

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3254/2022

Dr. Virendra S/o Keshavrao Jumde,
Aged about 51 years, Occu. Service,
R/o Godrej Anandam, Umrer Road, Nagpur.

PETITIONER

-VERSUS-

1. The Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur, through its Registrar.
2. The Vice Chancellor, Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur.
3. The Pro Vice Chancellor, Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur.
4. The Deputy Registrar (College Section), Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur.
5. The Joint Director of Higher Education, Nagpur.
6. Rashtra Vikas Shikshan Sanstha, Khapa, through its Secretary D.B. Parate, R/o Khapa, Dist. Nagpur.
7. The Management Council, Rashtrasant Tukdoji Maharaj, Nagpur University, Nagpur.

RESPONDENTS

Shri M.G. Bhangde, Senior Advocate with Shri Shajal Sarda counsel for the petitioner.

Shri S.P. Dharmadhikari, Senior Advocate with Shri S.S. Ghate, counsel for the respondent nos.1 to 4 and 7.

Shri N.R. Patil, Assistant Government Pleader for the respondent no.5.
Shri V.P. Marpakwar, counsel for the respondent no.6.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 08TH JULY, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 20TH JULY, 2022.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the communication dated 06.06.2022 that is issued by the Deputy Registrar, Rashtra Sant Tukdoji Maharaj Nagpur University, Nagpur – University by the order of the Pro-Vice-Chancellor and Disciplinary Authority thereby suspending the approval that was granted to the petitioner's appointment as Principal of Dr.Haribhau Admane Arts and Commerce College – College. In addition the petitioner has also challenged Direction No.23/2021 and Direction No.31/2021 as being *ultra vires* the powers of the Vice-Chancellor. By amending the writ petition, the approval granted by the Management Council to those Directions is also under challenge.

3. The facts relevant for considering the challenge as raised to the action of suspending the approval granted to the post of Principal is that on 16.06.2010 the Vice-Chancellor of the University approved the appointment of the petitioner as Principal of the College. On 22.07.2021, First Information Report No.0426/2021 was registered at Police Station Saoner against the petitioner for the offences punishable under Sections 354 and 504 of the Indian Penal Code read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. The petitioner was arrested on the same day and he was released on bail on 31.07.2021. In the meanwhile, the College placed the petitioner under suspension pending enquiry. After considering the Enquiry Report as submitted, the Management passed a resolution and proceeded to revoke the suspension

of the petitioner. On 16.02.2022 the Pro-Vice-Chancellor issued a show cause notice to the petitioner stating therein that since there was *prima-facie* involvement of the petitioner in an incident of serious nature for which he was arrested, it was proposed to initiate disciplinary proceedings against him. The petitioner was called upon to show cause as to why the approval granted to his appointment as Principal on 18.06.2010 should not be suspended by virtue of Clause 9 of Direction No.23/2021. The petitioner was granted time of seven days to submit his clarification. The petitioner on 18.02.2022 made a request to the Deputy Registrar to supply him various documents including copy of Direction No.23/2021, complaints received from various Students' Unions as the show cause notice was issued in that backdrop, the note-sheets of the University and the opinion of the Legal Advisor as received by the University. The petitioner also prayed for extension of the period to respond to the show cause notice. On 24.02.2022 the Deputy Registrar informed the petitioner that Direction No.23/2021 was available in public domain. Rest of the documents were sufficiently described in the show cause notice and it was not necessary to supply the same. The period to respond to the show cause notice was however extended by fifteen days. In the meanwhile on 21.02.2022 the Management through its President supplied certain documents to the Deputy Registrar of the University to indicate the steps taken by the Management after holding an enquiry against the petitioner. Thereafter on 02.03.2022 the petitioner replied to

