
(2019) 01 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition (L) No. 3633 Of 2018

Pramod

APPELLANT

Vs

University of Mumbai & Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Maharashtra Universities Act, 1994 — Section 76(7)
Constitution of India, 1950 — Article 226

Citation : (2019) 2 BCR 617

Hon'ble Judges : S.C. Dharmadhikari, J; M.S. Karnik, J

Bench : Division Bench

Advocate : Neeta Karnik, P.M. Palshikar, Geeta Shastri

Final Decision : Dismissed

Judgement

M.S.Karnik, J.

1. Rule. Rule is made returnable forthwith by consent of the parties.
2. The petitioner, by this Petition under Article 226 of the Constitution of India, challenges the selection and appointment of respondent No.3 to the post of Professor in Marathi, Department of Marathi, University of Mumbai. The respondent No.3 is appointed by an order dated 27/9/2013 issued by respondent No.1 to the said post. The petitioner further prays for declaration that he is entitled to be appointed to the post in question with effect from 27/9/2013 in place of respondent No.3. During the pendency of this Petition an Appeal already filed by the petitioner under Section 76(7) of the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the said Act' for short) came to be decided by respondent No.5. By this order dated 16/11/2018, the Appeal came to be rejected. The order dated 16/11/2018 passed by respondent No.5 is also challenged after carrying out necessary amendments in this Petition.
3. The facts of the case briefly stated are thus :

An advertisement for the post of Professor in Marathi for the Open category was published by respondent No.1 - University on 30/11/2011. The petitioner being duly qualified for the said post, applied along with necessary documents. Along with the application form the copy of Part B of the Academic Performance Indicator ('API' for short) and Category III showing that the petitioner is having necessary API score more than required score was also enclosed. The required API score to be eligible for interview is 400. The petitioner's API score is 683.5.

4. An Expert Committee was constituted to verify the API submitted by the eligible candidates. The Expert Committee verified the API scores of all the candidates including the petitioner and respondent No.3. The API score of the petitioner and respondent No.3 in Category III was found to be 683.5 and 694 respectively. The report of the Scrutiny Committee was placed before the then Vice Chancellor. The report was accepted and accordingly interviews were held by the Selection Committee on 27/4/2013. As per the recommendations of the Selection Committee, the appointment order was issued to respondent No.3, who was first in the order of merit. The respondent No.3 joined duty as Professor of Marathi, Department of respondent No. 1 -University w.e.f. 3/12/2013.

5. The petitioner challenged the appointment of respondent No.3 by filing Writ Petition No. 2125/2014 in this Court. By an order dated 17/1/2017 the Petition came to be disposed of with a request to respondent No.5 to decide the Appeal filed by the petitioner within a period of 3 months.

6. The respondent No.5, during the course of hearing of the Appeal, on 4/9/2017 directed the University to verify the API score of respondent No.3 claimed at the time of her appointment. Accordingly, the Vice Chancellor again constituted two member Experts committee comprising of Prof. Nagnath Kottapalle and Prof. P.V. Pradhan to verify the API score of respondent No.3 in view of the allegations made by petitioner. The two member committee met on 12/12/2017. The observations of the Expert Committee were placed before the Board of Deans for consideration and final decision. The Board of Deans was of the opinion that the API score of 694 in respect of the respondent No.3 calculated by the Evaluation Committee be accepted. The said recommendation of the Board of Deans was accepted by the University and the same was forwarded to respondent No. 5 by a communication dated 18/4/2018. A personal hearing was given by the respondent No. 5 -Hon'ble Chancellor on 19/8/2018 and by the order impugned in this Petition dated 16/11/2018, respondent No. 5 was pleased to dismiss the Appeal/Petition filed by the petitioner. It is observed that as Selection Committee selected respondent No.3 on merits, there is no justification to interfere with the decision of the Selection Committee.

7. Learned counsel for the petitioner in assailing the selection of the respondent No.3 and the consequent order passed in Appeal decided by the respondent No.5, submits that the entire selection process is carried out solely with a view to favour respondent No.3. She invited our attention to the API scores and also to the research publications and academic contributions of the petitioner. Learned

Counsel submitted that the API score of the petitioner in Category III is 683.5.

