
(2018) 12 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 4833, 4837, 4838 Of 2018

Dr. Pravin Balisingh Raghuvanshi

APPELLANT

Vs

Sant Gadgebaba Amravati University, Amravati Through Its
Registrar And Others

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Maharashtra Universities Act, 1994 — Section 10, 24
Maharashtra Public Universities Act, 2016 — Section 2(4), 2(7), 9(3)(b), 15(2), 26(4),
26(5), 28, 28(2)(d), 28(5), 29(2)(a) to 29(2)(za), 30, 30(4), 30(4)(f), 30(4)(g), 30(4)
(h), 30(4)(i), 31, 34(2), 34(4)(a), 36(2)(b), 36(2), 37(2)(a), 37(2)(b), 37(2)(c),
146(1), 146(4), 146(5), 146(6)

Citation : (2018) 12 BOM CK 0035

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : Firdos Mirza, J.B. Kasat

Final Decision : Dismissed

Judgement

R.K. DESHPANDE, J

1. Rule. The learned counsels appearing for the respondents waive service. Both these matters are being disposed of finally.

2. The Registrar of the respondent No.1- Shri Gadgebaba Amravati University published an electoral roll on 21-7-2018, consisting of the members of the Senate, the principal authority of the University, under Section 28 of the Maharashtra Public Universities Act, 2016 (for short, "the said Act") for the elections/nominations to constitute the Management Council under the provisions of the said Act to be undertaken in the meeting of the Senate scheduled to be held on 11-8-2018. It includes the name of the respondent Nos.2 to 5 nominated on 13-4-2018 as the Deans of the Faculties of (a) Science and Technology, (b) Commerce and Management, (c) Humanities, and (d) Inter-disciplinary Studies by the Vice-Chancellor with the prior approval of the Chancellor in exercise of his

power under Section 146(4) of the said Act for interim constitution of the two authorities, viz. the Faculty and the Board of Deans under Section 26(4) and (5), in accordance with the provisions of Section 34(2) and 36(2) respectively for a period of one year or till re-constitution of such authorities in accordance with the provisions of the said Act. The challenge in both these petitions is to the electoral roll dated 21-7-2018 and the nomination of the respondent Nos.2 to 5 as Deans by the Vice-Chancellor on 13-4-2018.

3. The contentions raised by Shri Anil Kilor and Shri Firdos Mirza, the learned counsels appearing for the petitioners, are as under :

(1) Section 146(4) of the said Act contemplates interim constitution of the "authority", as defined under Section 2(4) read with Section 26 of the said Act or the "body", as defined under Section 2(7) of the said Act and it does not contemplate an appointment of the officers of the University, as defined under Section 10 therein.

(2) The Deans are neither the authorities nor the bodies, as contemplated, but they are the officers of the University, as defined under Section 10 and hence the Vice-Chancellor was not competent to appoint them on 13-4-2018 in exercise of his power conferred by Section 146(4) of the said Act.

(3) The Deans of the Faculties can be appointed under Section 15(2) of the said Act by the Vice-Chancellor only on the basis of the recommendations of the Selection Committee for the purpose under the said Act. Undisputedly, neither the Selection Committee was constituted nor there are any recommendations of it for appointment of the respondent Nos.2 to 5 as the Deans of the Faculties and hence they are ineligible to be included in the electoral roll published on 21-7-2018.

4. Shri Kasat, the learned counsel appearing for the University, has opposed all the contentions raised. According to him, the function of interim constitution of the authority or body of the University cannot be confused with the function of the appointment of the Deans as the officers of the University. He submits that on coming into force of the Act, the Management Council, which is one of the authorities under Section 26 of the said Act, cannot be constituted in accordance with the provisions of the Act unless measures are taken for interim constitution of two other authorities, namely the Faculty and the Board of Deans. He submits that the appointments of the Deans of the Faculties under Section 15(2) of the said Act, in the present matters, are not for the purpose under the Act, but it is a measure for interim constitution of the authority of Faculty and the Board of Deans under Sections 34(2) and 36(2) of the said Act. Such appointments are transitory in nature and the duration is only for a period of one year or till such authority or body is constituted under the Act, whichever is earlier. According to him, the respondent Nos.2 to 5 are not the Deans appointed under Section 15 of the said Act as the full-time salaried officers for a term which shall be co-terminus with the term of the Vice-Chancellor or till he attains the age of

superannuation, whichever is earlier.

