri Dayanand Meshram, Joint Director, Higher and Technical Education, Mumbai. The three Member Committee after examining the record pertaining to the appointments made in the COEP from the year 2007 and after affording opportunity to the College and also the representatives of the respondent no.3 and after affording an opportunity of hearing to some of the affected teachers scrutinized 204 appointments which were made by the College between 2007 to 2011. The said Committee highlighted several lacunae in the entire process of appointment and the report makes reference to 15 such

lacunae and in the backdrop of the said 15 points, arrives at a conclusion that taking into consideration the sanctity of the appointment process and unmindful of the consequences that would impose a financial burden on the State Government, in utter dereliction of the policy of the State Government, the Board of Governors had effected such appointments without issuing clear advertisement, considering ineligible candidates for interview though on the date of the interview, the candidates were not qualified and the serious lacunae like two of the Professors participating in the screening process though they themselves were competing candidates.

Perusal of the said report submitted by the Three Member Committee has referred to the following lacunae and we deem it expedient to reproduce the highlights of the said report in order to understand the gravity and magnitude of the illegalities committed in the entire process of selection.

(i) Before issuing an advertisement, it was incumbent to finalize the post to be filled in from two sources i.e. the Government approved post and the posts to be filled in at the Institute level and the salary of the said appointees to be borne by the Institute. However, before issuing the advertisement, the number of posts to be filled in from the two distinct sources were not finalized nor mentioned in the advertisement.

(ii) It was imperative for the Institute to approve the roster point by taking into consideration the total number of approved post and after finalizing the reservation, it ought to have found a mention in the advertisement. However, the roster point was not approved from the competent authority nor the post reserved received approval. Further, the advertisement did not carve out any reservation for women and physically handicapped category.

(iii) Before publishing the advertisement, the proforma advertisement had to be prepared and the terms and conditions ought to have been included. Without verifying the same, the advertisement was issued.

(iv) It was imperative to consider the applications received till the last date schedule for making application. However, without granting any extension, the candidates who preferred application till the date of interviews were considered. Further, the applications received prior to issuance of the advertisement were also taken into consideration.

(v) While effecting appointments in the year 2007, the educational qualifications and experience as set out in the Government approved Recruitment Rules of 2000, the eligibility criteria was to be fixed. However the eligibility criteria of higher level was fixed by the Institute at its own level. However, while scrutinizing the applications, the eligibility criteria fixed by the Institute itself was ignored and the candidates who did not possess the requisite qualifications were called for interview.

(vi) On 1st March 2008, the State Government had approved the Recruitment

Rules for the autonomous Institutes and had issued direction that in any contingency, the minimum norms and standards could not be subjected to any relaxation, in ignorance of the said directives, the Scrutiny Committee in ignorance of the said criteria, scrutinized the applications and by applying inferior norms, held the candidates eligible. For following this process, the permission of the State Government was not taken and the decision was taken only at the level of the Scrutiny Committee, resulting into violation of the policy of the State Government.

(vii) As per the norms of the Society, the Selection Committee was to comprise of the representative of the University Directorate. Instead, the Committee was comprised of the Director of COEP, Pune. The representative of the backward class ought to have been invited to participate in the selection process and though Professor DomKundwar was included as a representative of backward class, no documents showing that he belonged to backward class were produced before the Inquiry Committee.

(viii) In terms of the Recruitment Rules published by the State Government on 1st March 2008 applicable to the autonomous institute, for the post of Professor, minimum qualification of Ph. D is mandatory. However, in ignorance of the said criteria, the candidates who had not acquired the said qualification till the date of interview were declared eligible by the Scrutiny Committee and even the Selection Committee selected such candidates.

(ix) In ignorance of the directives issued by the AICTE and the Recruitment Rules framed by the State Government for the post of Professor requiring a qualification of Ph.D and for Associate Professor possessing qualification of M.E/ M.Tech, the candidates who did not possess the said qualifications were given extension varying from 2 years to 5 years for acquiring Ph.D/M.E/M.Tech qualification.

20 The Committee also makes a reference to individual cases of lecturers who were not possessing the requisite educational criteria to be appointed. The report also makes a reference to the Fifth Pay Commission Report where the post of Professor, Associate Professor and Lecturer constituted a cadre, whereas in Sixth Pay Commission, the post of Professor, Associate Professor and Assistant Professor has been approved as a cadre. Resultantly, the erstwhile Assistant Professor is converted into Associate Professor whereas the post of Lecturer is converted into Assistant Professor. However, at the institute level, the post of Associate Professor has not been sanctioned and though it is not in existence, 9 employees were conferred with pay scale of 16400 - 20000 and their salaries have been paid from the government fund. This, according to the Committee, has caused financial loss to the State Government. Further, it is also noted by the Committee that certain Professors have been conferred with 5 to 10 increments without any justification. The Committee has also observed categorically that in the scrutiny process for appointment, the Professor in the subject of Metallurgy Dr.S.D. Agashi and Dr.M.J. Rathod themselves participated in the scrutiny

process.

21 The Committee clarified that the said report pertained to the appointments covered by the order of the High Court and there were no appointments from February 2011 to December 2012 and in the year 2013, there was a change in the mode of recruitment in the institute and appointments were made only on adhoc basis for one or two years and their services have come to an end by efflux of time and therefore, they were not covered in the said report.