8. Learned counsel invited our attention to the communication dated 29th September, 2016 of the University Grants Commission ('UGC' for short) addressed to the Vice Chancellors of all Universities. In the said communication, it is mentioned that the UGC regulations, once notified in the Gazette of India, are mandatory in nature and shall be followed by the Universities. She invites our attention to the relevant portion of the Gazette Notification dated 18th September, 2010 in respect of Category III - Research and Academic Contributions, wherein it is indicated that based on the teacher's self-assessment, API scores are proposed for research and academic contributions. Insofar as research papers published, maximum 10 points per publication are to be allotted to non-referred but recognized and reputed journals and periodicals having ISBN/ISSN numbers. Even insofar as research publications (books, chapters in books, other than referred journal articles) 25 maximum points can be awarded for research publication of the sole author and 10 points for chapter in an edited book. Even here the requirement for the subject books are of National level publishers/State and Central Government publications with ISBN/ISSN numbers.

9. Learned counsel thus submits that the maximum points are to be awarded for the research papers / publications in non-referred but recognized and reputable periodicals, journals only if they are having ISBN/ISSN numbers. She invited our attention to the notes below Category III, more particularly Note -1 in the said Gazette which makes it incumbent on the Coordination Committee proposed in these Regulations and the Universities to prepare and publicize within six months subject-wise lists of journals, periodicals and publications under categories III A and B. It further mentions that till such time, screening/selection committees will assess and verify the categorization and scores of such publications.

10. Learned counsel would thus submit that the mandate of the UGC is very clear. The procedure prescribed is mandatory in nature and has to be followed by the Universities. In her submission, the API score of the respondent No.3 is calculated in utter breach of this mandate of the UGC. Admittedly, the journals/magazines published by respondent No.3 do not have ISBN/ISSN numbers. According to her, the Committee added 150 marks to the API score of respondent No.3 in respect of the journals/magazines though they did not have ISBN/ISSN numbers thereby contravening the UGC guidelines which are mandatory in nature.

11. Learned counsel for the petitioner was at pains to point out that the API score of the respondent No.3 calculated by the Committee was only 316.5. Based on this score the respondent No.3 was not even eligible to be considered to be called for interview as the minimum API score required to be eligible for an interview call is 400. She submits that as a result of arbitrary increase of 150 marks to the API score of the respondent No.3, her score stands at 694 in Category III. The petitioner had API score of 683.5 in Category III. According to

her, it is thus obvious that the increase of 150 marks to the API score of the respondent No.3 in contravention of the UGC guidelines, is with a view to ensure that it is only the respondent No.3 who is selected to the post.

12. Learned counsel for the petitioner further submits that ISBN/ISSN numbers for the publications are prescribed for determination and maintenance of high standards of teaching and research therein. She submits that the Regulations prescribed by the University have a direct bearing upon quality and standards of higher education. The said standards are virtually diluted by the Committee by awarding 150 marks to the journals/ magazines submitted by respondent No.3 without these publications having the mandatory ISBN/ISSN numbers. Learned counsel therefore would submit that respondent No.3 is illegally selected.

13. Learned counsel for the petitioner also invited our attention to the Ground - IX in the Petition in support of her submission that respondent No.3 supplied wrong information to respondent No.2 - Selection Committee. It is alleged that respondent No.3 deliberately misled the Selection Committee by indicating her score as more than 400 to achieve the eligibility criteria. Learned counsel submits that though the respondent No. 3 deliberately increased her scores for paper presentation, however, the Selection Committee failed to rectify this mistake. Learned counsel submits that the Selection Committee avoided to correct this mistake only to show undue favour to respondent No.3. Learned counsel would contend that impugned order passed by respondent No.5 in Appeal is untenable, passed without considering the materials on record and therefore deserves to be interfered with.

14. On the other hand, learned counsel for respondent No.1 supported the impugned order. He invited our attention to the affidavit-in-reply filed by Shri Pratap Pandurang Lubal, Under Secretary to the Governor (Education) on behalf of respondent No.5. Learned counsel also submitted that respondent No.5 in the order dated 16/11/2018 considered the entire materials on record and has passed a detailed reasoned order. He further submits that even during the pendency of the appeal, in view of the submissions made by the parties, a two member Committee was constituted by a letter dated 2/12/2017 to verify the API score of respondent No.3. The report submitted by the Committee was placed before the Board of Deans which accepted the recommendations of the Committee.