5. The basic question involved in this matter is as under :

Whether the appointments of the respondent Nos.2 to 5 as the Deans of their respective Faculties by the Vice-Chancellor with prior approval of the Chancellor in exercise of his power conferred by Section 146(4) of the Maharashtra Public Universities Act, 2016 are liable to be set aside?

6. Section 15 of the said Act deals with the Dean of the Faculty, and it is reproduced below :

"15. Dean of Faculty.- (1) There shall be a Dean for each faculty, who shall be a full time salaried officer.

(2) The Dean shall be appointed by the Vice-Chancellor on the recommendations of the selection committee for the purpose under this Act.

(3) The term of Dean shall be co-terminus with the term of office of the Vice-Chancellor or till he attains the age of superannuation, whichever is earlier.

Provided that, the new Vice-Chancellor may continue his services as a Dean till the new Dean is duly appointed:

Provided further that, in case vacancy occurs in the office of the Vice-Chancellor because of death, resignation or otherwise, the dean shall continue to hold the post till the end of that academic year.

(4) The qualification and experience for the purpose of selection of the Dean shall be the qualification and experience of the Professor or principal having aggregate minimum teaching or research experience of not less than fifteen years.

(5) The Vice-Chancellor may nominate Associate Dean for the particular group of related board of studies, as may be required, for assistance, support and coordination and the minimum qualifications and experience for such nomination shall be at par with the post of Dean:

Provided that, the salary, allowances and other pecuniary benefits payable to the Associate Dean shall be met by the University out of its own resources and there shall not be any liability, direct or indirect, on the State Government for the said purpose."

The Dean of the Faculty is a full time salaried officer of the University and his appointment is to be made by the Vice-Chancellor on the recommendations of the Selection Committee for the purpose of the said Act. The term of the Dean is co-terminus with the term of the Vice-Chancellor or till he attains the age of superannuation, whichever is earlier. This is subject to the two provisos, namely - (i) that the new Vice-Chancellor may continue his services as a Dean till the new Dean is duly appointed, and (ii) that in case vacancy occurs in the office of the Vice-Chancellor because of death, resignation or otherwise, the Dean shall

continue to hold the post till the end of that academic year.

The qualification and experience for the purpose of selection of the Dean shall be the qualification and experience of the Professor or Principal having aggregate minimum teaching or research experience of not less than fifteen years. The powers and duties of the Dean are prescribed under Section 16 of the said Act.

7. Chapter IV under the said Act deals with the authorities of the University, and Section 26 therein contains a list of eighteen authorities of the University, amongst which the Senate is at serial No.(1), the Management Council is at serial No.(2), the Academic Council is at serial No.(3), the Faculty is at serial No. (4), and the Board of Deans is at serial No.(5). Section 28 deals with the Senate, which is the principal authority of the University for all financial estimates and budgetary appropriations and for providing social feedback to the University on current and future academic programmes. It is the largest body of the University and consists of several members, as are specified in sub-section (2) at serial Nos. (a) to (za), which include the Deans of the Faculties. The functions and duties of the Senate are specified under Section 29 of the said Act.

8. Section 30 of the said Act deals with the Management Council, which is the principal executive and policy making authority of the University, responsible for administering the affairs of the University and carrying out such duties which are not specifically assigned to any other authority. The constitution of the Management Council is specified under sub-section (4) of Section 30, which includes two Deans to be appointed by the Vice-Chancellor for a tenure of two and half years. The other members of the Management Council, namely two principals who are the members of the Senate under Section 30(4)(f), two teachers who are not the members or directors of recognized institutions but are the members of the Senate under Section 30(4)(g), two representatives of managements and two registered graduates elected by the Senate, as are specified in Section 30(4)(h) and (i), to be elected by the Deans of the Faculties as the members of the Senate. The powers and duties of the Management Council are prescribed under Section 31 of the said Act.

9. Section 34 of the said Act deals with the Faculty as the principal academic coordinating authority of the University in respect of studies and research in relation to the subjects included in the respective faculty and also in respect of studies and research in multi-faculties. Sub-section (2) therein prescribes that the University shall have the faculties, namely - (i) Faculty of Science and Technology, (ii) Faculty of Commerce and Management, (iii) Faculty of Humanities, and (iv) Faculty of Inter-disciplinary Studies. Sub-section (4) therein deals with the constitution of the faculty consisting of the members in Clauses (a) to (e) specified therein, which include the Dean of the Faculty as ex officio Chairperson. The powers and duties of the faculty are specified under Section 35 of the said Act.