22 We have carefully perused the report and with the assistance of the Special Counsel Shri Acharya, we have taken note of the data, accompanying the report and on the basis of which the Committee has recorded the conclusions which we have already reproduced above. The said report in detail deals with each candidate and the appointments made year wise. The Committee also notes that the defective advertisement were issued without mentioning the applicable pay scales nor did the advertisement categorically set out the dates of interview. The show cause notices issued to the petitioner College on 16th October 2014 clearly set out the illegalities in the selection process including the major illegalities of not mentioning of the post in the advertisement, non-mentioning of the reservation in the said advertisement and alleges that the institute was expected to act with responsibility in carrying out the entire process of selection and specifically when it was saddling the Government with huge financial bearings and it is also alleged that under the name of autonomy, the Government Rules and Regulations have been completely ignored. A reference is made to the Government Resolution dated 1st March 2008 issued by the Higher and Technical Education Department, where the Recruitment Rules applicable to the autonomous institutes were published but the said Rules were not complied with in regard to the minimum qualifications to be possessed by the candidate. The petitioner college was, therefore, called upon to submit an explanation as to why the 71 candidates should not be declared as ineligible and an explanation is sought along with the details of all the said 71 appointees which were found to be illegal.

The College of Engineering submitted its reply to the show cause notice and sought to submit clarification. The clarifications contained in the said reply are the one which were placed before us by the learned counsel Shri Borkar. It is attempted to be canvassed that in order to raise the Institute's academic standard, the Board had taken certain bold decisions and in the year 2007, it had adopted its own recruitment rules and decided to adopt the policy of executing the reservations after bunching the posts of all the departments cadre wise (Professor, Associate Professor, Assistant Professor) taken together rather than applying reservation to post of all cadres in a particular department with a logical belief that all caste categories would be duly facilitated and justice ensured by these cadre clustered positions. The explanation offered is that the Board adopted the best pro-active practices of IITs such as rolling advertisement round the year in its recruitment drive for faculty. The Board justified its selection

process and submitted that due diligence has been applied by the Board in effecting the faculty appointments and to its best understanding and belief, all the appointments have been correctly done. The decisions of the Board are further sought to be justified by show casing the performance of the institute from last one decade and by stating that the institute has been rated at the same level as IITs by all stake holders and surveys. The clarification was also submitted about individual appointments and on hearing Shri Borkar, we invited his attention to the major issues to which Borkar responded by stating that it was all done by the consent of the State Government or some times, when the guidance was sought it did not come and therefore, Board of Governors proceeded.

We have noted that the Board of Governors has faulted on several points and on perusal of the report of the Inquiry Committee and the show cause notice and the response submitted by the COEP and the final order, we could observe that there are 54 cases where the appointments are sought to be canceled and this includes 36 appointments on Government sanctioned post and 18 appointments on institute created post. Amongst these cases, the lacunae which were noted by the Committee can be summarized in a tabular form in the following manner :-

Table 3: Classification of objections and number of cases

Pt. no

Objection

No of appointment s on Govt. sanctioned positions

No of appointments on institute sanctioned positions

Total

1

Roster not followed

10

04

14

2

Unavailability of posts

03

09

12

3

Age Relaxation

02

02

04

4

Relaxation in Experience

01

01

5

Non submission of Non creamy layer certificate

07

01

08

6

Relaxation in qualification (MTECH/PHD)

10

02

12

7

Eligibility due to Basic degree

03

03

Total

36

18

54

On the Government sanctioned post, 36 posts suffers from the following lacunae :-

Appointments on government Sanctioned positions

Pt no.

Objection

No of cases recommended for continuation since the selection is valid

No of cases recommended for conditional continuation

No of cases transferred to institute created positions

Total

1

Roster not followed

05

01

04

10

2

Unavailability of posts

03

03

3

Age Relaxation

01

01

02

4

Relaxation in experience

01

01

5

Non submission of Non creamy layer certificate

03

04

07

6

Relation in qualification (MTECH/PHD)

02

04

04

10

7

Eligibility due to Basic degree

00

00

03

03

Total

08

12

196

36

The strange features which were adopted and sought to be justified by the petitioner institute is the issuance of rolling advertisement and it is vehemently argued that the Board of Governors decided to follow this practice which is prevailing in all leading institutions all over the world in which a detailed advertisement is issued and it is kept available for long period. It is sought to be submitted that it helps the aspiring candidates who apply against vacancies at any point of time in this period without bothering about the last date of receiving applications. Further, it is attempted to canvass and submit that a short advertisement came to be published periodically and in local, regional and national newspapers to fulfill the statutory requirements and to direct the aspirants to view details on the website and this practice has helped COEP in expanding its reach world wide and to get more number of applicants and also to reduce the advertisement expenditure. We are rather amazed by the said mechanism adopted by the Institute. In fact, we have noted that the advertisement issued did not prescribe the educational qualifications and diverted the candidate to the website of the institute. The Government had already formulated the 'Recruitment Rules for autonomous Institute' dated 1st March 2008 but the Advertisement did not mention the educational qualifications and the experience criteria. Further, the date of interview is found to be missing in the advertisement and the justification offered is that it was a rolling

advertisement. The objections of the Inquiry Committee are very self explanatory and it has noted that by this process, even the applications received before publication of advertisement were taken into consideration, whereas in cases the candidate who was not possessing a Ph.D degree on the date of interview was called for interview even though the application was received after the prescribed date. The Committee has also remarked that most of the candidates were lacking educational qualifications and those who were selected and appointed to fill up the backward category post did not possess non creamy layer certificate and for this irregularity also, the justification offered is that it was a rolling advertisement and the object was to appoint faculty with diversified multi-disciplinary qualifications. The age relaxation has also been granted to two candidates apart from the relaxation in qualification granted to 12 candidates. The roster point was alleged to be not followed is the observation of the Inquiry Committee and the explanation offered is that looking at the fact that the roster was common to all Government Colleges in the State and not separated College wise as required for implementing the provisions of Government Resolution of 2004 and in absence of any directions from the State Government on the subject, the Board of Governors decided to adopt the policy of executing reservations after bunching the post of all departments cadre wise (Professor, Associate Professor, Assistant Professor) rather than applying reservations to post of all cadres in a particular department taken together and roster of COEP was prepared in this manner. The said justification is unfathomable as it was by that the time, settled that said mechanism is not a permissible mechanism and the institute ought to have maintained the roster department wise. This has resulted into serious infraction of the implementation of the reservation policy and in 14 cases, it is the observation of the Committee that the roster was not followed.

