



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

WRIT PETITION NO.5114/2017

Raviprakash Govindrao Dani,
Aged : 62 year, Occ : Retired
Scientists, R/o C/o Mr.P.M.Birsiwale,
Happy Home, Mama Road,
Dharampeth, Nagpur – 440 010.

..... **PETITIONER**

..V E R S U S..

1. The Chancellor,
Dr. Panjabrao Deshmukh Krushi
Vidhyapeeth, Rajbhawan,
Malbar Hills, Mumbai.
2. The State of Maharashtra,
Through its Secretary,
Department of Revenue and
Agriculture, Mantralaya,
Mumbai.
3. Dr. Panjabrao Deshmukh Krushi
Vidhyapeeth, through its Registrar,
Akola.

... **RESPONDENTS**

Shri A. S. Kilor, Advocate for the petitioner.
Shri S. P. Dharmadhikari, Senior Counsel with Mrs. K.S. Joshi, Additional Government
Pleader for respondent Nos.1 and 2.
Shri A. R. Patil, Advocate for the respondent No.3.

**CORAM:- B.P.DHARMADHIKARI &
ARUN D. UPADHYE, JJ.**
DATED : 10/08/2017.

ORAL JUDGMENT : (PER B. P. DHARMADHIKARI, J.)

1. Looking to the nature of controversy, Rule has been issued and made returnable forthwith by consent of parties. Accordingly, we have heard Shri Kilor, learned counsel for the

petitioner, Shri Dharmadhikari, learned Senior counsel with Mrs. Joshi, learned Additional Government Pleader for respondent Nos. 1 & 2 and Shri Patil, learned counsel for respondent No.3 – Dr. Panjabrao Deshmukh Krushi Vidyapeeth, Akola.

2. The order dated 29th July, 2017, issued by the Governor of Maharashtra as Chancellor of respondent No.3 – University, terminating the services of petitioner as Vice-Chancellor of respondent No.3 – Agriculture University, has been questioned in the present matter.

3. It is not in dispute that the petitioner was appointed on 13th August, 2012 by the Chancellor for a term of 5 years from 14/08/2012 and otherwise his term was to expire on 13/08/2017.

4. Termination is due to the fact that the petitioner is a Citizen of United States of America and, therefore, not eligible to occupy the post as Vice-Chancellor.

5. Shri Kilor, learned counsel submits that in the advertisement published in the Newspaper in April, 2012, inviting applications for the post of Vice-Chancellor, citizenship of India was not shown as an essential requirement. The advertisement carries reference

to Government Orders dated 21st July, 2010 and 5th July, 2011. Neither these orders nor Section 17 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 (hereinafter mentioned as “Maharashtra Act”) contemplate citizenship of India, as an eligibility condition. He has invited our attention to the University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010, (hereinafter referred to as 2010 Regulations) particularly its Clause 7.3.0 dealing with the Vice-Chancellor, to urge that there also citizenship of India is not prescribed as an ingredient.

6. Resume given by the petitioner for consideration at the time of applying for the post is also relied upon by him to reveal that citizenship of United States of America with overseas citizen of India status and life long VISA as also permission to stay / work in India, are disclosed therein and have not been suppressed. Thus, with open eyes, the appointment order was issued after candidature of the petitioner was evaluated by a Committee presided over by a retired Judge of Hon'ble Supreme Court found him fit and eligible. Hence, reason that the petitioner is not a citizen of India, cannot stand on facts and in law.

7. Shri Kilor, learned counsel has pointed out that on

21/12/2015, there was a complaint made to the Chancellor as also to the Pro-Chancellor by the Citizen Forum and in it, the fact that the petitioner is not a citizen of India was pointed out. On 22/02/2016, comments of the petitioner upon it were called for. The petitioner gave his reply on 09/03/2016 and made clean breast of the matter. He also pointed out that previously in Rahuri and Parbhani Universities, similar appointments of persons with same status were made. The Pro-Chancellor himself, thereafter, made some complaint on 5th April, 2016. Another explanation of the petitioner was called for, however, in said notice, it was expressly stipulated that no reply about citizenship was needed. The petitioner replied to it on 20/04/2016.

