

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

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WRIT PETITION NO. 7077/2022

1) Prashant s/o Bhaskar Dekate
Aged 51 years, occu: service
R/o Near Hanuman Mandir
Plot No.73, Rajabaksha, Medical Chowk
Nagpur.

2) Shilwant s/o Anmol Meshram
Aged 36 years, occu: service
Ward No.3 At & Post Sangadi
Sakoli, Dist. Bhandara.

3) Ankit s/o Bhagwat Raut
Aged 31 years, occu: service
R/o Sindewani Bk. Bichwa, Nagpur.

..PETITIONERS

v e r s u s

1) Rashtrasant Tukdoji Maharaj
Nagpur Univerity, Nagpur
Through its Vice-Chancellor.

2) The Registrar
Rashtrasant Tukdoji Maharaj
Nagpur University, Nagpur.

3) The Chancellor
Rashtrasant Tukdoji Maharaj
Nagpur University, Nagpur.

4) The State of Maharashtra
Through its Secretary
Higher and Technical Education Department
Madam Cama Marg
Hutatma Rajguru Chowk
Mantralaya, Mumbai.

..RESPONDENTS

.....
 Mr. U.S.Dastane, Advocate for Petitioners
 Mr. S.M.Puranik, Advocate for Respondents 1 to 3
 Mr. A.S.Fulzele, Additional Government Pleader for Respondent 4.

CORAM: A.S.CHANDURKAR & ANIL L. PANSARE, JJ

DATED : 14th December, 2022.

JUDGMENT: (Per Anil L.Pansare, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The Petitioners have put forth the following substantive prayers :-

(i) by issuing appropriate writ, order or direction, quash and set aside the direction no.40 of 2022 dated 20.10.2022 at Annexure II being illegal and bad in law.

(ii) by issuing appropriate writ, order or direction quash and set aside the election programme/notification dated 20.10.2022 at Annexure I issued pursuant to direction No.40 of 2022 being illegal and bad in law.

3. It is the case of the Petitioners that the Petitioner Nos.1 and 2 were elected as Members of the Senate from the Graduate Constituency of the Respondent No.1-University. All the Petitioners are aspiring to contest the forthcoming Senate elections from Graduate Constituency. The Respondent No.1 has issued a notification dated 20th October, 2022 declaring the election programme with respect to

elections of the Senate from the registered Graduate Constituency of the Respondent No.1-University.

4. The grievance of the Petitioners is that the Respondents have not followed the procedure laid down in the Maharashtra Public Universities Act, 2016 ('Act of 2016', in short) so also the Uniform Statute No.1/2017 ('US 1/2017' in short). It is also the case of the Petitioners that Direction No.40/22 dated 20th October 2022, has been issued in total contravention of the Act of 2016 as also US 1/2017, which culminated in declaration of election of the Senate and the notification dated 20th October,2022. The same being *void ab initio*, being illegal and bad in law.

5. Mr. U.S.Dastane, learned counsel for the Petitioners has taken us through various provisions of the Act of 2016 so also the US 1/2017, so as to contend that the whole exercise to declare the election programme of the Senate is illegal and arbitrary. We will deal with his arguments a little later.

6. Mr S.M.Puranik, learned Counsel for the Respondents 1 to 3 has taken us through the reply, to contend that the Petitioners have equal efficacious remedy under Section 140 of the Act of 2016 and since the alternate remedy is available, the petition is not maintainable. He further submits that Section 62(2) of the Act of 2016 makes it

mandatory to complete the process of Senate election by 30th November of every year. The circumstances were such that if the elections were to be conducted in terms of US 1/2017, there would have been violation of Section 62(2) of the Act of 2016. In the circumstances, it was necessary for the Vice-Chancellor of the Respondent 1-University to exercise his powers vested under section 12(8) of the Act of 2016 to modify the required time, as laid down in Rules 8, 9 and 10 of the US 1/2017. Accordingly, Direction No. 40/2022 came to be issued followed by election programme which, according to Mr.Puranik, is in consonance with the Act of 2016 and, as such, prayed for dismissal of the petition.