23 The State Government has its reservation policy in place and while granting autonomy, it was made clear that the State intends to continue with the protection granted in favour of backward classes and expected the institute to follow the norms of the State Government. In utter derogation of the said policy, the Board of Governors has adopted the philosophy of bunching of post cadre wise instead of it being subject wise though in the year 2014, the State Government came up with a revised policy and has guided its policy towards cadre wise reservation. In any contingency, the said policy was not existing at the relevant time.

24 From the perusal of the entire report, it is clear that the Board of Governors has not followed the criteria of the requisite educational qualification and experience and also faulted in applying the reservation policy by bunching the post cadre wise when it was not the policy of the State Government. The grave lacunae like considering the candidates who had applied prior to issuance of advertisement and by selecting a candidate, after the last date of filling up of the application form was over, cannot be considered to be a pro-active part of the Board of Governors but it can only be described as bending the rules to suit the

candidates and we do not understand the audacity of the Board of Governors to justify the same by boosting that the petitioner institute has achieved excellence.

The rolling advertisements also do not seem to have yielded any results. We do not find any candidates with exceptional qualifications being competing for the post in the petitioner institute. We can thus only observe that there was a complete hotchpotch in the entire selection process and the patent illegality adversely affected the entire process of appointment and it warrants quashing of all such appointments which are faulted by report of the expert committee to which there is no denial except the justification which we have mentioned above.

25 In the backdrop of the factual position as emanating from the report of Meshram Committee which has pointed out grave and serious flaws in the manner of selection and the subsequent appointments being effected by the CoEP on a specious ground that it enjoys an autonomy. Therefore, we are called upon to determine what is the scope of 'autonomy' as is claimed to be granted in favour of College of Engineering, Pune and whether such autonomy would completely oust any regulatory control of the State Government over its functioning.

26 The term 'autonomy' implies right of a person, an organization etc. to govern or control his/her own affairs and to be independent. The Cambridge Dictionary defines 'autonomy' to be the ability to make your own decisions without being controlled by anyone else. The subject 'Education' finds place in a concurrent list of VIIth Schedule to the Constitution and Entry 25 includes technical education, medical education and Universities subject to the provisions of Entry 63, 64, 65, and 66 of the Union List. It is thus undisputed that the respective State Assembly is competent to enact a law regulating education including technical education. The field in the State of Maharashtra was governed by the Maharashtra Universities Act, 1994 which confers power and duties on the University which was responsible for providing instructions, teaching and training in such branches of learning and courses of study as the University may determine. It also empowered the University to create post of Directors, Principals, Professors etc. and other teaching or academic post required by the University with the approval of the State Government and to prescribe their qualifications and to effect such appointments. It is also the function of the University to lay down the conditions of affiliation of colleges and recognition of institutions taking into account the credibility of the management and the norms of academic performance of colleges, faculties and subjects, as may be laid down from time to time and to satisfy itself by periodical inspection that the conditions are fulfilled. The University is also duty bound to monitor and evaluate the academic performance of affiliated colleges and recognized institutions for affiliation and confer periodical accreditation. The Universities, thus, controlled the educational institutions by conferring affiliation. The Maharashtra University Act 1994 defined 'autonomy' as follows :

"Autonomy means a privilege of the university conferred by the statutes to

permit a college, institution or a university department to conduct academic programmes and examinations, develop syllabus for the respective subjects and issue certificates of passing the examinations, etc. A college, institution or a university department which has been granted autonomy shall have full academic administrative and financial autonomy subject to the provisions of the Act and Statutes".

The Maharashtra University Act, 1994 came to be repealed and the Maharashtra Public Universities Act 2016 was enacted and which entrusted somewhat similar powers and duties on the University by empowering it to lay down conditions of affiliation of colleges and recognition of institutions taking into account the credibility of the management and the norms of academic performance of colleges, faculties and subjects. The new enactment makes a provision for constitution of a council for ensuring coordinated and integrated development of technical education and maintenance of standards and this empowers the Council to lay down norms and standards for courses, curriculum, physical and infrastructural facilities, staff pattern, staff qualification, college instructions, assessment and examination. It is also empowered to withhold or discontinue grants in respect of courses, programmes to such technical institutions which failed to comply with the directions given by the Council.

