

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

WRIT PETITION NO.6692/2018

PETITIONERS :

- 1) Mr. Mithilesh Gyanprakash Pande,
aged 37 years, Occ. Service,
R/o 74-B, Bhushan nagar,
Yerkheda, Kamptee, Tq. Kamptee,
Nagpur - 441002.
- 2) Atul Gajananrao Khope,
aged 32 years, Occ. Service,
R/o Mahalakshmi App. Flat no.101,
Ghogali Besa Nagpur – 440034.
- 3) Yashwant Narayan Shende,
aged 37 years, Occ. Service,
R/o Mali Mohalla, Sangadi,
Ta. Sakoli, Dist. Bhandara – 441802.
- 4) Mr. Mohd Rashid Mohd Sabir,
aged 34 years, Occ. Service,
R/o Plot No.76, infront of Jamiat
hall, near old Chopde lawn,
Awasthi nagar Nagpur – 440013.
- 5) Mr. Sushil Dnyanaeshwar
Gaurkhede, aged 32 years,
Occ. Service, R/o Plot no. 622,
7th Mile, Amravati road Navneet
nagar, Wadi Nagpur – 440023.
- 6) Ms. Prerna Sevkdas Lautre,
aged 32 years, Occ. Service,
R/o Behind Nitin Raut House,
Plot no. 49, Garden lay-out
Bezanbgh Kamptee road,
Nagpur – 440004.

- 7) Mr. Tushar Gopal Moreshiya,
aged 31 years, Occ. Service,
R/o Azad ward near Shitala Mata
Mandir Ramtek, Ta. Ramtek
Dist. Nagpur – 441106.
- 8) Mr. Roshan Gendlal Kose,
aged 31 years, Occ. Service,
R/o Nehru ward near Arthik Vikas,
Dudh Dairy, Ramtek, Tq. Ramtek
Dist. Nagpur – 441106.
- 9) Mr. Vishal Jagdish Deshbhratar,
aged 35 years, Occ. Service,
R/o C/o Yashpal Panchbhai,
210 Mahendra nagar, Near Sahu
Kirana Store Nagpur – 440017.
- 10) Ms. Harnish Kaur Bhatia,
aged 31 years, Occ. Service,
R/o S. Mehtab singh Bhatia, 1029
Kamptee road Punjabi line, Behind
Gurudwara singh sabha,
Nagpur – 440004.
- 11) Ms. Kavita Suryabhan Kene,
aged 31 years, Occ. Service,
R/o 22 B Kohale Lay out, Prabhu
nagar, Godhani road near Datta
Mandir, Zingabai Takli,
Nagpur – 440030.
- 12) Mr. Vivek Rambhau Kumbhare,
aged 30 years, Occ. Service,
R/o Flat no. 302, Shri Ganesha App.
Maitri nagar Behind Shiv Shankar
Lawn Nagpur – 440009.

- 13) Mr. Manoj Ashok Sadafale,
aged 27 years, Occ. Service,
R/o plot no.13, Akash nagar,
Manewada ring road,
Nagpur – 440034.
- 14) Ms. Tasneem Maqsood Hasan,
aged 28 years, Occ. Service,
R/o NL/9 near Daroga Masjid,
Ruiganj Kamptee, Ta. Kamptee,
Nagpur – 441001.
- 15) Ms. Kamakhaya Kishan Argulwar,
aged 27 years, Occ. Service,
R/o Macchipul Shastri Chowk
behind Mata Temple Kamptee,
Nagpur – 441002.
- 16) Mr. Abhay Diwakar Mahajan,
aged 38 years, Occ. Service,
R/o 22/04 LIG Mhada Colony,
Hasanbagh road, near Hasanbagh
Police Chowki, Nandanvan,
Nagpur – 440009.
- 17) Mr. Amit Ramratan Kirpane,
aged 32 years, Occ. Service,
R/o Ward no.04 near Hanuman
Mandir, Patel nagar, Kanhan,
Ta. Parseoni, Dist. Nagpur – 441401.
- 18) Mr. Dilip Madhukarao Charde,
aged 37 years, Occ. Service,
R/o Plot no. 227, Kirti App. 01,
3rd floor, C/8, Nandanvan Cement
road Nagpur – 440009.
- 19) Mr. Shrikant Gajananrao Badalwar,
aged 30 years, Occ. Service,

R/o Zade ley-out, near Swami
Samrth Mandir, Old Mhada colony,
Sindhi Meghe, Wardha – 442001.

