

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

MISC. CIVIL APPLICATION NO.1253/2017

IN
WRIT PETITION NO.3215/2017 (D)

Umesh Arun Suryawanshi

...Versus...

The State of Maharashtra, through its Principal Secretary, Department of Animal Husbandry, Dairy Development and Fishery Development Mantralaya, Mumbai : 32 and others

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

Court's or Judge's orders

Shri P.B. Patil, Counsel for applicant
Mrs. A.R. Kulkarni, AGP for respondent no.1
Shri A.R. Patil, Counsel for respondent nos.2, 3 and 4

**CORAM : B.P. DHARMADHIKARI AND
ARUN D. UPADHYE, JJ.**

DATE : 09/03/2018

1. Review has been filed by applicant/petitioner for reviewing the orders passed by this Court on 22/9/2017 dismissing Writ Petition No.3215/2017.
2. In writ petition, challenge was to a charge-sheet and competency of Vice Chancellor to issue the same.
3. Counsel then representing petitioner and other respective Counsel were heard and thereafter relying upon Section 17 (1) and 17 (2) of the Maharashtra Animal and Fishery Sciences University Act, 1998 as also judgment of Hon'ble Apex Court reported at *AIR 1984 SC 626 [Corporation of the City of Nagpur and another...Versus...Ramchandra G. Modak and*

others], which explained the concept of Chief Executive Officer and Principal Executive Officer, challenge was found erroneous.

4. Review has been filed by petitioner and Counsel now representing submits that Sections 17 (1) and 17 (2) of the Act of 1998 need to be understood and construed in the light of other provisions therein. The Executive Council is the appointing and disciplinary authority of review applicant and there is no express authorization in favour of Vice Chancellor to function as disciplinary authority. Effort is also made to distinguish the words “general control” employed in Section 17 (2) of the Act of 1998 and words “entire control” looked into by the Hon'ble Apex Court in the judgment in the case of *Corporation of the City of Nagpur and another...Versus...Ramchandra G. Modak and others* (Supra).

5. Support is being taken from the judgment of Hon'ble Apex Court, reported at *AIR 1989 SC 1582 [The Marathwada University...Versus...Seshrao Balwant Rao Chavan]*. In an effort to show the error, the learned Counsel has also attempted to press into service the judgments reported at *AIR 1966 SC 447 [The State of West Bengal and another...Versus...Nripendra Nath Bagchi]*, *AIR 2005 SC 592 [Board of Control for Cricket, India and another...Versus...Netaji Cricket Club and others]* and full Bench judgment of this Court reported at *2003 (4) Mh.L.J. 423 [Prabhakar Shrirang Jagdale...Versus...Kalyan-Dombivli Municipal Corporation, Kalyan and another]* as also judgment of Hon'ble Apex Court, reported at *2002 AIR SCW 4939 [Bhavnagar University...Versus...Palitana Sugar Mill Pvt. Ltd. and others]*.

6. Respective Counsel appearing for respondents have opposed the prayer for review. They submit that there cannot be second hearing before this Court.

7. We have looked into relevant provisions as also case laws. The words “Principal Executive” in Section 17 (1) of the Act of 1998 and “general control” over the affairs in Section 17 (2) of the Act of 1998 have been construed by this Court in the light of judgment of the Hon'ble Supreme Court in the case of ***Corporation of the City of Nagpur and another...Versus...Ramchandra G. Modak and others*** (Supra).

8. During hearing it has also become clear that departmental enquiry is now complete and Enquiry Officer has submitted enquiry report.

9. We find effort to have review is rehearing and in this situation is misconceived.

10. Contention of review applicant that Section 59 of the City of Nagpur Corporation Act, 1948 vests all control with Municipal Commissioner while that is not the arrangement in Section 17 of the Act, 1998, is misconceived.

11. Sections 17 (1) and 17 (2) of the Act of 1998 together put all necessary powers with Vice Chancellor. This can also be seen from discussion of the Hon'ble Apex Court in paragraph no.18 of judgment, relied upon by review applicant, i.e., in the case of ***The Marathwada University...Versus...Seshrao Balwant Rao Chavan*** (Supra).

12. In this situation, we find substance in contention of respondents that review is nothing but an appeal in disguise filed before us.

13. Accordingly, we reject the review petition. No costs.

JUDGE

JUDGE

Wadkar