The Maharashtra Public Universities Act, 2016 defines 'Autonomy' as under :

"Autonomy means a privilege of the university conferred by the statutes to permit a college, institution or a university department to conduct academic programmes and examinations, develop syllabus for the respective subjects and issue certificates of passing the examinations, The petitioner institution stakes a claim that it is conferred autonomy by the Department of Higher and Technical Education vide its resolution dated 19th July 2002 in order to implement the technical education, quality improvement programme for improving the quality of technical education in India. Perusal of the said Government Resolution reveals that approval was given by the said Resolution to implement the TEQIP Programme in the Engineering Colleges and Polytechnics in the State of Maharashtra to enhance the quality of technical education and the so-called 'autonomy' was conferred subject to certain stipulations which included the stipulation of permitting the institutions to function as total autonomous institution on formation of the Board of Governors and obtaining academic autonomy. Under the Scheme of the Maharashtra Universities Act, 1994, a University Department or Institution, affiliated College or recognized institution is entitled to apply to the University for grant of autonomous status and the management council on recommendation of the academic council may confer such an autonomous status. On such an autonomy being conferred, the institutional college is empowered to constitute its authorities or bodies and exercise the powers and perform the function and carry out the administrative, academic, financial and other activities of the University as prescribed. It is also empowered to prescribe its own courses of studies, evolve its own teaching

methods and hold examinations and tests for students receiving instructions and award degrees or certificates of its own. The Autonomy contemplated under Section 89 of the Maharashtra Universities Act, 1994 permit the functioning of the institution with the objective of promoting the academic freedom and scholarship on part of teachers and students which are essential to the fostering and development of an intellectual climate conducive to the pursuit of scholarship and excellence. The petitioner institution is not conferred with such an autonomy as contemplated under Section 89 by the University. Perusal of the said Government Resolution confers autonomy on the institution in the field of administration, academic matters and financial matters. The autonomy in academic matters permitted the engineering colleges to decide or change the curriculum, course structure, examination system, conduct of examination etc. The administrative autonomy enabled the COEP to recruit the teachers and other employees in accordance with the rules framed by them and the new appointees appointed after the commencement of new governance are to be treated as the employees of institutions and not employees of the government, resultantly, the pension and provident fund schemes of the Government is not applicable to them. The financial autonomy permitted the CoEP to increase and retain the tuition fees and only expenditure on salaries was to be borne by the State Government whereas the non-salary and other expenditure was to be catered to from the tuition fees and other resources. The Government Resolution dated 31st March 2004 contemplated that while granting complete autonomy, managerial and administrative changes are to be effected as per guidelines issued by the Ministry of Human Resources Development, Government of India. It contemplated constitution of Board of Governors with a tenure of 5 years to its members and the functioning of the institution was to be carried forth through the Board of Governors. As far as service conditions of the regular teaching and non-teaching employees who had entered the service of the institute, prior to the issuance of resolution, through the Society continued to be the employees of the Government, whereas those appointed after, would be the employees of the Society and governed by the service conditions stipulated by the Society. The emphasis in both the Government Resolutions in conferring the autonomy in academic, administrative and financial matters was to improve the academic standards and to advance excellence and perfection in the field of technical education. In any contingency, the autonomy surely did not confer a licence for mal-administration so as to defeat the avowed purpose i.e. to achieve excellence in the field of technical education. The whole purpose to implement the TEQIP and conferring autonomy on the petitioner institute was to enhance the quality of technical education in the state and this could have been achieved by conferring certain powers on the Institute to be exercised by it independently in administrative academic and financial areas. However, while granting autonomy, the State Government had imposed a condition of continuing the currently available benefits to the socially backward class. This implicitly brought within its fold the application of the policy of reservation being implemented by the State Government and made it imperative for the institution to follow the roster point

while effecting the appointments. The petitioner college being a college imparting technical education is also subjected to the supreme body under the AICTE Act. The object of AICTE is that it has prescribed the educational qualifications to be possessed by those imparting education in the technical colleges and the petitioner institute was duty bound to adhere to the said norms of AICTE. The object of prescribing the educational qualifications is to maintain uniformity in the field of technical education and in prescribing the said qualification, it cannot be said that there is any interference with its autonomy but that is a step by which excellence and efficiency can be attained. The petitioner college has made an attempt to follow the pattern of IITs and it is attempted to canvass before us that the mechanism which is made applicable to IIT was followed by it i.e. the rolling advertisement. The appointments effected by the petitioner college did not adhere to the educational qualification prescribed by the AICTE and the Meshram Committee Report focuses on the qualification criteria, the age criteria, the experience criteria, being not adhered to. The lacunae pointed out by the Meshram Committee are gross and the justification offered by the College did not find favour with the Committee since it noted that the AICTE norms could not have been deviated and the essential qualifications could not have been relaxed and the mandate of possessing of qualifications should have been ensured at the time of effecting the appointment itself. The insistence of the State Government on adhering to the norms prescribed by AICTE cannot be said to be an interference in autonomy of the institution and what is only done by the State Government is bringing it to the notice of the institution that they have not followed the norms prescribed by AICTE and that they have not adhered to the reservation policy made applicable in the State. This, in our considered opinion, cannot amount to tinkering with the autonomy of the petitioner institution since the autonomy implies governance in accordance with the existing law and rules. The autonomy contemplated by the State Government would not confer a right to malfunction or to function de hors the norms prescribed by the AICTE or the Statutes framed under the Maharashtra Universities Act 1994 regarding the grant of autonomous status to the affiliated colleges/recognized institutions/Universities and University institution. The said statutes recognizes the autonomy being conferred on the institution on account of phenomenal growth of higher education where the affiliating system does not allow required freedom to the colleges to meet the demand cast on them. The statute being framed in the backdrop of existence of large number of affiliated colleges in the Universities and in view of the acknowledged fact that it has become a drag on the process of modernization and improvement of standards because of the compulsion to prescribe identical curriculum, teaching system and examination system for affiliated colleges and the compulsion to set standards which are attainable even by the weak colleges, the prescription of the Universities tends to keep the standards low and in this scenario, the colleges which have the potential to implement higher standards do not have the freedom to do so. Resultantly, the said Statute permits conferment of autonomy to the following effect :