- 20) Mr. Mohan Narayan Revatkar,
aged 42 years, Occ. Service,
R/o 68, Omkar Nagar,
Nagpur – 440027.
- 21) Mr. Manish Gulabrao Niwal,
aged 40 years, Occ. Service,
R/o Vaishano Dham Plot No.81,
Bandhu Nagar, Near Hanuman Shiv
Mandir, Zingabai Takli Road,
Nagpur – 440030.
- 22) Mr. Kishor Champatrao Harne,
aged 42 years, Occ. Service,
R/o At. Po. Lohari Sawanga,
Tq. Narkhed,
Dist. Nagpur – 441305.

...VERSUS...

- RESPONDENTS :**
1. State of Maharashtra,
Through the Secretary,
Higher Technical Education and
Employment Department,
Mantralaya, Mumbai.
 2. Director of Technical Education,
Through Joint Director of Tech.
Education, Govt, Polytechnic
Premises, Sadar, Nagpur.
 3. All India Council for Technical
Education, Through Its Regional
Office, Western Region, Industrial
Assurance Building, 2nd floor,
Nariman Road, Mumbai – 400 020.

4. Rashtrasant Tukadoji Maharaj
Nagpur University, Through Its
~~Vice Chancellor~~, Registrar, Near Maharajbagh,
Nagpur – 01.

(Correction/Amendment carried out
as per order dt. 10/12/19)

5. ITM College of Engineering,
Through its The Principal
Near Madhi Mandir, Ghorpad Road,
Kamptee, Dist. Nagpur.
6. Wardhaman Bahu Uddeshiya
Sanshta, Through its Chairman,
Platinum Techno Park, 1001,
10th Floor, Plot No. 17-18, Sector 30-A,
Vashi, Navi Mumbai – 05.
7. Wardhaman Bahu Uddeshiya
Sanshta, Through its Secretary,
Platinum Techno Park, 1001,
10th Floor, Plot No. 17 – 18,
Sector 30 – A, Vashi, Navi Mumbai – 05.

Shri D.P. Jaiswal, Advocate for petitioners
Shri S.M. Ukey, Addl. G.P for respondent nos.1 and 2
Shri N.P. Lambat, Advocate for respondent no.3
Shri P.B. Patil, Advocate for respondent no.4
Shri R.B. Puranik, Advocate for respondent no.5 to 7

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE JJ.
DATE : 08/12/2020**

ORAL JUDGMENT (PER : SUNIL B. SHUKRE , J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioners, who are the staff members of the respondent nos.5 to 7 – Institutes and Societies, have filed this petition, taking exception to the no objection given by the respondent no.4 – University to the proposal of the respondent nos.5 to 7 for closure of the College and the Institute.

3. According to the learned Counsel for the petitioners, the Academic Council did not examine the question of closure of the respondent no.5 – College from the viewpoint of possibility of transferring the management of college to another management. Reliance has been placed upon the provisions contained in Section 121 (3) of the Maharashtra Public Universities Act, 2016.

4. The petition is opposed by the respondents all of whom contend in one voice that all provisions of law have been complied with in the present case and no error could be found in the no-objection given by the respondent no.4. It is also submitted on

behalf of the respondent nos.5 to 7 that now, only five students have been left in the College after the higher and technical education department, approved the transfer of 23 students from the college to another institutes of the choice of the students, subject to the intake capacity of the new institutes vide Government Resolution dated 29/10/2020.

5. Shri Jaiswal, learned Counsel for the petitioners submits that although the college can be closed down, such closure cannot take effect unless consideration is given to the right of the petitioners to receive compensation upon such closure and that consideration has not been made by the concerned authorities.

