

(2018) 10 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No.3777 Of 2016

Dr. Chandraprakash Dattarao Khedkar

APPELLANT

Vs

Honable Chancellor, Maharashtra Animal And Fishery
Sciences University, Mumbai And Others

RESPONDENT

Date of Decision : 19-10-2018

Acts Referred:

Maharashtra Animal and Fishery Sciences University Act, 1998? 14(5), 17, 17(2),
17(4), 17(5), 17(16), 17(17), 17(18)

Citation : (2018) 10 BOM CK 0126

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : A.B. Patil, V.P. Maldhure, A.R. Patil

Final Decision : Allowed

Judgement

[1] Rule made returnable forthwith. Heard finally by consent.

[02] This writ petition challenges two orders, first is of the date of 12/05/2016 passed by the Hon'ble Chancellor, Maharashtra Animal & Fishery

Sciences University (hereinafter referred to as 'the University' for short) and the second is of the date of 15/01/2014 passed by the Vice Chancellor of

the said University.

[03] The second order, dated 15/01/2014, terminates the services of the petitioner. The petitioner was an Associate Professor, Dairy Technology

College, Pusad, run by the University, which is respondent No.3.

[04] The Indian Council of Agricultural Research, New Delhi had sanctioned a project â??Sustainable Rural Livelihood Security through Integrated

Approach in Hingoli and Nanded District of Maharashtraâ??. This project was sanctioned under an umbrella project for the agency called the National

Agricultural Innovation Project (NAIP). The petitioner, being expert and experienced, was appointed as a Consortium Principal Investigator (CPI) for the said sub-project. He was also appointed a Member Secretary to Consortium Advisory Committee. The project was to be implemented at the sanctioned outlay of Rs.7,23,31,600/- during the period from October, 2008 to January, 2012.

05] The NAIP appointed an agency to conduct the audit of the spendings made while implementing the project and the agency conducted the audit. In its report, it noted certain irregularities in implementation of the project. Some of them related to unauthorized expenditures. Further enquiry was conducted through a Retired District Judge, who in his report noted that the petitioner was responsible for making unauthorized expenditure to the tune of Rs.1,42,57,636/-. The report was submitted to the Vice Chancellor, the respondent No.2. The Vice Chancellor, after giving personal hearing and following due process of law, by the order passed on 15/01/2014, terminated the services of the petitioner. While terminating the service, the Vice Chancellor invoked his power under section 17(2), (4), (5) and (16) of the Maharashtra Animal and Fishery Sciences University Act, 1998 (hereinafter referred to as 'the Act, 1998' for short).

[06] Being aggrieved by the same, the petitioner filed an appeal under Section 17(17) of the Act, 1998 before the Executive Council of the University.

Initially the Executive Council vide Resolution No.4/2014 held that it overruled the allegations made by the petitioner, but still it resolved to give one hearing to the petitioner before the ensuing meeting under Section 17(17) of the Act, 1998. It also directed the University to call the auditors of the NAIP for hearing. Following the above resolution, the Executive Council, after considering all the reports that were placed before it and hearing the petitioner, passed Resolution No.38 on 26/05/2015. By this resolution, the Executive Council resolved and directed reinstatement of the petitioner with immediate effect from 26/05/2015. The resolution, it appears, was not given effect to by the Vice Chancellor, though it was his duty to implement the same and, therefore, the Executive Council in its another meeting held on 25/08/2015 passed yet another resolution being Resolution No.50, reiterating its decision taken vide Resolution No.38. By the subsequent resolution, the Executive Council also directed the University to make a fresh inquiry of

the complete NAIP project through one man committee of a Retired Judge. This time, it were the Vice Chancellor, who felt that the Executive Council had gone wrong and, therefore, the Vice Chancellor first preferred an appeal under Section 17(18) of the Act, 1998, but, as the appeal was not maintainable before the Hon'ble Chancellor, he, as per the legal advice, made a reference under Section 14(5) of the Act, 1998 to the Hon'ble Chancellor.