7. We have considered the rival submissions. Before we deal with the controversy, it will be appropriate to lay our hands to the relevant provisions of the Act of 2016 and US 1/2017.

(a) Chapter IV of the Act of 2016 deals with the authorities of the Universities. Section 26 of the Act provides for authorities of the Universities, namely the Senate, the Management Council, the Academic Council and so on. Thus, the Senate is one of the authorities. Section 28 provides that the Senate shall be the principal authority for all financial estimates and budgetary appropriations and for providing social feedback to the University on current and future academic programmes. The Senate consists of number of members. The Chancellor is a chair-

person, the other members are Vice-chancellor, Pro vice-Chancellor, the Deans of the Faculties and many more. Ten registered graduates are also the members of the Senate in terms of Section 28(2)(t). These graduates are to be elected from amongst the collegium of registered graduates.

(b) By virtue of Section 72(10) of the Act of 2016, the State Government has power to prescribe uniform statutes on the subjects, through publication in official gazette and such uniform statutes shall be binding on all the Universities of the State.

(c) Section 71(13) provides for a statute with respect to procedure for conduct of elections to various authorities and bodies of the University.

(d) Section 76(2), the details relating to the elections which are not specified in the Act, shall be prescribed by the statutes, and by virtue of US 1/2017, State Government has prescribed, procedure relating to conduct of elections to various authorities and bodies of the Universities.

(e) Section 62(2) of the Act of 2016 mandates that the process of election, nomination and co-option shall be commenced at least 3 months prior to the expiry of the term of the authority and shall be completed not later than 30th November in that year.

(f) US 1/2017 is prescribed by the State Government, whereas Clause 8 of the said Statute lays down the election and procedure for preparation of electoral roll prior to holding elections.

(g) Clause 8(3) of the US 1/2017 provides that provisional electoral rolls of persons entitled to vote at an election to the authorities or bodies of the University shall be published on the election portal on the official website of the University at least 45 clear days before the date of election.

(h) Clause 8(5) thereof provides that the final electoral roll shall be published at least 30 clear days before the election date.

(i) Clause 9 provides that the notice of election shall be given by the Registrar of the University at least 25 clear days before the date of election.

(j) Clause 10 provides that the candidate shall submit their nomination for elections to various authorities and bodies in the prescribed form.

8. The provisions of the Act of 2016 read with US 1/2017 makes it crystal clear that the process of election is to be completed not later than 30th November of the year. In the present case, there is no dispute that the term of the authority is complete and that the election process ought to have been completed on or before 30th November 2022.

Section 62(2) of the Act of 2016 further provides that the process of election, nomination and co-option shall be commenced at least three months prior to the expiry of the term of the authority. In that sense, the process ought to have been commenced or on or about 1st September, 2022. The provisional electoral roll, as provided under the US 1/2017 was to be published 45 clear days before the date of election. Thus, provisional electoral roll ought to have been published on or about 16th October, 2022. In similar lines, the final electoral roll ought to have been published on or about 31st October 2022, the notice of election ought to have been given by the Registrar at least 25 clear days before the date of election *viz.* on or about 5th November, 2022. Last but not the least, the US 1/2017 provides under Clause 10 that the candidate shall submit their nominations in the prescribed form. The prescribed form is Form 'A' and Form 'B'.

9. According to the learned Counsel for the Petitioners, these stipulations have been modified by the Vice-Chancellor under the garb of Section 12 (8) of the Act of 2016, thereby amending Section 62(2) of the Act of 2016 and the mandate under the provisions of US 1/2017. The power to amend the Uniform Statute vests only with the State Government and none else.

10. We have perused Direction No.40/2022 dated 20th October

2022 issued by the Vice-Chancellor which refers to various provisions of the Act of 2016 and then lays down the justification for issuing direction. The justification is to fulfill the mandate of Sub-section (2) of Section 62 of the Act of 2016, it is not possible to comply with the provisions of the US 1/2017 which prescribed time schedule and procedure for preparation and publication of electoral roll and that therefore, it was necessary to take some emergency and unprecedented measures. Thereafter the Vice-Chancellor proceeds to issue multiple directions under the name and style “The emergency Measures for Election of Ten Registered Graduates from the Collegium of Registered Graduates, Directions, 2022”.