6. Shri P.B. Patil, learned Counsel for the respondent no.4 - University submits that since the proposal for closure of the college was initiated by the respondent nos.5 to 7 and received by the University after coming into force the Maharashtra Public Universities Act, 2016 (hereafter as “the Act, 2016” for short), the provisions of this Act would be applicable to the instant case. He submits that there is no provision made in the Act, 2016 for grant of

compensation. Of course, learned Counsel would like to take recourse to the provisions contained in Sub Section 4 of Section 92 of the Maharashtra Universities Act, 1994, in order to buttress his submission regarding entitlement to receive compensation, such reliance is of no consequence as the proposal for closure of the college has been initiated after coming into force of the Act, 2016. Therefore, now, the demand of the petitioners would have to be examined only in the light of the provisions made in the Act, 2016. On going through the provisions of the Act, 2016, in particular those contained in Section 121 of the Act, 2016, we cannot but find ourselves in agreement with the contentions made in this regard on behalf of the respondents. Till now, what was available as a matter of entitlement to the affected employees in terms of compensation, is no longer made available to the affected employees. So, there can be no grievance raised from the angle of entitlement to receive the compensation.

7. The respondent nos.5 to 7, have already given an undertaking to the University on 13/07/2018 whereby, these respondents have undertaken to pay salary to all the staff members

as long as they remain in service with these respondents. We are of the view that this undertaking, having been fairly given by the respondent nos.5 to 7, would have to be taken as something which takes care of the interest of these petitioners within the parameters of law. Now, the next question is as to whether or not it was necessary for the Academic Council which examined the issue of closure of the college in accordance with the procedure prescribed in Section 121 of the Act, 2016 to have also considered as to whether or not the closure was avoidable by resorting to the other option of transferring the institute to some other management. No doubt, such examination and its conclusion do not find reflection in the report of the enquiry committee in so many words. But, we have to understand the fact that the members of the Academic Council whose Council has submitted such report are not well versed with the niceties of law and when they reach a conclusion it is quite possible that the conclusion may not be supported by such facts and reasons as a legal expert would expect to be spelt out while reaching a conclusion. Nevertheless, the report of the Academic Council being made up of experts, cannot be dismissed only because some of the niceties of law do not find any mention or reflection in the

conclusions made therein. In order to accept the contention that the Academic Council did not consider the possibility of transferring of the institute to another management, some material is required to be produced on record by the petitioners in the sense that the petitioners must demonstrate that this fact was brought to the notice of the Academic Council and yet the Academic Council did not consider the same. But, that is not the case here and therefore only because nothing is found to be specifically mentioned in the report of the Academic Council, it is not possible for us to straightway jump to the conclusion that the Academic Council failed to examine the possibility of transferring of the institute to another management.

8. Apart from what is stated just now, we find from the language employed in Sub Section 3 of Section 121 of the Act, 2016 that the prescription of examination of the possibility of transfer of college to another management made to the Academic Council is not mandatory in nature. This is evident from the use of words “the Academic Council may examine”. It appears to us that it has been left to the discretion of the Academic Council, in the facts and circumstances of a given case, to consider such a possibility. There

may be different fact situations and in some of them, the Academic Council may not think it fit to examine this possibility. Therefore, any failure on the part of the Academic Council to examine the other possibility cannot by itself be seen or viewed, as vitiating the enquiry report, recommending closure of the college.

9. Having seen that the petitioners do not have any entitlement in law to receive compensation and also having seen that the interest of the students have already been taken care of by allowing their transfer to suitable institutes, we are of the view that this petition has lost its force and substance before this Court. If any relief as prayed for by the petitioners is to be granted, it would only amount to authorizing continuation of the petitioners in a college which is already greatly depleted of its students strength. Today, upon instructions, the learned Counsel for the respondent nos.5 to 7 has made a statement that after approval for transfer of the students to other colleges was received, 23 students have been transferred and only five students have been left and that too or perhaps for the reason that these students have not so far applied for their transfer. We have no reason to not accept the statement so

made and we do accept it. Now, if only five students are left in the college, any continuation of the petitioners in that college, if it is permitted, would only mean that the petitioners are paid salary for sitting idle in that college. In fact, the petitioners should realize now that the institute, where they still have continued, is already denuded of its sources with all the students gone and therefore, it is time for them to look for other alternatives or move on to greener pastures. It is obvious that there would be left hardly any work for the staff members when the strength of the students is just five.

10. In the circumstances, we find that there is no merit in the petition. The writ petition stands dismissed. Rule is discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

Shailendra
Wadkar

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by Shailendra
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