the show cause notice and stated that he had filed appropriate proceedings before this Court for quashing the First Information Report that had been lodged against him. The petitioner stated that he had been placed under suspension by the Management which was thereafter revoked after receiving the Enquiry Report. It was further stated that Direction No.23/2021 came into effect on 27.08.2021 while the alleged incident that was the basis for issuing the show cause notice occurred much prior on 22.07.2021. It was stated that the documents as demanded be supplied for furnishing an effective reply. It was also stated that approval could only be cancelled for the misconduct committed by a teaching/non-teaching employee during examination and not for any other purposes. While requesting the Authority to withdraw the show cause notice dated 16.02.2022 the petitioner also requested for being granted an opportunity of personal hearing. The Deputy Registrar on 06.06.2022 by the orders of the Pro-Vice-Chancellor informed the petitioner that the Approving Authority was satisfied that involvement of the petitioner in the act as alleged was serious. Considering the gravity of the act and the petitioner's arrest it was stated that the Approving Authority was satisfied that the petitioner was required to be placed under suspension. Thus in exercise of power under Clause 9 of Direction No.31/2021 the approval to the appointment of the petitioner as Principal was suspended pending departmental enquiry on certain terms and conditions. Being aggrieved by the aforesaid action, the petitioner has

challenged the same in the present writ petition. The validity of Direction Nos.23/2021 and 31/2021 is also under challenge.

4. Shri M.G. Bhangde, learned Senior Advocate for the petitioner raised various contentions while challenging the communication dated 06.06.2022 by which the approval granted to the petitioner's appointment as Principal had been suspended. *Inter alia*, it was submitted that the order dated 06.06.2022 had been passed without granting due and proper opportunity to the petitioner and in breach of Clause 9 of Direction No.23/2021. The reply given to the show cause notice had not been considered nor had the request for supply of material and relevant documents accepted. As a result the contentions raised by the petitioner in the reply to the show cause notice as regards impermissibility as well as authority to suspend the approval as granted had not been considered. Moreover, the petitioner was not heard before suspending the approval. It was then urged that the initiation of the proceedings leading to the suspension of the approval was at the dictates of the Vice-Chancellor while such action if permissible was required to be initiated by the Pro-Vice-Chancellor. This was notwithstanding the fact that Section 13(13)(f) of the Maharashtra Universities Act, 2016 (for short, 'the Act of 2016') empowered the Pro-Vice-Chancellor only to withdraw an approval already granted but did not provide for suspension of such approval. Further, Direction No.23/2021 had been given a retrospective effect especially in

the light of the fact that the said Direction came into force much after the alleged incident occurred on 22.07.2021. It was further submitted that after Direction No.23/2021 lapsed the same Direction was re-issued being Direction No.31/2021 which indicated a colourable exercise of power by the Vice-Chancellor. Assuming that Direction No.31/2021 had been approved by the Management Council, the same was contrary to the provisions of Section 12(8) of the Act of 2016. Principally on these grounds it was urged that the order dated 06.06.2022 was liable to be set aside and Direction No.23/2021 as well as Direction No.31/2021 ought to be struck down as having been issued by the Vice-Chancellor by going beyond the powers conferred by the Act of 2016. The learned Senior Advocate relied on the decisions rendered by the Hon'ble Supreme Court in *VP. Gidroniya Versus The State of Madhya Pradesh & Another* [1970 (1) SCC 362] *Commercial Tax Officer, Rajasthan Versus Binani Cements Limited & Another* [(2014) 8 SCC 319], *National Insurance Co. Ltd. Versus Keshav Bahadur & Others* [(2004) 2 SCC 370], *State of Bihar & Another Versus Bal Mukund Sah & Others* [(2000) 4 SCC 640], *Govt. of T.N. Versus Park View Enterprises & Others* [(2001) 1 SCC 742], *Shree Digvijay Cement Co. Ltd. & Another Versus Union of India & Another* [(2003) 2 SCC 614], *Opto Circuit India Limited Versus Axis Bank & Others* [(2021) 6 SCC 707], *Bhartiya Seva Samaj Trust & Another Versus Yogeshbhai Ambalal Patel & Another* [(2012) 9 SCC 310], *State of Gujarat Versus Salimbhai Abdulgaffar Shaikh & Others* [(2003) 8 SCC