11. As noted above, the direction has been issued on 20th October 2022. It declares that the election shall be held on 30th November 2022. The direction has, thus, been issued 45 days prior to the election. The time period of three months prescribed u/s. 62(2) of the Act of 2016 so also the provisions of US 1/2017 has been given a go-bye. The process of election, as stated earlier, ought to have been commenced on or about 1st September, 2022. However, the direction itself has been given on 20th October, 2022. Further, not only that time prescribed under the Act of 2016 and US 1/2017 been amended, but

also the requirement of submission of nomination form in the prescribed form. The amendment to that effect finds place in Clause 4 (a) of the Directions which reads thus:

“a. Graduates of the University who have enrolled their names in the register of Graduates after the elections of Senate in the year 2017, their Form A for enrollment shall also be treated as their consent and desire to enroll themselves in the electoral roll for the registered graduates’ collegium under section 28(2) (t) of the Act and submission of Form B for these graduates is not required.”

12. Learned counsel for the Petitioners has taken strong exception to the aforesaid amendment not only on the count that the Vice-Chancellor has exceeded his jurisdiction but because he has completely changed the mode of submission of the enrollment forms and that the change carries a risk of enrollment of registered graduates, not belonging to the Respondent 1-University.

13. On this point, he has drawn our attention to Section 131 of the Act of 2016 which reads thus,

“131. Registered graduates.

(1) Subject to the provisions of sub-section (2), the following persons shall be entitled to have their names entered in the register of registered graduates or deemed to be registered graduates, maintained by the university, namely :-

- (a) who are graduates of the university;*
- (b) who are graduates of the parent university from which corresponding new university is established :*

Provided that, the graduates registered in the parent university as registered graduates but residing in the jurisdiction of the new university will have to apply for registration, as registered graduates, to the new university and once registered with the new university, they will automatically cease to be the registered graduates of the parent university.

(2) A person who -

(a) is of unsound mind and stands so declared by a competent court; or

(b) is an undischarged insolvent; or

(c) is convicted for an offence involving moral turpitude; or

(d) has obtained a degree by fraudulent means; or

(e) is a registered graduate of any other university established by law in the State, shall not be qualified to have his name entered in the register of graduates, or be a registered graduate.

(3) Every person who intends to be a registered graduate shall make an application to the Registrar in such form and make payment of such fees as may be prescribed by the Statutes.

(4) The Vice-chancellor shall, after making such enquiry as he thinks fit, decide whether the person is entitled to be a registered graduate. If any question arises whether a person is entitled to have his name entered in the register of graduates or be a registered graduate or is not qualified to be a registered graduate, it shall be decided by the Vice Chancellor after making such inquiry as he thinks fit and his decision shall be final.

(5) From amongst the persons registered as registered graduate, an electoral college shall be constituted for election of members of the Senate under Clause (t) of sub-section (2) of Section 28, and for that purpose, an electoral roll shall be prepared as prescribed by publishing a public notice, requiring the registered graduates desirous of enrolling themselves in such electoral roll to fill in the prescribed form for such enrollment. (emphasis now)

14. Learned counsel for the Petitioners submits that Sub-section (3) of Section 131 provides that the person who intends to be registered graduate shall make an application to the Registrar in such form as may be prescribed by the Statute. The form so prescribed is form 'A'. Similarly, he submits that sub-section (5) of Section 131 provides that from amongst these registered graduates an electoral college is to be constituted for election of members of the Senate under clause (t) of sub-section (2) of Section 28 and for that purpose an electoral roll is to be prepared requiring the registered graduates desirous of enrolling themselves in such electoral roll to fill in the prescribed form. The prescribed form is form 'B'.

15. The learned counsel for the Petitioners has drawn our attention to Clause (4) of the said Form. It requires the candidate seeking enrolment in electoral roll of a particular University to declare that the candidate is not a registered graduate of any other University established by law in the State of Maharashtra and that the candidate is registered graduate in the faculty of the Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur i.e. Respondent 1-University.

