

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12721 OF 2022

1] Tapti Education Society, Bhusawal,
Tq. Bhusawal, District – Jalgaon
Through its Secretary
Vishnu Shravan Chaudhari
Age 73 years, Occu. Agriculture
R/o. Jamner Road, Bhusawal,
Tq. Bhusawal, District – Jalgaon

2] Mahesh S/o Devidas Phalak
Age : 54 years, Occu. Agriculture
R/o. Bhusawal, Tq. Bhusawal,
District – Jalgaon

.. Petitioners

VERSUS

1] The State of Maharashtra,
Through the Secretary,
Higher Education Department,
Mantralaya, Mumbai

2] Kaviyatri Bahinabai Chaudhari
North Maharashtra University
Umavinagar, Jalgaon
District – Jalgaon
Through its Registrar and the
Election Officer of
Kaviyatri Bahinabai Chaudhari
North Maharashtra University,
Jalgaon

3] Nilkanth S/o Chintaman Phalak,
Age 75 years, Occu. Agriculture,
R/o. Govind Colony, Jamner Road,
Bhusawal, District – Jalgaon

.. Respondents

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Advocate for petitioners : Mr. V.D. Hon, Sr. Advocate i/b. Mr. A.V. Hon

AGP for the respondent no. 1 : Mrs. M.A. Deshpande

Advocate for the respondent no. 2 : Mr. A.B. Girase

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**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 14 DECEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule made returnable forthwith. Learned AGP waives service for the respondent no.1 and Mr. Girase waives service for respondent no. 2. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioners are challenging the decision taken by the respondent no. 2 - University's Registrar and Election Officer in the impending elections to the post of the management nominees on the Senate being undertaken under section 28(2) of the Maharashtra Public Universities Act, 2016 and seeking writ of *mandamus* directing the respondent no. 2 to include petitioner no. 2's name in the final electoral roll.

4. Mr. Hon, learned senior advocate for the petitioners submits that without there being any communication to petitioner no. 2 and purportedly on an objection raised by the respondent no. 3, by the impugned order, the Registrar has rejected the application of the petitioner no.2 though there is a dispute amongst the management, the respondent no. 2 could not have discarded and rejected the nomination. The change report was pending before the Assistant Charity Commissioner. The decision in the matter of **Murlidhar**

Janrao Kale and others Vs. State of Maharashtra; 2011 (2) Mh.L.J.

849 clearly demonstrates that on presentation of a change report, it shall be assumed that is the changed body which is in the office and his application ought not have been rejected that too without assigning any reason. He would further submit that though the petitioner no. 2 has preferred an appeal under clause 8 of the Uniform Statute No.1 of 2017, nothing has been communicated.

5. Mr. Girase at the outset submit that the appeal of the petitioner no. 2 has been rejected by the Vice Chancellor. He would further submit that on an enquiry with the office of the Deputy Charity Commissioner, Jalgaon, the office has informed the respondent no. 2 - Registrar that a change report bearing no. 937 of 2008 of the petitioner no.1 - society has been pending with that office. It was also informed by that office that in view of such pendency of that change report, it could not be declared as to which is the legally constituted management. In view of such peculiar circumstance, when there has been a dispute amongst the management, there was no option left with the respondent no. 2 - Registrar but to reject the objection of the petitioner no. 2 to the provision electoral roll.

6. Irrespective of the merits or otherwise of the matter, the fact remains that a statutory appeal preferred by the petitioner no. 2 under clause 8 of the Uniform Statute No. 1 of 2017 has been

dismissed by the Vice Chancellor. There is no further challenge put up by the petitioners to that decision and consequently, this Court in exercise of the powers under Article 226 cannot indulge in further scrutiny.

7. Besides, as is submitted by Mr. Girase, the office of the Charity Commissioner has specifically informed the respondent no. 2's inability to express as to which management is in the office. The change report has been pending adjudication since 2008 and, therefore, no error can be found even in the decision of the respondent no.2 rejecting the petitioner no.2's objection to the electoral roll.

8. As can be seen from the wordings of clause 8, only the omissions and wrong entries can be corrected and the power of the Registrar is limited only to this extent. If in the circumstances, indicated herein-above, the respondent no. 2 has issued the impugned communication, it cannot be said that he has illegally refused to exercise the power.

9. The petition is dismissed.

10. Rule is discharged.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/