An autonomous college shall have the freedom to

- (a) determine and prescribe its own course(s) of study and syllabi
- (b) prescribe rules of admission, subject to government norms
- (c) evolve methods of evaluation and conduct examinations and
- (d) evolve new course(s), subject(s) as per requirement of region, society and/or industry"

27 Ultimately, Autonomy is a privilege granted by the University. Whether under the 1994 Act or 2016 Act, it remains a privilege and comes with conditions. The autonomy under the said statute is set out as a means to achieve higher standards and greater creativity in future and such an autonomous college/institution is fully accountable for the content and quality of education that is imparts and shall be responsible for evaluation of the students for award of degrees/diplomas in certificates which will be accepted by the parent university. Statute 606 empowers the autonomous college/recognized institution the following autonomy:

Statute 606 The Autonomous College/Recognized Institution/ University Department/University Institution, subject to the revised guidelines of the University Grants Commission on the scheme of autonomous colleges (1998), shall :

- (a) frame, determine and prescribe its own courses of studies and syllabi for the course(s), subject(s), for which autonomy is granted;
- (b) admit the students to the professional courses as per the Government rules, from time to time;
- (c) impart instructions and training, using modern methods;
- (d) conduct tests and examinations, using innovative methods for award of the degrees, diplomas and certificates of its own and on behalf of the University;
- (e) introduce modern techniques of evaluation and testing;
- (f) subject to prior permission of the Government and/or the University, create posts of teachers, non-vocational academic staff and non-teaching employees and appoint suitable persons as per the provisions of Statutes, Standard Code as prescribed by the University/Government from time to time.
- (g) appoint the panel of paper-setters, examiners, moderators and invigilators on the recommendation of the Examination Board;
- (h) declare the dates of examinations and their results, as per the recommendations of the Examination Committee;
- (i) function with the objectives of the autonomy by promoting academic initiatives and scholarship on the part of the teachers and students;

(j) collaborate with other institution/agencies/ industries etc. in the teaching research, extension programs, production of teaching material and institution awards, medals, scholarship, freeship, etc.

(k) perform such other duties and responsibilities that may be necessary to fulfill the obligations of autonomous status"

The Statute thus contemplates creation of post in the institute, subject to prior permission of the Government and appointment of suitable persons as per the provisions of the statutes, standard code as prescribed by the University/ Government from time to time. We have noted that the insistence of the State Government is about following the norms and the educational qualifications prescribed by the AICTE which provides for establishment of All India Council for Technical Education Act, 1987 which provides for an establishment of an All India Council for Technical Education with a view to proper planning and Coordinated development of the technical education system throughout the country and for planned quantitative growth and regulation and proper maintenance of norms and standards in the technical education system. Further, the insistence of the State government is also on following the reservation policy as is contained in the Maharashtra State Public Services (Reservation for Scheduled castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes/Special Backward category and Other Backward Classes) Act, 2001 which provides for a reservation of vacancies in public services and posts in favour of persons belonging to certain category and it extends to the whole State of Maharashtra. Every establishment which is the office of the Government or local authority or a statutory authority constituted under the Act of State legislature or a University is duty bound to comply with the provisions of the said Act. The public services and posts covered under the said enactment covers an educational institution owned and controlled by the government which receives grant-in-aid from the Government including University established by or under the Maharashtra Act. The appointments effected in violation of the provisions of the Act are void appointments and a report of the Expert Committee specifically sets out that the appointments which are effected by the petitioner institute are without following the procedure of the said enactment. In such circumstances, the petitioners have misconstrued the provision of autonomy conferred on it and the autonomy does not exclude the principles to be made applicable for public appointments and there can be no deviation from the said principles.

28 The petitioners cannot contend that the public has no stake in their employment. That is a employment of a public nature and that the Autonomy is granted to sub-serve the Public Interest itself mandates strict adherence to the principles of fairness, openness, transparency and reasonableness and importantly equality all of which are enshrined in Articles 14 and 16 of the Constitution of India. That the salutary and binding principles of law laid down in the case of *Srilekha Vidhyarthi V/s. State of Uttar Pradesh* by the Hon'ble Supreme Court bind all concerned including us. In that judgment reported in AIR

1991 SC 537 in paras 26 to 28, the Hon'ble Apex Court held as under :-

26. A useful treatment of the subject is to be found in (1990) 106 L.Q.R. at pages 277 to 292 in an article 'Judicial Review and Contractual Powers of Public Authorities'. The conclusion drawn in the article on the basis of recent English decisions is that 'public law principles designed to protect the citizens should apply because of the public nature of the body, and they may have some role in protecting the public interest'. The trend now is towards judicial review of contractual powers and the other activities of the Government. Reference is made also to the recent decision of the Court of Appeal in *Jones v. Swansea City Council*, [1990] 1 W.L.R. 54, where the Court's clear inclination to the view that contractual powers should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed 'solely in order that it may use them for the public good'. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.

27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14.

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore,

find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

Any deviation or departure from these principles invalidates an appointment or inaction and if that is writ large and on the face of inaction and if that is Writ large and on the face of it, the Appointments in this case were bad in law from inception. Once such is the flaw and serious infirmity in the process of appointments and as a while from the very beginning, then, it is futile to urge that a beneficiary of such a illegal process ought to have been heard. Surely, a individual beneficiary cannot be heard in answer to the charge of the process of Appointment being vitiated from the commencement. Those in charge of the process were given an opportunity to justify it and they failed. None other can come to their rescue and the attempt of the petitioners in WP No.3919 of 2015 and WPST No.34785 of 2015 is thus of no avail.