16. Mr. Dastane submits that the aforesaid direction discriminates the persons enrolled in the Register of Registered Graduates prior to 2017, because they are required to submit form 'B',

whereas the persons who have registered their names in the Register of Registered Graduates after 2017 are not required to submit form 'B'.

17. It is accordingly argued that the Vice-Chancellor by incorporating Clause (4) in the Direction No.40/2022 has committed a grave error as graduates who have enrolled their names in the register of graduates after the year 2017 will now be treated as graduates who have given their consent to enroll their names for electoral roll of the Respondent No.1-University. Thus, the graduates registered after the year 2017 will now be not required to give declaration that they do not belong to any other University and that they are registered graduates of the Respondent 1-University only. This arrangement will go completely contrary to the provisions of Act of 2016, so also the US 1/2017. This causes discrimination between the graduates registered prior to 2017 and those registered after the year 2017.

18. As against this, learned counsel for the Respondent Nos. 1 to 3 contended that the Direction No.40/2022 has been issued in terms of provisions of Section 12(8) of the Act of 2016 and that the Vice-Chancellor was well within his jurisdiction to issue such direction to fulfill the mandate of Section 62 of the Act of 2016 *viz.* to complete the election by 30th November, 2022. The direction has been issued because of paucity of time and that the Vice-Chancellor has ensured that no

discrimination of whatsoever nature will be caused to the stakeholders.

19. The question, therefore, revolves around the scope of Section 12(8) of the Act of 2016. Section 12 (8) reads as under :-

12(8) : *Where any matter is required to be regulated by the Statutes, Ordinances or Regulations, but no Statutes, Ordinances or Regulations are made in that behalf or where there is an exigency to amend Statutes, Ordinances or Regulations, the Vice-chancellor may, for the time being, regulate the matter by issuing such directions as he thinks necessary, and shall, at the earliest opportunity thereafter, place them before the Management Council or other authority or body concerned for approval. He shall, at the same time, place before such authority or body for consideration the draft of the Statutes, Ordinances or Regulations, as the case may be, required to be made in that behalf :*

Provided that, such direction shall have to be converted into Statute, ordinance or Regulations as the case may be, within six months of issuing such direction failing which such direction shall automatically lapse.”

20. We have minutely gone through the wordings of Sub-section (8) of Section 12 of the Act of 2016. The Vice-chancellor has been entrusted with wide powers under sub-section (8). It provides that the matter which is required to be regulated by the Statutes, Ordinances or Regulations but no such Statutes, Ordinance or Regulations are made in that behalf, the Vice-Chancellor may for the time being regulate such matters by issuing such directions as he think necessary. In the present case, the election of Senate is regulated by the US 1/2017. Thus, this part of sub-section (8) will not empower

the Vice-Chancellor to issue directions. The impugned directions appear to have been issued by virtue of later part of Sub-section (8) which authorizes the Vice-Chancellor to amend the Statutes, Ordinances or Regulations for the time being in case there is an exigency to do so. The Vice-Chancellor has to then place the directions before the Management Council or other authorities for approval along with draft of the statute, ordinance or regulation, as the case may be. The proviso to Sub-section (8) provides that such directions shall be converted into statute, ordinance or regulation within six months from issuance of the directions failing which the direction shall stand automatically lapsed.

21. The overall reading of Sub-section (8) of Section 12 of the Act of 2016 would make it amply clear that there has to be an exigency to amend the regulation and that the exigency must be such that it cannot wait for enactment or amendment. Therefore, as an interim arrangement, the Vice-Chancellor will be justified in making certain provisions including amending existing provisions. The interim arrangement is to be then converted into permanent feature. Since it is mandatory to convert the direction into permanent regulation within six months of issuance of direction. The consequence of failure to convert direction into regulation shall render the direction

ineffective because the direction will be lapsed automatically. Thus, the amendment so made will apply to future elections as well.