10. Section 36 of the said Act deals with the Board of Deans as one of the

authorities of the University to co-ordinate, oversee, implement and to supervise the academic activities of the University. It is responsible to plan the development of the University in academics, research and development, entrepreneurship, intellectual property rights, incubation of industries and linkages with industries for integrated planning. It consists of the members, as are specified in Clauses (a) to (c) under sub-section (2) therein, which include the Deans of the Faculties. The powers and duties of the Board of Deans are specified under Section 37 of the said Act.

11. We may note here that the Dean of the Faculty is neither an 'authority', as defined under Section 2(4) read with Section 26 of the said Act, nor the 'body', as defined under Section 2(7) therein. The Dean is the officer of the University, as included at serial No.(4) in Section 10 of the said Act, dealing with the other officers of the University. Though the Deans of the Faculties were the "other officers of the University", as defined under Section 10 of the Maharashtra Universities Act, 1994 (for short, "the old Act"), and the Faculty is one of the authorities of the University, as prescribed under Section 24 of the old Act, the Board of Deans was not the authority prescribed therein, but such authority is created for the first time, as specified at serial No.(5) under Section 26 of the said Act.

12. The Maharashtra Public Universities Act, 2016 came into force with effect from 1-3-2017 and it repealed the Maharashtra Universities Act, 1994. The transformation required the introduction of transitory provisions under Chapter XVI under the Maharashtra Public Universities Act, 2016. The provisions of sub-sections (1), (4), (5) and (6) of Section 146 dealing with the provisions relating to continuance and constitution of authorities contained in the chapter of transitory provisions under the said Act are relevant and, therefore, the same are reproduced below :

"146. Provisions relating to continuance and constitution of authorities.- (1) Every authority of an existing university shall, as soon as practicable, but within a period of six months or immediately following 31st August, from the date of commencement of this Act, whichever is later, be re-constituted in accordance with the provisions of this Act. Every such authority shall, be deemed to be reconstituted with effect from such date as the Vice-Chancellor may, from time to time, specify by notification.

(4) If on the date of commencement of this Act, any authority or body cannot be constituted in accordance with the provisions of this Act, the Vice-Chancellor may, after approval of the Chancellor take such measures for interim constitution of such authority or body.

(5) The term of such authority or body constituted under sub-section (4) shall be for a period of one year from its constitution or till such authority or body is duly constituted under this act, whichever is earlier.

(6) For the removal of doubt, it is hereby declared that on expiry of a period of

one year of the interim constitution of such authority or body, such authority or body shall cease to function."

In terms of sub-section (1), every authority of an existing University was required to be re-constituted as soon as practicable but not later than 31st May, 2018 in accordance with the provisions of the said Act and every such authority shall be deemed to be re-constituted with effect from such date as the Vice-Chancellor may, from time to time, specify by notification. Sub-section (4), which is of great significance, states that if on the date of commencement of this Act, any authority or body cannot be constituted in accordance with the provisions of this Act, the Vice-Chancellor may, after approval of the Chancellor, take such measures for interim constitution of such authority or body. Sub-section (5) prescribes that the term of such authority or body constituted under sub-section (4) shall be for a period of one year from its constitution or till such authority or body is duly constituted under this Act, whichever is earlier. Sub-section (6) removes the doubt and declares that on expiry of a period of one year of the interim constitution of such authority or body, such authority or body shall cease to function.

13. The scheme of the Act to the extent pointed out above and relevant to the controversy involved in both these matters shows that upon coming into force of the said Act, the provisions of the old Act were repealed. The transitory provision under Section 146(1) of the said Act requires re-constitution of various authorities of the University as soon as practicable, as are specified under Section 26 of the Act, but not later than 31-5-2018, in accordance with the provisions of the said Act. If on the date of commencement of the said Act any authority cannot be constituted in accordance with the provisions of the said Act, the Vice-Chancellor may, after the approval of the Chancellor, take such measures for interim constitution of such authority. The term of the authority so constituted shall be for a period of one year from the date of its constitution or till such authority is duly constituted under the Act, whichever is earlier. Sub-section (6) of Section 146 of the said Act removes a doubt and declares that on expiry of a period of one year of interim constitution of such authority, such authority ceases to function.

14. In order to constitute the authorities, like the Senate, the Management Council, the Faculty, and the Board of Deans, specified under Section 26 of the said Act, it is absolutely necessary to appoint the officers, like the Dean of the Faculty under Section 34(2), who shall be the ex officio Chairperson of the Faculty under Section 34(4)(a); the member of the Board of Deans under Section 36(2)(b); the member of the Senate under Section 28(2)(d), entitled to elect two principals, two teachers (who are not the principals or directors of recognized institutions), two representatives of the managements and two registered graduates as the members of the Management Council under Section 30(4)(f)(g)(h) and (i) of the said Act.