8. Thereafter, there was no further development and suddenly, the petitioner received the impugned communication. Shri Kilor, learned counsel points out that the impugned communication mostly places reliance upon the advice / opinions tendered by the State Ministry for Law and Judiciary, Advocate General and Ministry of External Affairs of Government of India. He has taken us through the same. These documents / opinions are filed on record by respondent Nos.1 and 2 as a part of their reply. He submits that the authorities expressing their opinions, expressly pointed out absence of material and, therefore, the office of the Chancellor ought to have conducted a proper enquiry without relying upon it. He also submits that the office

of the Chancellor, while relying upon these opinions, has selected some part of it while other part has been conveniently ignored.

9. Inviting attention to the provisions of Section 17 of Maharashtra Act, he argues that under sub-Section (6)(a), the Chancellor may remove the Vice-Chancellor at any time on the charges of neglect or for failure to carry out responsibilities. Under sub-Section (6)(b), the Chancellor has to reach an opinion that Vice-Chancellor omits or refuses to carry out provisions of the Maharashtra Act or abuses the powers or that his continuation in office is detrimental to the office of University. After reaching such satisfaction, Chancellor has to consult the Executive Council and then by order, direct removal of Vice-Chancellor. He submits that these ingredients and application of mind are lacking in present matter and hence, recourse to Section 17 (6) (a) & (b) is not possible. Even otherwise under sub-Section (6)(c), order of removal cannot be passed unless such Vice-Chancellor is given a reasonable opportunity of being heard in respect of the action proposed to be taken. He submits that there was no such opportunity of hearing extended to the petitioner.

10. Learned counsel has invited our attention to the Statute 133 to urge that the requirement of applicant being a Citizen of India is prescribed only for the posts in University service and Vice-Chancellor is

not included in it. The definition of “Appointing Authority of University” in Statute 2(c) is relied upon to contend that “Vice-Chancellor” is envisaged as “Appointing Authority” and hence, Vice-Chancellor cannot be subjected to said Statute 133. Statute 41 dealing with classification and method of appointment is also relied upon to show that the appendix stipulated in clause (1) of Statute 41 does not include Vice-Chancellor at all. The provisions contained in Statute 43, dealing with reservation of posts in University services, is also relied upon with similar contention. Statute 73 prescribing “Classification of Academic Staff Members” is relied upon to urge that it is in relation to any post in the University services and still it does not deal with Vice-Chancellor. He contends that thus, this entire material reveals that Statute 133, which mandates Citizenship of India, does not extend to the post of Vice-Chancellor. Accordingly, after valid and proper advertisement, the petitioner came to be selected and was appointed on contract. He could not, therefore, have been discontinued under wrong and erroneous impression.

11. Shri Kilor, learned counsel has also invited our attention to the provisions contained in The Citizenship Act, 1955, particularly Section 7-B (2)(a) to urge that impliedly, it shows availability of employment to Overseas Citizen of India (OCI) like the petitioner. He further states that in this situation, Section 7(2)(i), of

this Act is not attracted. He submits that the petitioner was not given opportunity on the rights made available to him by the Union of India.

12. He points out that under Section 57 of the Maharashtra Act, contract of employment subsists for a period of five years and if its period was to be reduced, the hearing, after proper show cause notice, was must.

13. Shri Dharmadhikari, learned Senior counsel submits that action against the petitioner is not under Section 17(6) of the Maharashtra Act, it is not punitive and no stigma has been cast. The petitioner does not plead any mala fides. As he is a Citizen of United States of America, as per Section 7-A of the Citizenship Act, only rights expressly conferred are available. He submits that Section 7-B of the Citizenship Act speaks about such rights and sub-section (2) thereof points out restrictions in this connection. Unless there is a positive direction by Central Government specifically in case of petitioner, allowing him a right to become Vice-Chancellor, petitioner cannot seek any writ. In view of Section 7-B (2)(i), such a notification will be illegal and unconstitutional. He contends that the entire controversy needs to be viewed in this background.

