

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 5079 OF 2018**

Bharat Ramdas Khairnar

.. Petitioner

**Versus**

The State of Maharashtra and others

.. Respondents

Shri R. N. Dhorde, Senior Advocate i/by Shri Vikram R. Dhorde,  
Advocate for the Petitioner.

Shri A. V. Deshmukh, A.G.P. for the Respondent No. 1.

Shri P. M. Shah, Senior Advocate i/by Shri S. P. Shah, Advocate  
for Respondent Nos. 2 and 3.

Respondent Nos. 4, 6 to 9, 11 to 15 are served.

**CORAM : S. V. GANGAPURWALA AND  
SUNIL K. KOTWAL, JJ.**

**DATE : 14TH JUNE, 2018.**

**FINAL ORDER :**

. The petitioner has filed the petition with following prayers :

B. Hold and declare that, the election program published on 25.05.2018 which are Exhibit D along with the voters list which has been published by Respondent No. 2 and 3 for holding the elections to the Management Council of the Respondent No. 2 University, is illegal, arbitrary and violative of Article 14 and 19(1) (g) of the Constitution of India and in contravention to the provision of Statue No. 1 of 2017 and the Maharashtra Public Universities Act, 2016 and therefore, the same is liable to be quashed and set aside and for that purpose issue necessary orders.

C. Issue writ of Mandamus or any other writ or directions in the nature of writ of mandamus,

directing the respondent No. 2 and 3 to prepare and publish the electoral roll in accordance with law and thereafter, hold the election to the Management Council of Respondent No. 2 University and for that purpose issue necessary orders.

02. Mr. Dhorde, the learned senior advocate for the petitioner submits that, according to Sec. 26 of the Maharashtra Public Universities Act, 2016 (for short "Act 2016") one of the authority of the university is the management council and the election is to be held to the said management council. The persons entitled to vote are enumerated in Sec. 28(2) of the Act 2016. Twelve posts are vacant and subordinate officers have been appointed as incharge on the said twelve posts namely respondent Nos. 4 to 15. In fact, these posts are required to be filled as per Sec. 105 of the Act 2016 by constituting the selection committee and by advertising the posts. These posts are vacant. On 25.05.2018 on the election portal of the respondent No. 2/University the electoral roll is published along with election programme from the stage of nomination. The provisional list of electoral roll was not prepared, nor objections were called for the provisional electoral roll. The petitioner upon getting knowledge of the electoral roll raised an objection on 26.05.2018 before respondent Nos. 2 and 3.

03. The learned senior advocate further submits that, Statue 8 (3) to (5) are applicable even to the election in the meeting. The provisional electoral roll has to be published 45 days prior to the

election. The objections are to be invited, same are to be decided and thereafter final electoral roll is to be published. The appeal is provided to the Vice Chancellor and his decision would be final. Without following any of these provisions, the respondent No. 3 directly, who herself is incharge Registrar has included her name in the said electoral roll and published final electoral roll. The twelve persons who are included in the said electoral roll viz present respondent Nos. 4 to 15 are not eligible to be included in the electoral roll. They are not entitled to vote in the elections to the management council, as they are holding additional charge of the post. The learned senior advocate further submits that the illegalities are writ large and this Court can interfere in its writ jurisdiction under Article 226 of the Constitution of India.

04. The learned senior advocate relies on following judgments.

- I. Bar Council of Delhi and others Vs. Surjeet Singh and others reported in (1980) 4 SCC 211.
- II. Pundlik Vs. State of Maharashtra and others reported in (2005) 7 SCC 181.
- III. Dr. Mohd. Talib S/o Mohd. Sadique Vs. Dr. A. S. Kuchewar reported in 2007(3) All MR 99.
- IV. Sudhakar S/o Vitthal Misal Vs. State of Maharashtra and others reported in 2007(6) All MR 773.

05. Mr. P. M. Shah, the learned senior advocate for respondent Nos. 2 and 3 submits that, the petitioner has an alternate

remedy under Section 140 of the Act 2016. The members of the management council are required to be elected by Senate. There is no provision which excludes incharge officers and these respondent Nos. 4 to 15 are the members of the Senate. The elections are to be held in the meeting. The necessity to publish provisional voters list is necessary for elections to be held other than in the meeting. The proper procedure has been followed. Some from respondent Nos. 4 to 15 were nominated by the Vice Chancellor as members of management council in May to November 2017. The petitioner did not challenge the same since December 2017.

06. The learned senior counsel relies on following judgments :

- I. Vadodara District Cooperative Sugar cane Producers Union Ltd. Vs. Chandrakantbhai Thokarebhai Patel and others reported in (2005) 11 SCC 523.
- II. Shyamdeo PD. Singh Vs. Nawal Kishore Yadav reported in (2000) 8 SCC 46.
- III. The Election Commission of India Vs. Shivaji and others reported in AIR 1988 SC 61.
- IV. Shaji K. Joseph Vs. V. Vishanath and others reported (2016) 6 SCC 429.
- V. Avta Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and others reported in (2006) 8 SCC 487.

07. We have considered the submissions canvassed by the learned counsel for respective parties.

08. The voting is scheduled on 15.06.2018. It would be improper to stall the election at this stage. Even otherwise the question arises of interpretation of various provisions relied by the learned senior counsel for respective parties. Sec. 140 of the Act 2016 reads thus :

"Section 140 - If any question arises regarding the interpretation of any provisions of this Act, or of any statute, ordinance or regulation or rule, or whether a person has been duly elected or appointed or nominated or co-opted as a member or is entitled to be a member of any authority or body of the University, the matter may be referred on petition by any person....., to the Chancellor..."

09. The petitioner has remedy under Section 140 of the Act 2016. Considering that the voting is scheduled tomorrow and also considering that the petitioner has remedy under Section 140 of the Act 2016 to approach the Hon'ble Chancellor, we do not feel it appropriate to interfere with the election process at this stage. The matter would require interpretation of various provisions as is argued by respective learned senior counsel.

10. Considering all the aforesaid conspectus of the matter, the writ petition is disposed of with liberty to the petitioner to avail

the remedy under Section 140 of the Act 2016 and/or such other remedy as is permissible in law. No costs.

11. In case the petitioner avails alternate remedy, the forum where the petitioner would avail the remedy shall endeavour to dispose of proceedings expeditiously.

**[SUNIL K. KOTWAL, J.]**

**[S. V. GANGAPURWALA, J.]**

bsb/June 18