[07] The Hon'ble Chancellor, after issuing notice to the individual members, who had participated in passing of resolutions and considering their respective replies and also the record placed before him, found that the Executive Council had exceeded its jurisdiction and did not properly consider the material before it and, therefore, the Hon'ble Chancellor annulled the proceedings by his order passed on 12/05/2016.

[08] The learned Counsel for the petitioner submit that the Hon'ble Chancellor had no authority to annul the proceedings without hearing the petitioner and in any case, could not have done so, when, the Vice Chancellor himself was under cloud in view of the report of the auditor expressing possibility of involvement of not only the petitioner, but also several other officers and authorities connected with the NAIP project. He points out that even the name of the Vice Chancellor had figured in the audit report prepared by the agency appointed by the NAIP and this fact had been duly communicated to the University.

[09] Shri A.B. Patil, learned Counsel for the petitioner further submits that the view of the Hon'ble Chancellor that no appeal under Section 17(17) of the Act, 1998 was preferable before the Executive Council is against the facts on record. He submits that the Vice Chancellor himself had passed the order of termination by invoking his power under Section 17(16) against which the appeal is provided for under sub-section 17 of Section 17 of the Act, 1998. He further submits that under Statute 19, an Appellate Authority consisting of Retired District Judge, has been provided before whom the original order passed by the Vice Chancellor can be challenged by the aggrieved person. But, in the present case, there was no such Appellate Authority appointed by the Executive Council and, therefore, the only provision under which an appeal could have been filed was that of Section 17(17) of the Act, 1998. According to him, in any case, the appellant could not

have gone before the Grievance Committee appointed under Clause 1 of Statute 19.

[10] Shri A.R. Patil, learned Counsel for respondent Nos.2 & 3 submits that after the audit report was received by the University, the University conducted an inquiry and found involvement of the then Vice Chancellor and several other officers of the University against whom a complaint was filed under the provisions of the Prevention of the Corruption Act and now a charge-sheet has also been filed against all these persons. So, this is not a case, wherein no action has been taken by the University following the audit report.

[11] The learned Counsel for respondent Nos.2 & 3 further submits that the Hon'ble Chancellor has all the power under Section 14(5) of the Act, 1998 to annul the proceedings, if the proceedings are found to be held not in conformity with the Act, Statutes, Rules or Regulations or have been found to be causing prejudice to the interest of the University. In the present case, the Hon'ble Chancellor found on facts of the case that the proceedings were not in the interest of the University and, therefore, he annulled the proceedings and rightly so, the learned Counsel for respondent Nos.2 & 3 further submits.

[12] The learned Counsel for respondent Nos.2 & 3 further submits that no appeal was available under Section 17(17) of the Act, 1998 and the reason for this conclusion has been rightly given in the order passed by the Hon'ble Chancellor, which has been impugned herein. He also submits that at the most, if the petitioner was really aggrieved, he could have approached the Grievance Committee appointed under Clause 1 of Statute 19.

[13] Shri V.P. Maldhure, learned Assistant Government Pleader for respondent No.1 reiterates that the Hon'ble Chancellor did have the power under Section 14(5) of the Act, 1998 and that the conclusions drawn by the Hon'ble Chancellor, being based upon the facts of the case and the statutory provisions applicable to them, cannot be assailed in the present petition. He also adopts the arguments submitted on behalf of respondent Nos.2 & 3.

[14] Coming to the power of the Hon'ble Chancellor under Section 14(5) of the Act, 1998, I must say that the provision of law is quite clear. It reads as follows.

â??The Chancellor may, by order in writing, annul any proceeding of any officer

or authority of the University, which is not in conformity with this

Act, the Statutes or the Regulations, or which is prejudicial to the interest of the University :

Provided that, before making any such order, he shall call upon the officer or authority to show cause why such an order should not be made, and if

any cause is shown within the time specified by him in this behalf, he shall consider the same.â??

[15] Careful perusal of this provision of law would show that the Hon'ble Chancellor can by an order made in writing annul any proceeding held by

any officer or authority of the University, if the proceeding was not in conformity with the Act, 1998 or the Statutes or the Regulations or has been

found to be prejudicial to the interest of the University. Before passing such an order, this provision also mandates, that an opportunity of hearing

should be granted to that officer or the authority who or which has held the proceeding, which is being scrutinized by the Hon'ble Chancellor. The

proviso to this Section does not generally contemplate giving of an opportunity to a person or officer in relation to whom the proceeding is held.