15. Learned counsel submitted that the Committee which comprised of experts in the field of education recommended that out of 14, 10 publications are reputed journals/magazines which may be considered and if considered, 150 marks can be added to the API score calculated by the Committee. Learned counsel submitted that as per report of the Committee, respondent No.3 possesses the API score of 316.5 and regarding the remaining API score of 150, the Expert Committee opined that even though the API score of 150 is claimed through the journals/magazines which do not have ISBN/ISSN numbers, they are reputed journals / magazines and hence may be considered. Thus respondent No.3 had

necessary API score at the time of her appointment as a Professor of Marathi in University Department. Learned counsel submits that respondent No.3 was found eligible and more meritorious and therefore appointed by Selection Committee.

16. We have heard learned counsel for the parties at length and with their assistance perused the Petition, its annexures and all affidavits placed on record.

17. The advertisement for the post of Professor of Marathi in Open category was published by University on 30/11/2011 and an Expert Committee was constituted for evaluation of the API score submitted by eligible candidates. The Expert Committee verified the API scores in respect of all applicants including petitioner and respondent No.3. The API score of petitioner and respondent No.3 in Category III was 683.5 and 694 respectively. The report the Scrutiny Committee was placed before the then Vice Chancellor. The interviews were held by the Selection Committee on 27/4/2013. The respondent No.3 was selected and appointed on 3/12/2013. Pursuant to the order passed by this Court in Writ Petition No.2125/2014 filed by the petitioner, the Petition was disposed of with direction to the respondent No.5 to decide the Appeal filed by the petitioner within a period of three months. During the course of the hearing of the Appeal, on the basis of the submissions made by the concerned parties, respondent No.5 called for a comprehensive report from the Vice Chancellor. A comprehensive report dated 9/5/2017 was submitted, a copy of which was forwarded to the petitioner and respondent No.3. Thereafter, respondent No.5 called upon the Vice Chancellor to examine the points raised by the petitioner and respondent No.3 and was asked to send his views in the matter, more specifically on the following points :

a) Whether Dr. (Smt.) Bharati Nirgudkar had the necessary API score of 400 at the time of her appointment as Professor of Marathi ?

b) Whether Dr. (Smt.) Bharati Nirgudkar was otherwise qualified for being appointed as Professor of Marathi, University of Mumbai ?

18. Upon hearing the petitioner and respondent No.3, respondent No.5 by the impugned order dismissed the Appeal/Petition filed under Section 76(7) of the said Act.

19. We have gone through the recorded Minutes of the Evaluation Committee which evaluated the API scores of the candidates prior to the issuance of appointment of respondent No.5. The Evaluation Committee consisting of Prof. P.G. Jogdand, Dean, Faculty of Arts and Prof. Shubhada Joshi, Head, Department of Philosophy, verified the API scores of the petitioner and respondent No.3 as 683.5 and 694. Thereafter, eligible candidates were called for interview. Four candidates eligible, appeared for the interview. The Committee after interviewing the candidates and upon taking into consideration their qualifications, teaching and research experience, publications, etc. and also their performance at the interview unanimously decided to recommend to the Vice Chancellor the name of respondent No.3, failing which the petitioner was to be appointed.

20. There is no dispute that the Selection Committee comprised of experts in the field of Education. In the next Selection Committee meeting held on 27th April, 2013, all members endorsed the selection of respondent No.3. One of the members of the Selection Committee Dr. Ramdas G. Atram, Director of Higher Education, has endorsed the selection subject to verification of API score in Category III. The respondent No.3 thus came to be appointed after a due selection process.

21. As indicated earlier, even during the course of the hearing of the Appeal before the respondent No.5, and in view of the submissions made by the parties, two member Committee was appointed by the acting Vice Chancellor to verify the API score in respect of respondent No.3. The Two member Committee comprised of Prof. Nagnath Kottapalle and Prof. P.V. Pradhan. Based on the materials placed before them, the Committee observed as under :

"1. III-A : Papers published in referred journals - The research papers published by the candidates are not published in referred journals. Therefore cannot be considered.

2. Subject books by the candidate, although have ISBN no. One book 'lehfkk lafgrk' is published on 23rd March, 2012 which is after the date of submission of her application. Hence cannot be considered while calculating API score.