50], *K.S. Srinivasan Versus Union of India* [AIR 1958 SC 419], *Sharif-ud-Din Versus Abdul Gani Lone* [AIR 1980 SC 303], *Bharat Aluminium Company Versus Kaiser Aluminium Technical Services Inc.* [(2012) 9 SCC 552], *Huda & Another Versus Dr.Babeswar Kanhar & Another* [(2005) 1 SCC 191], *State of Maharashtra Versus Chandrabhan* [AIR 1983 SC 803], *Krishna Kumar Singh & Another Versus State of Bihar & Others* [(2017) 3 SCC 1] and *K.S. Paripoornan Versus State of Kerala & Others* [(1994) 5 SCC 593]. The learned Senior Advocate also relied upon the judgment of this Court in **Writ Petition No.1927/2021** [*Pankaj Roshan Dhawan Versus National e-Assessment Centre, Delhi & Others*] and the judgment of the Patna High Court in *Smt. Sudha Devi Versus State of Bihar & Others* [2002 SCC Online Pat 948] to substantiate his submissions. It was thus submitted that the order suspending the approval was liable to be set aside.

5. Shri S.P. Dharmadhikari, learned Senior Advocate for the respondent nos.1 to 4 and 7 opposed the aforesaid submissions. According to him, in view of about four complaints received by the Vice-Chancellor cognizance of the same was taken and as there was *suo motu* power available with the Vice-Chancellor in view of provisions of Section 12(14)(a) of the Act of 2016, the proceedings for suspending the approval granted to the petitioner's appointment as Principal were initiated. It was found that the Management had held a farce of an

enquiry against the petitioner and without placing the report of the Enquiry Officer on record the suspension of the petitioner had been revoked. After noticing the aforesaid, the University stepped in and proceeded to take action in accordance with law. Reference was made to the provisions of Section 12(14)(a) of the Act of 2016 to indicate that the Vice-Chancellor has exercised the powers conferred on him and the Pro-Vice-Chancellor had not acted on the dictates of the Vice-Chancellor. The Enquiry Officer appointed by the Management had thereafter acted as counsel for the petitioner in the criminal proceedings. It was denied that Direction No.23/2021 had been retrospectively applied. The suspension of the approval to the petitioner's appointment was from the date of the order as passed and not prior thereto. It was further submitted that there were various reasons for re-issuance of Direction No.23/2021 in the form of Direction No.31/2021. Such reasons had been elaborated in paragraph 16 of the affidavit-in-reply and hence it could not be said that such re-issuance was in colourable exercise of power. It was denied that the approval granted by the Management Council was void as urged. It was thus submitted that as the suspension of the approval was pending disciplinary action it was not necessary at this nascent stage to interfere. If the petitioner was successful in proving his defence no action would be warranted against him. Reliance was placed on the judgment of this Court in **Writ Petition No.5967 of 2017** [*M.S. Ahluwalia Versus Western Coalfields Limited & Others*] decided on 05.04.2022 to urge that

considering the gravity of the charges discretion may not be exercised at the instance of the petitioner under Article 226 of the Constitution of India. It was thus submitted that the writ petition was liable to be dismissed.

6. Shri V.P. Marpakwar, learned counsel for the respondent no.6-Management denied the contention of the University that a farce of a Departmental Enquiry was held against the petitioner. After the report was submitted by the Enquiry Officer, the petitioner had challenged the initiation of the criminal proceedings by preferring Criminal Application (APL) No.956 of 2021 through the counsel who had acted as an Enquiry Officer but that did not mean that the enquiry conducted was unreliable. He further referred to a communication dated 29.02.2022 issued by the President of the Management to the Deputy Registrar to indicate that the copy of the enquiry report dated 27.08.2021 had been forwarded to the University. Infact, there was no reply to the said communication dated 29.02.2022 issued by the Management.

Shri N.R. Patil, learned Assistant Government Pleader for the respondent no.5 submitted that the dispute was principally between the petitioner and the Management on one side and the University on the other.

7. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. It is seen that on 18.06.2010 approval was granted to the appointment of the petitioner as Principal of Dr.Haribhau Admane Arts and Commerce College. A First Information Report dated 22.07.2022 was lodged against the petitioner at Police Station Saoner pursuant to which the petitioner came to be arrested on the same day. The petitioner was placed under suspension on 26.07.2021 and the Management conducted an enquiry in the matter. After receiving the copy of the enquiry report the Management on 30.08.2021 resolved to revoke the order of suspension and permitted the petitioner to re-join his duties subject to the outcome of the criminal proceedings. It is thereafter that on 16.02.2022 the Deputy Registrar of the University issued a show cause notice to the petitioner calling upon him to give his explanation as to why the approval granted to his appointment should not be suspended. In this show cause notice a specific reference has been made to Clause 9 of Direction No.23/2021. In response thereto the petitioner on 18.02.2022 made a request to the Deputy Registrar to supply him a copy of Direction No.23/2021, complaints received from various Students' Unions, the Note-Sheet of the University with regard to the action taken after receiving the aforesaid complaints and copy of the opinion of the Legal Advisor. The petitioner was informed by the Deputy Registrar on 24.02.2022 that copy of Direction No.23/2021 was available in the public domain. It was further

stated that with regard to the other information sought the same had been sufficiently disclosed in the show cause notice. The petitioner submitted his reply to the show cause notice on 02.03.2022 and therein referred to the report of the Enquiry Officer dated 27.08.2021 pursuant to which his suspension was revoked by the Management. He further stated that Direction No.23/2021 could not be applied retrospectively. Reference was also made to the legal proceedings initiated by the petitioner for challenging the registration of the First Information Report, lack of supply of relevant documents that were demanded preventing the petitioner from submitting an effective reply as well as action taken by the Vice-Chancellor that was in breach of the provisions of the Act of 2016 and the Statutes framed therein. A specific request was made by the petitioner to grant him an opportunity of hearing. It is thereafter that on 06.06.2022 that the impugned order was passed suspending the approval granted to the petitioner's appointment on certain terms and conditions.

8. Since the action of suspending approval to the petitioner's appointment as Principal has been taken by relying upon Clause 9 of Direction No.23/2021 it would be necessary to reproduce the relevant portion thereof to examine whether the requirements thereof have been complied with. Clause 9 insofar as it is relevant for the present purposes reads as under:-

“9.Suspension of Approval:

An order for suspension of approval of a Principal/Teacher of a Centre of Higher Education may be passed by the Pro-Vice-Chancellor in the following circumstances:-

i. Where a Principal/Teacher is accused of a criminal misconduct, resulting in his/her arrest by the Police, the Pro-Vice-Chancellor may suo-motu suspend the approval of the concerned Principal/Teacher, taking cognizance of the event.

ii.

iii.

In all cases where suspension of approval of a Principal/Teacher is contemplated, adequate opportunity of being heard shall be accorded to the concerned delinquent.”

[Emphasis supplied]

From the aforesaid it can be seen that under clause 9 the Pro-Vice-Chancellor has been conferred with the power to *suo motu* suspend the approval granted to a Principal/Teacher who is accused of criminal misconduct resulting in his/her arrest by the Police. Suspension of approval can also be directed under Clause (ii) and (iii) of Clause 9 with which we are presently not concerned. However in all cases where suspension of approval of a Principal is contemplated adequate opportunity of being heard has to be accorded to the concerned delinquent. It is the grievance of the petitioner that despite this clear stipulation in Clause 9 the approval has been suspended without complying with that mandate.

9. We find that the petitioner is on firm ground in his challenge to the suspension of his approval as being contrary to Clause 9 of Direction

No.23/2021. The specific assertion made by the petitioner in paragraph 18 of the writ petition of absence of any opportunity of personal hearing has not been controverted by the University. On the contrary in paragraph 26 of the reply filed by the respondent nos.1 to 4 it has been stated as under:-

“26. It is denied that the reply tendered by the petitioner to the show cause notice was not considered while passing the order. In fact, in the matter of placing under suspension the services, like that of petitioner, it is not in the nature of punitive. Therefore, it may not attract the principles of natural justice, yet the petitioner was noticed as to why his approval shall not be suspended pending investigation. Therefore, in the fitness of the facts, personal opportunity of hearing was unwarranted. It is denied that there was a denial of natural justice.”