22. The exigency as referred to in sub-section(8) will have to be understood in the light of what has been discussed herein-above. The exigency, in the present case, is to complete election of the Senate by 30th November, 2022. The amendment is, thus, proposed only for the present election of the Senate meaning thereby that in future the Senate election will not be governed by the proposed amendment. This amendment, therefore, cannot be converted into regulation. In fact, it is not even the case of the Respondents that the amendment proposed under the impugned direction will have to be converted into regulation. The wording of direction itself indicates that this amendment is proposed only for the present election and that because of paucity of time, the time schedule and the submission of nomination in the prescribed form has been given a go-bye.

23. There is nothing on record to show as to why did the Respondents could not commence the process of election on 1st September, 2022. What transpires from the pleadings and arguments is that the Respondent-authorities failed to adhere to the provisions of the Act of 2016 and US 1/2017 and that after realising their mistake, have taken aid of the extraordinary power of Vice-

Chancellor, u/s 12(8) of the Act of 2016. The exigency is, thus, created exigency which has not cropped up unexpectedly. The extraordinary power which carries extraordinary duty, in our considered view, is not meant to rectify the mistake. The interim arrangement as envisaged under Sub-section (8) of Section 12 is to meet the exigency where the matter is required to be regulated by statute or regulation. The main object of sub-section (8) appears to us to issue directions in the exigency, which is of such a nature that requires provisions in the statutes, ordinances or regulations, as the case may be, for all time to come.

24. In the present case, the so called exigency is to complete the election process by 30th November, 2022. It was well within the knowledge of the Respondents that it is to be done and for that purpose the election process was to be commenced from 1st September, 2022. The statute so also the regulations to that effect is in place. The only requirement was that the authorities ought to have been alive to the said provisions. We were informed that the elections in all the Universities, except this, have been held in terms of the provisions of the Act and the Regulations. In the present case, the authorities somehow missed the date and suddenly woke up and issued directions, thereby giving a go-bye to the provisions of the Act

and regulations. This exigency is thus created.

25. There is another angle to look into the matter. Learned counsel for the Petitioners has rightly argued that by US 1/2017 the Government of Maharashtra has prescribed the Uniform Statute relating to procedure for conduct of elections to various authorities and bodies of the University in exercise of powers conferred by sub-sec.(10) of Section 72 read with sub-Sec.(13) of Section 17 and Section 67 of the Act of 2016. Thus, these powers are vested with the Government of Maharashtra. The provisions therein will apply to all the Universities in the State. The Vice-Chancellor of one University will, therefore, lack the jurisdiction to amend the provisions of the Act of 2016 so also US 1/2017, which is applicable to all the Universities.

26. Further, the powers u/s 12 (8) of the Act of 2016, if said to be powers delegated to the Vice-Chancellor, he cannot upset the substantive provisions of the Act or the regulations. What the Vice-Chancellor has done in the present case, is that he has completely modified the time schedule and also the necessity to submit the nomination in prescribed form. This act of the Vice-Chancellor is *ultra vires* the provisions of the Act of 2016 and US 1/2017. If the impugned direction is to be upheld, it would amount to ratifying the

excessive delegation in the hands of the authority, which is not permissible. It would, in a way, be an abdication of the legislative function by the executive. The delegation cannot be and must not be unguided, unfettered and uncontrolled. In the present case, the impugned direction issued by the Vice-Chancellor under the delegated powers goes beyond the statutes and regulations. In other words, it goes beyond the enabling or parent Act and the Regulations. The impugned order has amended the provisions of the Act of 2016 and the US 1/2017 which, clearly is, without jurisdiction, because the provision does not enable the executive to perform or discharge the duties and function of the legislature.