3. III-B - One of the book 'avuoV okVk' does not have ISBN no. Hence cannot be considered for calculating API score.

4. Chapters in books - Four books published by Dept. of Distance Education, University of Mumbai are in fact student learning material. Hence they don't have ISBN no. Therefore cannot be considered for API score. Two books namely 'izk-xaxk/kj xkMxhG ;kaps lkfgR;' o 'lqosZ ;kaps fo|kihB' does not have ISBN no. Thus cannot be considered for API score.

5. III-E - Papers presented in conferences/seminars - Under that (iii) Part B (National Level Conferences) 13 papers are presented in National Level Conferences. (iii)c-06 papers presented in State Level Conferences and (iii)-d-08 presented in University/College level conferences/seminars.

6. IV(B) - Invited lectures at National Level/Seminar/Conferences - Candidate has delivered a lecture in an event organized by Maharashtra Seva Sangh, Mulund, which is not a national level organization."

22. Insofar as details of Category III API score of respondent No.3, the Committee observed that total score for Category III of the petitioner is 316.5. The following chart would clearly indicate that the Committee upon assessing every activity, made its independent observations. The details of Category III API score is listed below :

Section

Activity Head

Claimed by teacher

Committee's observation

Nos

API Score

API score

III A

Papers in referred journal

14

$14 \times 15 = 210$

Nil

III B

Subject books published by publishers with ISBN/ISSN number

02

$2 \times 25 = 50$

$1 \times 25 = 25$

Chapters in books published by publishers with ISBN/ISSN number

14

$14 \times 5 = 70$

$8 \times 5 = 40$

Chapters in knowledge based volumes by publishers with ISBN/ISSN number

03

$3 \times 5 = 15$

$3 \times 5 = 15$

III C

Research project

01

$1 \times 15 = 15$

$15 \times 1 = 15$

III D

Research Guidance Ph.D. awarded

02

$$2 \times 10 = 20$$

$$1 \times 10 = 10$$

III E

Refresher courses (not less than 2 weeks) attended

03

$$3 \times 20 = 60$$

$$3 \times 20 = 60$$

Refresher courses (1 week) attended

01

$$1 \times 10 = 10$$

Nil

Papers in National conferences

20

$$20 \times 7.5 = 150$$

$$13 \times 7.5 = 97.5$$

Papers in Regional/State level conferences

10

$$10 \times 5 = 50$$

$$6 \times 5 = 30$$

Papers in Univ./college level conferences

08

$$8 \times 3 = 24$$

$$8 \times 3 = 24$$

Invited lectures at National level conferences

01

$$1 \times 5 = 05$$

Nil

Total score for Category III

694

316.5

23. The Committee made the following recommendations below the Chart reproduced above as under :-

"Note : Committee feels that as mentioned above in item no.III(A) papers in Research Journals - These are reputed Journals but do not have ISBN No. or ISSN No. However, Committee feels that out of 14, 10 Journals are reputed Journals/Magazines and hence may be considered. If considered 150 marks can be added to the API score calculated by the Committee.

The matter may be considered by the University Authority."

24. The main objection of learned counsel for the petitioner as recorded earlier is that the UGC guidelines which are mandatory in nature should have been followed in respect of those research journals / magazines which do not have ISBN/ISSN number. The Note referred above itself indicates that the journals / magazines relied by respondent No.3 do not have ISBN/ISSN number. According to her, the Committee was not justified in awarding 150 marks towards these 10 journals/ magazines. Learned counsel for the petitioner would submit that the Committee has no authority to override UGC Norms. She moreover submits that there nothing on record to suggest that these journals / magazines are reputed journals / magazines. Thus according to her, the Committee has virtually tinkered with the UGC guidelines.

25. From the record it is evident that initially the Selection Committee which met on 27/4/2013 comprised of experts in the field of Education. One of the member Dr. Ramdas G. Atram, Director of Higher Education, had also endorsed the unanimous decision of the Selection Committee to recommend the name of respondent No.3 subject to verification of API score in Category III. Even during the course of hearing of the Appeal, two members Expert Committee which went into the issue of API scores of the petitioner, comprised of Dr. Nagnath Kottapalle, Ex-Vice Chancellor, Dr. Babasaheb Ambedkar Marathwada University and Prof. P.V. Pradhan, former Registrar of the Mumbai University, to check and verify the necessary 400 API score of the petitioner. We find that the issue has been examined even by the Board of Deans. The subsequent clarification that the Board of Deans was not competent to decide the issue of API scores of a candidate is hardly of any consequence as the two member Expert Committee has recommended the API score of 150 for the journals / magazines in respect of respondent No.3. Thus it is clearly a matter of record that the respondent No.3 possesses the API score of 316.5. Regarding remaining 150 points the Expert Committee has opined that even though the API score of 150 is claimed through the journals/ magazines which do not have ISBN/ISSN number, they are reputed journals / magazines and hence may be considered. The record further indicates that even the Vice Chancellor of the University of Mumbai was in agreement with this opinion of the Expert Committee. The guidelines issued by the UGC on various aspects of University education are for the purpose of maintenance of