14. Inviting attention to Section 13 of the Maharashtra Act,

he points out that there, personnel in University are classified under three heads. Under clause (a), Executives, Academic Officers and other Officers are put. Under clause (b), Academic staff members with academic duties are placed while ministerial staff member is placed in last category i.e. (c). As per Scheme in Section 14, the Chancellor, the Pro-Chancellor and the Vice-Chancellor are the Executives and Academic Officers of University. The petitioner – Vice-Chancellor, therefore, is in “services of University” in the light of Section 13 read with Section 14 and, therefore, regulated by Statute 133.

15. Section 17 (3) is relied upon to urge that the Vice-Chancellor is a whole-time salaried officer of University. Statute 133 and phrase “University Services” needs to be understood with reference to Section 13 only. Thus, for petitioner, Citizenship of India is essential. He points out that even for person of Indian origin who has gone out and migrated again, a certificate of eligibility is envisaged in proviso to Statute 133.

16. According to him, when Section 7-B of the Citizenship Act is perused in this backdrop, absence of material mentioned by authorities giving advice to Hon'ble Chancellor shows that there was no right conferred on the petitioner to occupy the post of Vice-Chancellor. Only notification dated 11/04/2005 has been issued and that

notification by the Ministry of Home Affairs under Section 7-B (1) of the Citizenship Act prescribes only three rights. Right of parity with Non-resident Indian does not enable the petitioner to claim employment. Facilities available in educational field envisaged in clause (c) of this notification does not cover employment.

17. He, therefore, states that though the requirement of Citizenship of India was not mentioned in the advertisement, that by itself does not improve situation for the petitioner. That requirement needs to be satisfied and when the fact that the petitioner does not hold the status of Citizen of India became clear, necessary action has been taken. His selection and appointment is / was void ab initio. No opportunity of hearing was, therefore, necessary. He places reliance upon the judgment of the Hon'ble Apex Court in the case of **State of Orissa and another Vrs. Mamata Mohanty**, reported at **(2011) 3 SCC 436** and in the case of **Government of Andhra Pradesh and others Vrs. K. Brahmanandam and others**, reported at **(2008) 5 SCC 241**.

18. Shri Dharmadhikari, learned Senior Counsel adds that though present petition has been filed, the petitioner has not placed before this Court any right conferred upon him in terms of Section 7-B of the Citizenship Act, enabling him to hold the post of Vice-Chancellor. He, therefore, submits that in this situation, grant of an opportunity of

hearing would have been nothing but empty formality. As the petitioner has not pointed out any prejudice, the petition is liable to be dismissed. He is relying upon the judgment of the Hon'ble Apex Court in the case of **Ashok Kumar Sonkar Vrs. Union of India and others**, reported at **(2007) 4 SCC 54**, in support of his contention.

19. Lastly, he adds that though the petitioner has mentioned instances at Rahuri and Parbhani Universities in his reply, details of incumbent are not furnished and hence, the same cannot be looked into at all. As the law does not permit an OCI to occupy the post of the Vice-Chancellor, the petition is liable to be dismissed.

20. In reply, Shri Kilor, learned counsel invites attention to Section 37 (b), (c) and (g) of the Maharashtra Act, and submits that Section 37 itself does not support a statute on eligibility conditions of the Vice-Chancellor.

21. He submits that advices received by the Chancellor, provisions relied upon by him and instances at Rahuri and Parbhani, bring on record disputed questions of facts and law. Hence, an opportunity of hearing ought to have been provided. Lastly, he adds that in affidavit-in-reply filed by respondent Nos.1 and 2, they have not expressly taken a plea that the impugned order is not issued under

Section 17 of the Maharashtra Act. He contends that the Chancellor has got no other source of power. Fairly, he accepted that the plea of power with “Appointing Authority” to recall such an appointment is appearing in the reply.

22. After hearing respective counsel, we are satisfied that there is no dispute about the status of the petitioner as OCI. A perusal of advertisements in response to which he participated in selection process reveals that the petitioner was not warned of requirement of that status. In his Bio-Data, he pointed out his USA citizenship with status as OCI and other privileges. Thus, he did not suppress anything. The respondents, therefore, have selected him as their Vice-Chancellor with open eyes.