15. There is no challenge to the opinion or satisfaction of the Vice-Chancellor

formed under sub-section (4) of Section 146 that the authorities of the Faculties and the Board of Deans cannot be constituted, as provided under Sections 34(4) and 36(2) of the said Act, who shall become the members of the Senate under Section 28(2)(d) entitled to elect the members of the Management Council under Section 30(4)(f)(g)(h) and (i) of the said Act. Obviously, therefore, the appointments of the respondent Nos.2 to 5 as the Deans of the Faculties are made for the purposes of re-constitution of the authorities, like the Faculties and the Board of Deans, by the Vice-Chancellor on 13-4-2018 upon obtaining prior approval of the Chancellor on 12-4-2018. The term of office of the respondent Nos.2 to 5 shall only be for a period of one year, which shall expire on 12-4-2019, if prior to that such authorities are not constituted in accordance with the provisions of the said Act. We, therefore, do not find lack of competency on the part of the Vice-Chancellor to invoke his power under Section 146(4) of the said Act and appoint the respondent Nos.2 to 5 as the Deans of the Faculties.

16. The appointment of the Dean of the Faculty in exercise of the power under Section 146(4) of the said Act cannot be confused with the power to appoint the Dean of the Faculty under Section 15 of the said Act. The Dean of the Faculty appointed under Section 15 is a full time salaried officer of the University, as is specified at serial No.(4) in Section 10 of the said Act. His appointment is made by the Vice-Chancellor on the recommendations of the Selection Committee for the purpose under the said Act. The tenure of the Dean as an officer of the University remains co-terminus with the term of office of the Vice-Chancellor or till he attains the age of superannuation, whichever is earlier. On the contrary, the appointment of the Dean of the Faculty in exercise of the power conferred by Section 146(4) of the said Act is the measure taken for interim constitution of the authorities, like the Faculty and the Board of Deans. The duration of such authority is for a period of one year or till such authority is constituted under the Act, whichever is earlier. At any rate, the duration of such interim constituted authority does not extend beyond the period of one year. It is, therefore, not possible for us to accept the contention raised by the learned counsels appearing for the petitioners that the appointments of the respondent Nos.2 to 5, having not been made on the recommendations of the Selection Committee, as specified under sub-section (2) of Section 15 of the said Act, become invalid or illegal.

17. We, therefore, hold that the Vice-Chancellor was competent to make the appointments of the respondent Nos.2 to 5 as the Deans of their respective Faculties with the prior approval of the Chancellor in exercise of his power conferred by Section 146(4) of the said Act and their appointments cannot be set aside on the ground of violation of Section 15(2) of the said Act. Consequently, the inclusion of the names of the respondent Nos.2 to 5 in the electoral roll of the Senate published on 21-7-2018 to elect the members of the Management Council in the meeting scheduled to be held on 11-8-2018, also cannot be faulted with.

18. Shri Mirza, the learned counsel appearing for the petitioners in Writ Petition No.4837 of 2018, invited our attention to various provisions of uniform Statute No.1 of 2017, brought into force on 17-5-2017, to urge that several provisions of the said Statute are violated and, therefore, the preparation of the final electoral roll for the purpose of election of the Management Council scheduled to be held in the meeting dated 11-8-2018 is liable to be quashed and set aside. We need not go into all these aspects of the matter at this stage on the ground that there exists an alternate statutory remedy to approach the Chancellor making out the grievances of violation of the provisions of this Statute in preparing the electoral roll or conduct of the election of the members of the Management Council under Section 9(3)(b) of the said Act and in such a case the Chancellor is empowered to suspend or modify any resolution or order or proceeding of any authority, body, committee or officer, which, in his opinion, is not in conformity with the Act, Statutes, Ordinances or Regulations made thereunder, or is not in the interest of the University, as provided under sub-section (4) therein. The Chancellor is empowered to issue a show cause notice and take the final decision in the matter, which binds the University. We have dealt with the question of appointments of the respondent Nos.2 to 5 as the Deans of their respective Faculties, because the said appointments are made with the approval of the Chancellor.

19. For the reasons stated above, both these petitions are dismissed. Rule stands discharged. There shall be no order as to costs.

The interim order passed by this Court stands vacated. We expect the respondents to proceed expeditiously in accordance with law.