However, there could be some exceptional cases, wherein such person or officer may face civil consequences if the annulment of the proceeding is

ordered by the Hon'ble Chancellor. One of the exceptional situations would be a case wherein the principles of natural justice would require granting

of hearing to such a person or officer. But, here, we are not concerned with such an exceptional situation for the reason that there are other grounds

on which the order passed by the Hon'ble Chancellor is being found to be not consistent with the power that he has exercised under Section 14(5) of

the Act, 1998 in the present case.

[16] As stated earlier, the annulment of a proceeding can be directed only when the proceeding has been found to be not in conformity with law or is

found to be prejudicial to the interest of the University. In the present case, the Executive Council has considered not only the report of the Inquiry

Officer, a Retired District Judge, but also the audit report submitted by the agency appointed by the NAIP, the report of the Director Finance, NAIP

and all other documents placed before it and came to the conclusion that the in the interest of justice and also the University, it was necessary that a

re-audit be conducted and if necessary, fresh proceeding for dismissal or

termination of the petitioner be taken. That is how, the Executive Council passed two Resolutions Nos.38 & 50. In the subsequent Resolution No.50, the Executive Council also directed that a fresh inquiry of the complete NAIP Project entitled 'Sustainable Rural Livelihood through Integrated Approach in Hingoli and Nanded District of Maharashtra' through one-man committee of retired Judge be conducted. This resolution in the nature of an order, upon its careful consideration, can be seen to be furthering the interest of the University rather than operating prejudicially to the same.

[17] The conclusion made in previous paragraph, is supported by the report of the Director (Finance) of NAIP, which he had sent to the University vide his letter dated 05/12/2011. The report comprises four points specifically referred to therein. The first point deals with the discrepancies in the financial management of the project, second is about expenditure on unapproved items, third is regarding non-compliance with World Bank guidelines for procurement of goods/works under the project and the fourth relates to irregularities in hiring of vehicles. With regard to the first point, in particular, this report notes as follows :

â??The University's reply is factually incorrect since as per the MOU signed by the university authorities viz. Vice-Chancellor & Comptroller wherein they had agreed to ensure that the funds will be utilized as per the mandate of the project and follow the guidelines prescribed by NAIP/World Bank. Also, all the remittances were made by PIU-NAIP under instructions of Comptroller, MAFSU, and Nagpur. The remittances were made to Diary Technology College, Pusad on the advice of Comptroller, MAFSU, Nagpur. The report of internal auditor was sent to Comptroller, MAFSU, Nagpur for taking necessary corrective actions. Therefore, the contention of the University that the sole responsibility for discrepancies rests with the CPI is not at all correct and the Vice-Chancellor of the University in capacity of Consortium Leader is also responsible for proper utilization of the project funds.â??

[18] The above report finally concludes that there was obvious lack of supervision at the level of CIC/CAC, the onus of implementing of the project as per the mandate and sanction was with the University and the Consortium Leader i.e. Vice Chancellor, MAFSU and, therefore, the monetary loss has to be made good by the University as per the project terms and conditions laid

down in the agreement.

[19] After this report, it was clear that even the role of the Vice Chancellor, who was also a Member of the Executive Council, came under cloud.

During a meeting of the Executive Council, as noted in the 65th Meeting of the Executive Council held on 26/05/2015, the Vice Chancellor informed

the Executive Council that till that time no action had been taken against the other persons involved in the project and even then, it is seen, the Vice

Chancellor insisted that such report could not be a ground for reinstating the petitioner. This contention of the Vice Chancellor was rejected by the

Executive Council and in my opinion rightly so, especially when one considers the opinion of the Director (Finance) of NAIP expressed in his report

submitted to the University. In his opinion, the responsibility for the discrepancies found could not be that of the petitioner alone but would be a joint responsibility.