27. Further, the crux of issuance of direction is/was to fulfill the mandate of sub-Sec.(2) of Section 62 to complete the election by 30th November, 2022. The Respondents, in reply, have now pleaded that in view of the receipt of several representations to extend the date of voting the election programme has been extended and that the elections will be held on 11th December 2022. In our view, the very foundation for issuance of direction is destroyed by these pleadings of the Respondents. If the election programme could be extended, that too on the basis of receipt of representations it will not lie in the mouth of the Respondents to even pronounce the term

‘exigency’ much less to place reliance upon the said term. On the top of it, learned Advocate for the Respondents 1 to 3 submitted during the course of arguments that the elections will have to be further extended in view of the visit of Hon’ble Prime Minister to Nagpur scheduled on 11th December, 2022. He has submitted that election will now be held some time in January, 2023. However, we were later informed that the decision has been taken to hold election on 17th December, 2022. We find that the election programme is being extended at the drop of the hat. The significance of its compliance on 30th November has been completely lost sight of and if it could be , the impugned order/direction cannot stand scrutiny of law.

28. Mr. Dastane, learned counsel for the Petitioners has relied upon the following judgments in support of case of the Petitioners :-

- 1) (Ritesh Tiwari vs. State of UP) : AIR 2010 SC 3823
- 2) (C.Albert Morris vs.K.Chandrasekaran)(2006) 1 SCC 228
- 3) J N Ganatra vs. Morvi Municipality : (1996) 9 SCC 495
- 4) Upen Gogoi vs. State of Assam & others : (1988) 3 SCC 381
- 5) S. Misra vs. State of Orissa & ors. (2004) 8 SCC 599
- 6) C.I.T. Mumbai vs. Anjum, Ghaswala : (2002) 1 SCC 633
- 7) Karbhari & Ors. vs. Deepak Chengede:(2019) SCC Online 992
- 8) Judgments in CWP No.4980/2006 (Balwir Singh vs. Financial Commissioner Punjab and others)

The first six judgments have been relied in support of the contention of the Petitioners that if any order or action is bad or

unlawful since its inception, then it does not get sanctified at a later stage and cannot validate any further order or action which is not lawful at the inception. The Hon'ble Apex Court has held that it is settled legal proposition that if an order is bad in inception, it does not get sanctified at a later stage. The Apex Court has also held that it is well settled position of law that power under a statute has to be exercised in accordance with the provisions of the statutes, and in no other manner. It is also held that it is a normal rule of interpretation that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

29. We do find, in the present case, that the Vice-Chancellor has not exercised his powers in the manner as provided in the statute nor is the election programme declared in the manner as provided in the statute and the regulation. We further find that the impugned order/direction is unlawful at its inception and, therefore, cannot be sanctified at a later stage. In fact, and as stated earlier, the Respondents have not even argued that they intend to sanctify the amendment made by way of impugned direction.

30. The judgments cited at Sr.Nos.(7) and (8) have been relied on by the learned Counsel for the Petitioners on the point that the

election programme must be in accordance with the governing statutes and not otherwise. The Hon'ble Apex Court in the case of *Karbhari and others (supra)*, while dealing with the election of Kamgar Sabha in terms of the clauses of its constitution, found that the election was not processed in terms of the provisions of the constitution. The Court held that howsoever laudable the objective may be, the Election Officer could not have been beyond the confines of the constitution of the Sabha and could not have imported into which were not rooted in the constitution of the Sabha and that the election programme must be completed in accordance with the governing statutes and the constitution of the Sabha.

31. In the present case as well, the election programme ought to have been commenced and completed in accordance with the Act of 2016 and US 1/2017. The impugned direction, therefore, and in view of the discussion made herein-above, is without jurisdiction and *ultra vires* to the provisions of the Act of 2016.

32. So far as the objection of maintainability is concerned, the law is well settled that the alternate remedy will not be a bar to exercise the jurisdiction under Article 226 of the Constitution of India, at least in three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is

failure of principles of natural justice ; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case, the impugned order/direction falls in the third category, i.e. where the order is wholly without jurisdiction

33. For the reasons aforesaid and in view of the law laid down, we allow the writ petition in terms of Prayer clauses (i) and (ii) and direct the Respondents to take immediate steps to commence and complete the election in issue in accordance with the provisions of the Act of 2016 read with provisions of US 1/2017.

34. Rule made absolute accordingly. No costs.

sahare (ANIL L. PANSARE,J.)

(A.S.CHANDURKAR, J.)