23. The Section 13 of the Maharashtra Act appear in Chapter IV which deals with the Officers of the Universities. Section 13 classifies entire personnel into three categories. As per Section 14 (iii), the Vice-Chancellor is a part of the Executive. Section 17 enables the Chancellor to appoint the Vice-Chancellor. Under Section 14 (i), the Chancellor is also a part of the Executive.

24. Statute 133 is framed in exercise of powers under Section 38 of the Maharashtra Act. Section 38 prescribes procedure for

making of Statute. Section 37 is on matters on which Statute can be made. Sub-Clause (b) therein reads as under :-

Sub-Clause (b) : The (****) other conditions of service of the Vice-Chancellor and his powers and duties.

25. Shri Kilor, learned counsel relied upon clause (c) also along with clause (g) of the Section 37 in Maharashtra Act and hence, we find it appropriate to reproduce those clauses also.

Clause (c) : The designations, qualifications, method of recruitment, pay, allowances and other conditions of service of various categories of employees of the University, and their powers and duties.

Clause (g) : The designations, qualifications, method of recruitment, pay, allowances and other conditions of service of Professors, Associate Professors, Assistant Professors, Lecturers, Demonstrators and other categories of employees of affiliated colleges and recognised institutions, and their powers and duties.

26. Reading of these three clauses in contradistinction, according to Shri Kilor, learned counsel shows that Statute cannot be made on subject of classification, method of recruitment, etc. of the

Vice-Chancellor. We find it difficult to accept the same as the portion deleted (by Mah. 12 / 1988) from above clause (b) read “*emoluments and*”. Thus, before removal of these words “*emoluments and*”, Clause (b) empowered making of a Statute on the emoluments and other conditions of service of the Vice-Chancellor and his powers and duties. This clause when read with clause (c) and clause (d) (supra), cannot be construed to mean that the Statute cannot be made prescribing qualifications, method of recruitment, etc. of the Vice-Chancellor. Words “*other conditions of service*” in clause (b) (supra) cannot be understood to exclude facets stipulated in clause (c) and clause (g).

27. In the Statute “Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990, the “Appointing Authority” prescribed is the “Vice-Chancellor”. This by itself does not mean that a post of the Vice-Chancellor is not subjected to said 1990 Statutes. Statute 133 occurs in its Chapter XV is on Pay, Allowances, Pension, Leave and General Conditions of Service of Employees of the University / Affiliated Colleges / Recognized Institutions. Statute 133 is the first provision in this Chapter which deals with “Disqualifications for appointment”. It stipulates various disqualification for appointment in University Service. Thus, as per clause (a) (i), a person who is not citizen of India, cannot be appointed to any post in University Service. The emphasis is highlighted by the requirement of possessing a

“Certificate of Eligibility” for a migrant to India in its proviso. The word “University Service” takes into its fold all three categories mentioned in Section 13 and the post of the Vice-Chancellor also. Chapter V is on Academic Officers, Heads of Departments, Professors and other equivalent posts. Statute 41 deals with Qualifications and method of appointments. Non-mention of post of the Vice-Chancellor in this Statute or Chapter by itself is, therefore, not decisive. Statute 43 is prescribing percentage of Reservation. Again it does not support the contention of the petitioner that the post of the Vice-Chancellor is not dealt with in Statute 133. Statute 73 is on Qualifications of Academic Staff Members. For the reasons mentioned supra, again it is of no assistance to the petitioner in the present matter.

28. The provisions of the Citizenship Act, 1955, are of paramount importance. Section 7-A of the Citizenship Act, 1955, is about Registration of overseas citizen of India cardholder. The petitioner is one such cardholder. As per Section 7-B of the Citizenship Act, 1955, a overseas citizen of India cardholder is entitled to only such rights which are not stated in sub-section (2), provided the same are specified by the Central Government by notification in the Official Gazette. This provision under sub-section (1) of Section 7-B, therefore, shows that such rights to be specified by the Central Government, cannot be those which are excluded under sub-section (2) thereof. Sub-