Such report necessitated a thorough inquiry for ascertaining the individual roles of all those involved in the project implementation at different levels

fixing the responsibility on each individual found to be involved in commission of irregularities and quantifying shares of liability of such responsible

individuals. This was not done by the Vice Chancellor. In fact, the Vice Chancellor himself having been blamed for the various discrepancies, as one

of the authorities, could not have been in a position to sit in judgment over the fate of the petitioner regarding his alleged role in commission of various

irregularities. This was a matter which required a detailed inquiry by the person having good experience of judicial proceeding and decision making.

But, as that was not done, the Executive Council felt, and rightly, that fresh inquiry was necessary and till it is done, the petitioner could not be

punished for something which is yet to be conclusively established. Such a resolution of the Executive Council, therefore, could not have been viewed

as being not in the interest of the University. There had been also no provision of law which was not followed or which has been shown to me by the

learned Counsel for respondent Nos.2 & 3 to have been breached by the Executive Council.

[20] For the reasons aforesaid, I find that the Hon'ble Chancellor could not have annulled the proceedings of the Executive Council in which two

resolutions being Resolution Nos.38 and Resolution No.50 were passed by the

Executive Council. This order, additionally, had the effect of condemning the petitioner without hearing him, which only made the case of University worse. Such an order is patently illegal. It also has the effect of causing of great prejudice to the petitioner. Therefore, it cannot be sustained in the eye of law. By the order passed by the Hon'ble Chancellor, on the one hand, proceedings of the Executive Council have been annulled and on the other hand, the order of termination, an original order, passed by the Vice Chancellor has been restored. The order of the Hon'ble Chancellor is open ended. It does not direct that the Executive Council shall hold it's meeting and consider the whole matter afresh. So, this order virtually confirms the order passed by the Vice Chancellor and it is here that great prejudice occurs to the petitioner. This order, if allowed to stay, would have the effect of terminating the service of the petitioner and that too without granting him any opportunity of hearing. These are the reasons why I have held just now that the order of the Hon'ble Chancellor needs interference.

[21] There have been objections taken before the Executive Council which basically pertain to the maintainability of the appeal before the Executive Council. Upon going through the provisions of the Act, 1998 and also Statute 19, I find that there are various options available before the Executive Council to deal with these objections. It appears to me that the Executive Council has not dealt with these objections appropriately and, therefore, I am of the view that the Executive Council would also have to consider these objections in accordance with the aforestated provisions of law.

[22] While the Executive Council takes it's decision in the matter, I am of the considered view, fate of the petitioner cannot be made to hang in balance. Prima facie, the order passed by the Vice Chancellor and who appears to be also suffering from the malice of the bias, is vitiated in law. Therefore, as a temporary measure of relief, it would have to be directed that the petitioner be reinstated in service from the date on which he is directed to be reinstated previously by the Executive Council, which is the date of 26/05/2015 with all benefits as have been granted to him by the Executive Council vide it's Resolution Nos.38 & 50.

[23] In the result, the writ petition deserves to be allowed and it is allowed accordingly.

i. The order of the Hon'ble Chancellor, dated 12/05/2016 is hereby quashed and

set aside. The order, dated 15/01/2014 passed by the Vice Chancellor

i.e. respondent No.2 is hereby stayed till final decision of the Executive Council and in case any decision adverse to the interest of the petitioner is

taken by the Executive Council, the stay hereby granted shall operate for a further period of 15 days from the date of the communication of the order.

ii. The Executive Council is directed to reconsider the whole matter including the objections regarding maintainability of the appeal before him in the

light of the provision of Section 17(17) of the Act, 1998 and also Clause 6 of Statute 19.

iii. Rule is made absolute in the above terms with no order as to costs. At this stage, Shri A.R. Patil, learned Counsel for respondent Nos.2 & 3 makes

a request to stay the effect and operation of this order for a further period of eight weeks for challenging the same before the Apex Court, which has

been strongly opposed by Shri A.B. Patil, learned Counsel for the petitioner.

Request made by the learned Counsel for respondent Nos.2 & 3 can be granted for a limited period of time. Accordingly, the effect and operation of

this order is stayed for a period of eight weeks from the date of the order.