29 In the aforesaid circumstances, and the patent illegalities brought forth by the respondent and scrutinized by the Expert Committee, we do not feel that any amount of hearing or any amount of an opportunity of hearing would have made any difference and cured such illegal appointments. In such circumstances, we are not inclined to accept the contention advanced by Shri Borkar and the learned senior counsel Shri Desai that the exercise undertaken by the State Government calls for an interference in view of the violation of principles of natural justice. We do not agree with their submissions and the reject the same.

30 This leads us to deal with the objection raised by Mr.Borkar and also by the learned Senior Counsel Mihir Desai appearing for the individual petitioners who are affected by the said decision. It is a specific grievance raised that before taking an action which results into civil consequences, there is no adherence to the principles of natural justice. Learned counsel would submit that it was necessary to make known to the appointees against whom action was proposed to be taken about the exact and precise nature of the irregularity alleged to be committed as well as misconduct if any, attributable to them so that they would have been in a position to explain. It is further alleged that the order of termination is thus in clear violation of Article 311 of the Constitution. It is further submitted that the copy of the Inquiry Report is also not supplied to the affected parties against whom action was recommended. As against the said argument, the argument of learned Senior Counsel Shri Anturkar and Special Counsel Shri Acharya is to the effect that a case where irregularity committed in the process of selection is all pervasive vitiating the whole selection, in that event, it would not be required to serve each of the appointees with an individual show cause notice and it was open to cancel the whole process of selection. In dealing with the said issue, our attention was invited to the several decisions. It would be appropriate to peruse the decisions relevant to the issue.

31 In case of Krishna Yadav Vs. State of Haryana, the Hon'ble Apex Court was dealing with the allegations of favoritism and arbitrariness in filling up the post of

Taxation Inspector by the subordinate Selection Board. An inquiry was ordered by Hon'ble Apex Court to be held by the CBI. The report revealed acts of favoritism, selection without interview even on the basis of fake interview, tampering of records and fabrication of documents etc. In such circumstances, it was held by the Court that the entire selection was vitiated even in respect of those who were already appointed and have been working for a past few years and in this backdrop of facts, individual cases of innocence have no relevance. In case of Union of India Vs. O. Chakradhar (2002) 3 SCC 146 the Hon'ble Apex Court observed thus :-

"In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show- cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

12 As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra) applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed".

32 The Hon'ble Apex Court in case of *Veerendra Kr.Gautam And Ors vs Karuna Nidhan Upadhyay* (2016) 14 SCC 18, was dealing with the selection process of Principals of Degree and Post Graduate Colleges and on a finding recorded that the selection process was vitiated by arbitrariness, dishonest intention reflected in colorable exercise of power, serious allegations of favoritism as against the overall selection process, the Apex Court upheld the decision of the High Court setting aside the entire process of selection. The observations of the Hon'ble Apex Court in recording the lacunae in the appointment needs a reproduction :-

"We are, therefore, of the view that the Division Bench was well justified in holding that the changing of the norms while applying Regulation 6(1) for the initial screening thrown considerable doubt about the genuineness in the selection process adopted by the Commission. In the said circumstance, the conclusion of the Division Bench that when greater faith and trust was invested with Commission and when the Commission breached its won criteria and thereby acted contrary to the standards laid by it, which resulted in an arbitrary selection made by it has to be held as well justified. We are, therefore, not able to appreciate the submission of the learned Senior Counsel for the appellants and the same is also rejected.

33 In the case of *Hitendrasingh Bhupendrasingh and Ors Vs. Dr. Panjabrao Deshmukh Krishi Vidyapeeth*, through its Registrar, Akola, the Division Bench while dealing with several irregular appointments flowing from selection of undeserving and less meritorious candidates by manipulation, favoritism and other mal-practices while dealing with an argument of non-compliance with principles of natural justice, canvassed by the individual appointees whose termination was effected in the wake of an inquiry report, held that to merely allege that the principles of natural justice are violated and prejudices them is not enough. What must be depicted is what was the adverse material and what prejudice has been caused. The Division Bench after making a reference to the judgment of the Hon'ble Apex Court in case of *Union of India and O. Chakradhar* (supra) observed thus :

"However, Mr.Deshpande is right in relying upon a decision in the case of *Union of India and others v/s O. Chakradhar* reported in (2002) 3 SCC 146, and particularly paragraph 8 thereof wherein the Supreme Court emphasized that the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance".

The aforesaid judgment was challenged before the Hon'ble Apex Court and while

upholding the Division Bench judgment and dismissing the Appeal, the Hon'ble Apex Court has upheld the finding recorded by the High Court on the issue of violation of principles of natural justice and no prejudice being caused by not affording an opportunity of hearing. The Hon'ble Apex Court held that the requirements of audi alteram partem are not capable of straight jacket application and their application depends so much upon the nature of the Tribunal that is deciding the matter, the nature of inquiry that is being made and consequences flowing from the determination. In the peculiar facts of the case, a notice to the petitioners who were likely to be affected and a hearing afforded to them apart from written responses was held to be a substantial compliance with the principles of natural justice and it was held that no further hearing was required to be afforded by the Chancellor who had before him the recommendations of the Executive Committee and the Vice Chancellor who took a final view of the matter having regard to the totality of the circumstances. An attempt is made to canvass before us that every administrative action must follow the principles of natural justice and if the post is civil in nature, the provision laid down under Article 311(2) of the Constitution of India has to be followed. It is no doubt true that the principles of natural justice should be adhered to, to ensure fairness. However, it should not be stretched too far so that it leads to a futile exercise and empty formality, where even after remitting the matter, there is no likelihood of the change in the decision, then, merely for the sake of following the principles of natural justice, it would not be appropriate and in the interest of justice to remand the matter before the authority to pass a fresh order.