We find that the stand as taken by the University is not in consonance with Clause 9 of Direction No.23/2021. Clause 9 in clear terms stipulates grant of adequate opportunity of being heard before an order of suspension of approval is issued by the Pro-Vice-Chancellor.

10. It is also found that after the show cause notice dated 16.02.2022 was issued to the petitioner he had demanded certain documents on 18.02.2022. The complaints received from various Students' Unions leading to initiation of the impugned action were demanded by the petitioner. The same were however not supplied to him. When the action of suspending the approval was stated to be initiated on the basis of such reports and reference to the same was made in the show cause notice, the

petitioner was justified in demanding copies of the same. The same were however not supplied to the petitioner. That stand has been taken by the petitioner in his reply dated 02.03.2022. Reading of the impugned order also does not indicate consideration of the petitioner's reply dated 02.03.2022. We therefore find that when Clause 9 of Direction No.23/2021 specifically prescribes for grant of adequate opportunity of being heard there was no reason for the University to deny him such opportunity. In addition, the documentary material demanded has not been supplied. Similarly, the reply to the show cause notice and the stand taken therein has not been considered. In our view this ground of attack to the impugned order of suspension of approval dated 06.06.2022 is sufficient to interfere with that order.

The following observations of the Patna High Court in *Smt.Sudha Devi* (supra) in this context are relevant:-

“16. The question of means and ends may be an arguable and debatable issue in philosophy, ethics or in politics but not in law. In law apart from the object or the end, the procedure followed by a statutory body for the realisation of the object must also be duly sanctioned by the statute. No object howsoever laudable and commendable can justify following a procedure for its realisation which is not sanctioned by law. The Authority is a creature of the statute, namely, the Bihar Regional Dev. Authorities Act. It has a legal obligation to perform certain functions specified in the Act; but those functions must be performed in the manner laid down in the Act. All its action must, therefore, conform to the provisions of the Act and it is not free to act beyond the parameters of the statute and in a manner not sanctioned by the statute.”

11. Since it is found that the order dated 06.06.2022 suffers from procedural impropriety inasmuch as the requirements of Clause 9 of Direction No.23/2021 have not been satisfied, it is not necessary to examine the challenge to the said order on the other grounds as raised. In that view of the matter we are inclined to relegate the parties to the stage of re-consideration of the petitioner's request made on 18.02.2022 and by permitting the University to proceed further from that stage. For aforesaid reason, it is not felt necessary to examine the challenge to the impugned order on the other grounds as raised. We have not referred to the various decisions relied upon by the learned counsel for the parties in that context.

12. Accordingly, the following order is passed:-

- (I) The order dated 06.06.2022 passed by the Deputy Registrar (College Section) of the Rashtra Sant Tukdoji Maharaj Nagpur University, Nagpur is set aside.
- (II) The University is free to proceed further from the stage when the petitioner issued the communication dated 18.02.2022 demanding various documents mentioned therein. It would be open for the University to re-consider that request and then proceed further. It would also be open for the petitioner to give an additional reply to the show cause notice besides the reply dated 02.03.2022.
- (III) The University is free to take an appropriate decision in the light of Direction No.31/2021 or any other Direction/Ordinance/Statute as prevailing in accordance with law. The other challenges as raised

to the order dated 06.06.2022 are kept open for being raised if found necessary in future.

(IV) Since it has been found that the order dated 06.06.2022 has been passed in breach of Clause 9 of Direction No.23/2021 the consequence of setting aside that order would follow in the matter of payment of salary to the petitioner.

13. Rule is made absolute in aforesaid terms leaving the parties to bear their own costs.

(URMILA JOSHI-PHALKE, J.) (A.S. CHANDURKAR, J.)

APTE