minimum standards of quality education. The explanation mentioned under Category III for research and academic contribution providing for maximum points for the publication, mentions that based on the teacher's self-assessment, API scores are proposed for research and academic contributions. The minimum API score required by teachers from this category is different for different levels of promotion and between university and colleges. It is further provided that the self assessment score will be based on verifiable criteria and will be finalized by the screening / selection committee. Even in the Notes below Category III - Research and Academic Contributions, more particularly Note-1 provides that it is incumbent on the Coordination Committee proposed in these Regulations and the Universities to prepare and publicize within six months subject- wise lists of journals, periodicals and publications under categories IIIA and B. It further mentions that till such time, screening/selection committees will assess and verify the categorization and scores of publications.

26. In the present case, the Selection Committee comprised of experts in the field of education. Even the two member Committee which submitted its recommendations during the pendency of the Appeal comprised of experts in the field of education. The petitioner has not imputed any malafides to the Selection Committee. The allegation is that the respondent No.2 has shown undue favour to respondent No.3 by awarding 150 marks for the journals / magazines which do not have ISBN/ISSN number. In our opinion, once the committee of experts in the field of education consistently found that out of 14 journals / magazines, 10 journals / magazines are reputed journals / magazines towards which 150 marks can be added to the API score, it is not open for us in the exercise of writ jurisdiction to question the wisdom of experts unless the decision is vitiated by malafides or patent illegality. Undoubtedly points are to be granted to these publications which have ISBN/ISSN numbers. However, it does not appear to us that the ISBN/ISSN numbers are so sacrosanct without which marks cannot be awarded even if journals / magazines are of repute in the opinion of experts in the field of education.

27. Nothing has been placed to indicate that these 10 journals / magazines are not of repute. In any case once experts in the field of education conclude that the journals / magazines are of repute, it is not possible for us to substitute our opinion for that of the Experts and come to a different conclusion. The entire object of the UGC Regulations is to maintain high standards of education. The circular provides for awarding of API scores to those publications which have ISBN/ISSN numbers. It is not possible for us to adopt a narrow approach, especially in matters of education and hold that reputed journals/magazines which do not have ISBN/ISSN numbers cannot be awarded points. The awarding of API score in respect of publications which have ISBN/ISSN numbers are in the nature of guidelines. In a given case if Expert Committee is of the opinion that reputed publications though may not have ISBN/ISSN numbers, but deserve awarding points as per the guidelines, there is nothing in the guidelines which prohibits the Expert Committee from adopting this course.

28. The Expert Committee was conscious of the fact that the journals / magazines do not have ISBN/ISSN numbers. The committee, however, was of the clear opinion that these are reputed journals / magazines and hence deserve consideration. If in such circumstances, the Committee recommended awarding 150 marks to the API score calculated, we do not find anything illegal in the decision making process so as to warrant interference. It is by now well settled that what can be challenged by way of a Writ Petition under Article 226 of the Constitution of India is the decision making process and not the decision itself.

29. We have already noted earlier that no allegations of malafides against the members of the Selection Committee are made nor is there any dispute that the Selection Committee and the subsequent two Member Committee comprised of experts in the field of education. The Expert Committee was clearly of the opinion that 10 journals / magazines published by the petitioner are reputed journals / magazines. We do not find any arbitrariness in the recommendations of the Expert Committee or selection process.

30. We have gone through the order passed by respondent No.5. The order not only considers the entire materials on record but is a well reasoned order passed after giving adequate opportunity of hearing to the petitioner. Even during the pendency of the Appeal, respondent No.5 called for a report from the Vice Chancellor, who constituted two member Committee to consider the issue of API scores of respondent No.3. We, therefore, do not find any reason to interfere with the well reasoned order passed by respondent No.5.

31. The Petition is therefore dismissed with no order as to costs.

32. Rule is discharged.