34 Reliance placed on the judgment of the Hon'ble Apex Court in case of Dharampal Satyapal Dy. Commissioner of Central Excise, Gauhati & ors (supra) by the learned counsel Shri Desai needs to be referred to in light of the above principle. Their Lordships of the Hon'ble Apex Court have categorically held to the following effect :

38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight- jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an

admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason - perhaps because the evidence against the individual is thought to be utterly compelling - it is felt that a fair hearing 'would make no difference' - meaning that a hearing would not change the ultimate conclusion reached by the decision-maker - then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corporation*[20], who said that:

"....A 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'.

Relying on these comments, Brandon LJ opined in *Cinamond v. British Airports Authority*[21] that

".....no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

35 The judgment relied upon by Shri Borkar in case of *Mahipal Singh Rana vs. State of Uttar Pradesh and ors* (2013) 16 SCC 771, to support his contention that the employees of the petitioner institute were not supplied with a copy of Meshram Committee Report, nor were they afforded an opportunity to controvert

the findings recorded and hence their termination of services is illegal for non-compliance of provisions of natural justice has also been looked into. In the said case, the Apex Court was dealing with a situation where the petitioners were recruited in pursuance of an advertisement issued by Uttar Pradesh Higher Education Services Commission to the post of Principals for Post Graduate Degree Colleges and they came to be selected and placed in the position of Principals in various colleges. In case of some of the selected candidates, the Management of the colleges concerned did not issue appointment orders and in some cases, the appellants either voluntarily sought change of placement or the Director suo moto changed the placement. After joining the respective position, most of the appellants were confirmed by the Management. However, subsequently, on receipt of complaints alleging large scale irregularities in the placement of selected candidates in different colleges, the State Government had directed the District Magistrate, Allahabad to conduct an inquiry and submit a report. Pursuant to the said report, the Management of the Colleges terminated the services of the appellants and they raised a grievance that they were neither supplied with a copy of the report prepared by the District Magistrate nor they were served with any notice or afforded any opportunity of hearing. The appellants approached the High Court by filing writ petition and the Division Bench of the High Court negated the appellants' plea that the action of the respondent authorities was violative of the principles of natural justice.

The said judgment cannot be applied to the case in hand, as in the peculiar facts of the case, the High Court had noted that some of the appellants have been placed in the colleges which were not even advertised by the Commission and others were placed against the vacancies notified in earlier years. Their Lordships however, observed that on perusal of the record which was produced, the applicants' direct involvement in their placement in a particular college was not pointed out and the question whether their placement was contrary to the statute and whether their placement was subsequently changed for some extraneous consideration could not have been decided without supplying each of them copy of inquiry report and without affording opportunity to controvert the findings recorded by the District Magistrate. In this backdrop, Their Lordships of the Hon'ble Apex Court distinguished the judgments relied upon by the High Court as in all these judgments, the Court had found that the appointments were contrary to law and the appointees did not fulfill the conditions of eligibility. Thus, the judgment sought to be relied upon for deviating from the principles of natural justice were distinguished.

36 In the backdrop of the aforesaid legal situation, if we examine the facts of the present case, it is apparent that Meshram Committee took note of the illegalities in case of the appointees individually and the same went to the root of the matter and in absence of the essential qualifications, the candidate was not eligible to be appointed. The report is self speaking and even if an opportunity of hearing would have been afforded, it would have hardly made any difference or changed the situation, which the College has categorically admitted to and has

offered a justification which we do not find to be appropriate and worth consideration.

37 On the close scrutiny of the facts involved in the present case, we have noticed that the CoEP has made appointments which are strikingly issued in violation of the Recruitment Rules and the policy of the State Government governing the reservation. The lacunae which assume the proportion of patent illegality are beyond dispute. The institution making such appointments have admitted the same and has sought to offer justification, which did not find favour with the State Government. Full opportunity was given to the College to explain the illegalities and it has failed to offer any sustainable justification. The plea of the individual appointees that they ought to have been afforded an opportunity of hearing, in our view, cannot be sustained since their appointments violate the rules and regulation governing the appointments, from inception and therefore, the appointments are nullity. Mere adherence to the principles of natural justice could not have cured the illegality and the individual appointees could not have better explained the illegalities committed by the institution. In such circumstances, we are of the clear opinion that individual notice to the appointees could not have validated the otherwise invalid appointments and the position would have remained unchanged even if an opportunity of hearing would have been afforded to the appointees. The Hon'ble Apex Court in case of Union of India & Anr Vs. Raghuwar Pal Sigh (Civil Appeal No.1636 of 2012 decided on 13th March 2018 has observed thus :-

20. In the case of State of Manipur (supra), the appointment letters were cancelled on the ground that the same were issued without the knowledge of the department of the State. The Court after adverting to the reported decisions concluded that the candidates were not entitled to hold the posts and in a case of such nature, principles of natural justice were not required to be complied with, particularly when the same would result in futility. It may be useful to advert to paragraph 22 of the reported decision, which reads thus:

"22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility. It is true that where appointments had been made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with, in view of the decision of this Court in Murugayya Udayar." (emphasis supplied)

