

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3655/2018

Ganesh S/o Dinkarrao Kedar

..Vs..

Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND Z.A.HAQ, JJ.

DATED : 28.6.2018.

1. Advocate Shri F.T. Mirza for petitioner pointed out that on the rejection of nomination of petitioner after scrutiny on 20th June, 2018 petitioner preferred appeal within stipulated time before competent Authority, namely, Vice-Chancellor. Vice-Chancellor has on 24th June, 2018 found that rejection unjust, however, then surprisingly, a new objection, not within knowledge of petitioner and not communicated to him, has entered the consideration. One G.S. Khadekar has on 22nd June, 2018 raised an objection alleging that petitioner does not have necessary Ph.D. students to his credit. This objection has been accepted and nomination paper has been rejected. Contention is, this is in violation of election programme / process as also in breach of principles of natural justice.

2. The elections as per programme are due on 2nd July, 2018. Hence, we issued notice in the matter on 27th June, 2018 and made it returnable today.

3. Today, we have also heard Advocate Shri S.M.

Puranik, who has assisted the Court on the basis of records of University, and Advocate Abhay Sambre, who appears for respondent No.4 - Shri G.S. Khadekar. Shri Khadekar has also filed reply affidavit.

4. The part of order passed by Vice-Chancellor restoring nomination of petitioner by holding earlier order rejecting it during scrutiny is not in challenge before us. It is the latter part which centers around objection raised by Shri Khadekar that falls for consideration.

5. On merits, Advocate Mirza has submitted that petitioner does have necessary Ph.D. students and is not at all disqualified. Had he been given that opportunity, petitioner would have definitely succeeded in demonstrating it.

6. Advocate Sambre, on the other hand, disputes this. According to him, the material on record does not justify stand of petitioner and, therefore, petitioner is not qualified in terms of Rule 6(b)(iv) of the Direction No.13 of 2018.

7. Records produced by Advocate Puranik before us are not in dispute. Records are in the shape of two files. The first file begins with a note dated 22.6.2018 on its note side. The note there is addressed to Deputy Registrar, Academics. Said Authority has then written a handwritten note which is signed by it on 22.6.2018. This note dated 22.6.2018 is in fact only on objection by Shri Khadekar. It does not comment, in any way, upon the facts looked into at the time of scrutiny and used for

rejecting nomination paper of petitioner. This note accepts objection of Shri Khadekar and recommends accordingly to Vice-Chancellor. The note then goes to Registrar and Registrar has mentioned that petitioner could not have been treated as qualified. This recommendation of Registrar is then addressed to Vice-Chancellor. Vice-Chancellor has below it in red ink accepted portion "A" and placed date 24.6.2018 after his signature. Portion "A" in note of Deputy Registrar, Academics is highlighted part in relation to having necessary Ph.D. students.

8. On correspondence side, this file has a written letter / objection sent by Shri G.S. Khadekar and then there is a protest letter in two copies (both signed in original dated 26.6.2018 by present petitioner).

9. In the other file produced before us University has invited our attention to proceedings of hearing conducted on 24.6.2018. These proceedings mention that during hearing objection raised by Shri Khadekar on 22.6.2018 was brought to notice of present petitioner. The proceedings are in the shape of order of Vice-Chancellor. It is a printed document having signature of Vice-Chancellor and date on it is mentioned in print as 24.6.2018. In addition, there is also an order in Marathi. This order in Marathi does not mention any date after signature of Vice-Chancellor but it shows that it is after hearing on appeal filed by petitioner on 24.6.2018 and petitioner was present for it. After this order independently, on a paper, attendance of appellant

and perhaps appellants in other matters have been recorded and their signatures have been obtained.

10. This document does not contain signature of Shri Khadekar. Respondent No.4 - Shri Khadekar also does not state that he was present for hearing on 24.6.2018. We, therefore, need not dilate more on this aspect.

11. After hearing respective parties, we find that objection raised by Shri Khadekar in writing was not served upon petitioner. Petitioner was, therefore, not given an opportunity to meet it effectively. Facts not within comprehension of petitioner were raised and a new objection was taken by Shri Khadekar. Petitioner could have been then given some opportunity to bring correct facts on record.

12. Today we find that not only a factual dispute but also a legal question about sustainability of such effort made by respondent No.4 is being raised. All these issues could not be noticed by petitioner on 24.6.2018.

13. We, therefore, quash and set aside the order of respondent No.3 - Vice-Chancellor dated 24.6.2018 and restore appeal filed by petitioner for fresh consideration as per law to his file.

14. We direct the petitioner to remain present before respondent No.3 on 29th June, 2018 at 12 o'clock. in the afternoon. Respondent No.3 shall after hearing petitioner and after perusal of records take suitable decision as per law, preferably on same date.

15. It is not in dispute that further election of Management Council of respondent No.1 - University are already stayed by this Court.

16. As per election programme published on 9th June, 2018 after decision of appeal, the list of validly nominated candidate is to be published on next day and then date of withdrawal was again one day thereafter. The final list of contesting candidates was to be published on 4th day after the decision of appeal.

17. In these peculiar facts, we postpone stages in present election with similar time intervals commencing from the date of adjudication of appeal of petitioner by respondent No.3 - Vice-Chancellor.

18. The copy of objection raised by respondent No.4 shall be made available to counsel for petitioner during the course of the day in Court.

19. Respondent No.4 - Shri Khadekar can also present himself for hearing before respondent No.3 - Vice-Chancellor. The status or *locus* and need of hearing to be provided to him is being objected by petitioner. We find that this aspect also can be looked into by Vice-Chancellor as per law.

20. Accordingly, writ petition is allowed and disposed of. No costs.

21. An authenticated copy of this order be supplied to the learned counsel for the parties.

JUDGE

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