

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

**CIVIL APPLICATION NO.2192 OF 2021
IN
WRIT PETITION NO.8401 OF 2019**

Dr. Shankar s/o. Bhagwan Ambhore,
Age : 54 years, Occ. Service,
r/o. Plot No.120, Pethe Nagar,
Bhavsingpura, Aurangabad

..Applicant

Vs.

1. Hon'ble Chancellor,
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad, Raj Bhavan,
Malbar Hill, Mumbai
2. Dr.Babasaheb Ambedkar University,
through its Registrar,
University Campus, Aurangabad
3. Dr. Vilas s/o. Bhikaji Khandare,
Age : 49 years, Occ. Service,
office at Shri Asaramji Bhandwaldar
College, Devgaon Rangari,
Tq. Kannad, Dist. Aurangabad
4. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32

..Respondents

Mr.S.V.Dixit, Advocate for applicant
Mr.S.V.Deshmukh, Advocate for respondent no.3
Mr.S.P.Tiwari, AGP for respondent no.4

CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 11, 2021

ORDER :-

The applicant, original petitioner in Writ Petition No.8401 of 2019, has filed this application for the following reliefs :-

"A) That, implementation, execution and operation of Notification No.1/2021, issued on 22.01.2021 by Registrar and returning officer of respondent no.3 be stayed.

B) That, respondent no.2, its Officers, servants or anybody claiming through respondent no.2 be restrained by an order of injunction from conducting election of Management Council from Academic Council as per Section 30(4)(j) of the Maharashtra Public Universities Act, and to post held by applicant till final disposal of present Writ Petition."

2. The applicant's nomination as a Member of the Board of Studies in Economics of Dr.Babasaheb Ambedkar

Marathwada University, Aurangabad, under Section 40(2)(b)(ii) of the Maharashtra Public Universities Act, 2016 ("the Act" for short), was declared as *void ab-initio* vide order dated 01.09.2019 passed by respondent no.1 – Chancellor of the University. On the same day, by a separate order passed by respondent no.1 - Chancellor, the applicant's nomination as a Member of the Board of Studies of Dr.Babasaheb Ambedkar Marathwada University, Aurangabad, under Section 40(2)(b)(ii) and (iii) of the Act, was declared as *void ab-initio*. Both these orders were under challenge in Writ Petition Nos.11980 of 2019 and 12001 of 2019, respectively. Both these Writ Petitions have been decided vide judgment and order dated 14.10.2020. The applicant/petitioner has been unsuccessful in both these Writ Petitions. Learned counsel for the applicant submitted to have filed a Special Leave Petition challenging the order of dismissal of these Writ Petitions.

The applicant's election to the management council under Section 30(4)(j) of the Act, has also been held to be void *ab-initio* vide order dated 20.06.2019 passed by respondent

no.1 – Chancellor. The applicant/petitioner has challenged the order dated 20.06.2019 by filing Writ Petition No.8401 of 2019, which is pending.

3. The programme regarding election of the management council from academic council under Section 30(4)(j) of the Act, has been declared. The election is scheduled for 12th February, 2021.

4. Mr.Dixit, learned counsel for the applicant would submit that Writ Petition No.8401 of 2019 was reserved for orders on 05.09.2019 and this Court, during the course of hearing, had orally directed the Advocate appearing for the University, for not holding further election to fill up the post held by the applicant in the management council. Such direction was given considering the fact that the matter was heard by the Court on its merits. According to the learned counsel for the applicant, the election programme has been declared with a view only to frustrate the cause agitated in Writ Petition No.8401 of 2019. According to him, the applicant

has every chance of success in the Writ Petition. If the election is allowed to be held, it would be prejudicial to the interest of the applicant. He, therefore, urged for grant of the application.

5. Mr.Deshmukh, learned counsel for respondent no.3, would, on the other hand, submit that both Writ Petition No.11980 of 2019 and 12001 of 2019 have been dismissed on merits. He, however, admits that the Court had orally directed not to hold election to fill up the post held by the applicant in the management council. According to him, said oral direction short-lived since the Writ Petition reserved for orders, has now been de-reserved. Thereafter, the aforesaid two Writ Petitions have been decided. Learned counsel has also produced on record the order dated 30.06.2019 passed in those two Writ Petitions.

6. In support of his claim in the application, learned counsel for the applicant is simply relying on oral direction of this court to the Advocate appearing for the University, not to hold election to fill up the post held by the applicant in the management council. Such direction appears to have been

given when the Writ Petition was reserved for orders. The matter has now been de-reserved. The same needs to be heard on merit. Learned counsel for the applicant did not make any submission as to merit of the matter.

7. In paragraph 18 of the order dated 30.09.2019 passed in aforesaid two Writ Petitions, it has been observed as under :-

“18. A peculiar situation has therefore, arisen concerning these two petitions vis-a-vis the above stated petition which is reserved for orders. In the event, these two petitions suffer rejection in this Court, the very nomination of the petitioner to the BOS of economics would be set aside thereby destroying his foundation of being an elected chairperson of BOS. He was ex-officio member of the Academic Council which eventually led to his contesting the elections to the Management Council. In the event these two petitions are dismissed, the Writ Petition which is reserved for judgment would be rendered of an academic interest and no purpose would be served in deciding the said petition in which the same petitioner prays for sustaining his election to the Management Council.”

8. It is reiterated that both the Writ Petitions have been dismissed vide order dated 14.10.2020. Learned counsel for

the applicant did not make any submission so as to make out a *prima facie* case to grant the application. It is his only submission that if the applicant succeeds in the Writ Petition, holding of election would be prejudicial to the applicant's interest and resultantly, Writ Petition No.8401 of 2019 would become infructuous.

9. Since the oral direction has short-lived in view of the fact of the Writ Petition having been made de-part heard and the fact that other two Writ Petitions of the applicant have been dismissed on merit and the fact that learned counsel for the applicant made no submissions to *prima facie* overcome the observations in paragraph 18 of the order dated 30.09.2019, in my opinion, the applicant is not entitled for the reliefs claimed in the application.

10. The Civil Application, therefore, fails. The same is rejected.

[R.G. AVACHAT, J.]

KBP