21. In paragraph 30 of the reported decision, the Court adverted to the exposition in M.C. Mehta Vs. Union of India & Ors.¹¹ which evolved the 'useless formality' theory. It is apposite to 10 (1991) Supp. (1) SCC 331 11 (1999) 6 SCC 237 21 reproduce paragraphs 30 to 32 of the reported judgment, which read thus:

"30. In M.C. Mehta Vs. Union of India this Court developed the "useless

formality" theory stating: (SCC.PP.246-47, para 22)

"More recently Lord Bingham has deprecated the 'useless formality' theory in *R.v. Chief Constable of the Thames Valley Police Forces, ex p Cotton*¹² by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary?' 1991 PL, p.64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow?' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch and Glynn* were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p.323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the Court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala Vs. S.K. Sharma*¹³, *Rajendra Singh Vs. State of M.P.*¹⁴ that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived." (emphasis in original)

31. In *Kendriya Vidyalaya Sangathan* it was held: (SCC p. 505, para5)

"It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid.

If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise."

32. In *Bar Council of India Vs. High Court of Kerala*¹⁵ it was stated : (SCC p.323, para 45)

"Principles of natural justice, however, cannot be stretched too far. Their application may be subject to the provisions of a statute or statutory rule." (emphasis supplied)

In the present case, the appointment letter was admittedly issued without the approval of the competent authority.

22. In *Dhirender Singh & Ors. Vs. State of Haryana & Ors.*, termination of the appellant therein albeit without notice, was not interfered with by the Court as admittedly the same was not approved by the competent authority. The underlying principle will apply *proprio vigore* to the present case, as the letter of appointment has been issued by an officer who had no authority to do so and also because it was issued without waiting for the approval of the competent authority. Resultantly, there was no necessity to afford opportunity to the respondent before issuing the letter of cancellation of such appointment. The mere fact that such letter of appointment had been issued in favour of the respondent does not bestow any right in his favour much less to insist for an opportunity of being heard.

23. Reverting to the impugned decision of the High Court, the High Court has not analyzed the efficacy of the crucial reason recorded in the subject office order dated 29.08.2000 in its correct perspective. Indeed, the High Court has noted that prior approval of the competent authority was not mandatory. That observation, in our opinion, is manifestly wrong. We affirm the view expressed by the Tribunal that the appointment of respondent was not in conformity with the governing Rules and executive instructions in that regard.

24. Further, the High Court could not have interfered with the subject office order solely on the ground that it was issued without affording an opportunity to the respondent. The other reason which had weighed with the High Court, in our opinion, will be of no avail to the fact situation of the present case. To wit, the fact that the subject office order does not attribute any motives to the then Director Incharge, can be no basis to invalidate the same. In our opinion, the office order records just and tangible reason as to why the appointment of the respondent is illegal. Unless the core reason mentioned in the subject office order was found to be untenable, the High Court could not have concluded that the subject office order was vitiated merely because it was issued without notice or lack of opportunity to the respondent. Similarly, the fact that the Tribunal has taken note of other grounds urged by the parties (other than the reason noted in the subject office order), *per se*, cannot be the basis to invalidate the subject office order which is otherwise just and proper. The High Court could have ignored those other reasons/grounds taken into account by the Tribunal.

38 In light of the aforesaid discussion, we are not in a position to accede to the arguments advanced by Shri Borkar and learned senior counsel Shri Mihir Desai. We have already observed that the appointments effected were void *ab initio* and therefore, could not be saved. All the appointments are a nullity and no amount of sympathy in favour of the appointees in the backdrop of their long rendered services could save such appointments.

39 For the reasons aforesaid, Writ Petition No.3919 of 2015 and Writ Petition St.No. 34785 of 2015 are dismissed.

40 As far as Writ Petition No. 3952 of 2015 is concerned, we are of the express

opinion that the State Government has taken appropriate decision on the recommendation of the representation and has already cancelled 54 appointments which were per se illegal. We are not able to accept the contention of the learned Senior counsel Shri Anturkar that all the appointments ought to have been met the same fate as we do not find any justification for the same nor are we inclined to go into the said issue. Resultantly, Writ Petition No. 3592 of 2015 is also disposed of.

At this stage, Mr.Borkar appearing for the petitioner in Writ Petition no. 3919 of 2015 says that on 24th April, 2015, this court passed the following order:-

"Issue notice to Respondent No.3, returnable on 31 July 2015. Private notice is also permitted by all possible modes, in addition. Mr.Patel, the learned AGP, waives notice for Respondent Nos.1 and 2.

2 Considering the facts and as no prior notice was given before passing the impugned order, whereby directed to terminate 54 Professors out of 71 who are in service since 2007, we are inclined to grant ad-interim relief in terms of prayer clause (c).

3 The parties to act on the basis of an authenticated copy of this order".

41 It is stated that this order has been continued till today and once we have dismissed the writ petition, this order be continued so as to enable the petitioner to consider its position and if so advised, challenge this order in a higher court.

Similar request is made by Mr.Jadhav appearing for the petitioners in Writ Petition (St.) No. 34785 of 2015. It is claimed that such an order protecting the petitioners in that petition has also been passed.

After the writ petitions were extensively heard and we have pronounced the judgment today dismissing both the petitions, inter alia for the reason that individual notices are not required to be issued to the petitioners before terminating their services as the whole process is vitiated, then, this ad-interim order, though continued till date, cannot be continued any further. There is a sanctity and purity attached to a process whereby public posts are filled in. This is public employment and any departure and deviation, amounting to gross illegality and constitutional infirmity, therefore, cannot be condoned. Once we have proceeded on these lines, then, the request as made cannot be granted. It is refused.