section (2) points out rights to which such cardholder is not entitled. He is not entitled to rights available to citizen of India under Article 16 of the Constitution. He is also not entitled to appointment to public services and posts in connection with affairs of Union or of any State except for appointment in such services and posts as Central Government may by special order in that behalf specify. Thus, sub-section (2) while denying certain rights to an OCI, carve out limited exception thereto, if it is backed by a notification of Central Government. All rights which are available to Citizen of India cannot be enjoyed by a person like petitioner. This sub-section (2) therefore, does not imply that rights which are not stipulated in sub-clause (a) to (i) thereof can be enjoyed by a cardholder like the petitioner. A joint reading of Section 7-B(1) with sub-section (2) shows that cardholder like the petitioner can enjoy only few such rights which may be specified by the Central Government by notification in the Official Gazette. The petitioner has not pointed out any such notification which authorizes him to apply for and occupy the post of the Vice-Chancellor of respondent No.3 – University. The contention of Shri Kilor, learned counsel that absence of such material mentioned by various advisors to the Hon'ble Chancellor supports the case of the petitioner is thus erroneous. On the contrary, it adversely affects the cause of the petitioner. Section 7-B is a provision which disqualifies cardholder like the petitioner and an express document specifying the right to be

exercised by him, must be brought on record. The petitioner has failed to do so.

29. Section 7-B begins with non-obstante clause and it overrides any other law for the time being in force. It, therefore, also overrides the provision of the Maharashtra Act, which has received assent of the Governor of Maharashtra on 22nd August, 1983. Hence, even if contention of Shri Kilor, learned counsel founded on the absence of stipulation of Indian Citizenship for a holder of post of the Vice-Chancellor in advertisement for recruitment or in Statute 133 is accepted, still because of Section 7-B of the Citizenship Act, the petitioner cannot aspire for the post of the Vice-Chancellor of respondent No.3 – University.

30. Shri Dharmadhikari, learned Senior counsel has rightly submitted that advice furnished by various departments or by the learned Advocate General to respondent No.1 – Chancellor, need not be looked into. We are, therefore, avoiding to appreciate it either way. The discussion above shows that the office of respondent No.1 - Chancellor has approached the controversy in right perspective. Correctness of recourse to Section 7-B (i) of Citizenship Act to unsit the petitioner is not demonstrated to be bad.

31. The petitioner does not point out any stigma and no arguments in that regard are advanced. The petitioner has also not placed on record any Gazette Notification or order issued by the Central Government enabling / authorizing him to occupy the post of the Vice-Chancellor. It is, therefore, apparent that no prejudice has been caused to him by denying opportunity of hearing. Moreover, the petitioner has claimed such an opportunity, because of Section 17 (6) of the Maharashtra Act. Sub-section 6(a) or (b) envisage some misconduct or administrative error on the part of the Vice-Chancellor. Thus, when for such an error or mistake, bordering on line of “misconduct”, action is to be taken by the Chancellor, the procedure prescribed therein needs to be adhered to. In that event, reasonable opportunity of being heard should be granted. Here, there are no aspersions on integrity or ability of the petitioner. Absence of status or eligibility in him is only used to point out the disqualification. As held supra, his record is unblemished. The petitioner also does not allege mala fides against anybody. Section 17, therefore, does not have any role to play. The office of respondent No.1 has rightly, in impugned order dated 29th July, 2017, not invoked Section 17 (6) of the Maharashtra Act.

32. In the case of **State of Orissa and another Vrs. Mamata Mohanty** (supra) in para 37, the Hon'ble Apex Court has pointed out that an order which is bad in its inception, does not get

sanctified at a later stage. The observation in paras 40 and 41 also show that the absence of essential qualification results in lack of basic eligibility which cannot be cured later on. The observation of the Hon'ble Apex Court in the case of **Government of Andhra Pradesh and others Vrs. K. Brahmanandam and others** (supra) shows that no writ can be issued in the matters where appointment is in violation of mandatory provisions and void. In the case of **Ashok Kumar Sonkar Vrs. Union of India and others** (supra), the Hon'ble Apex Court has reiterated settled law that court of law does not insist on compliance with useless formality. It has explained that compliance with principle of *audi alteram partem* cannot be insisted upon, unless prejudice is shown. It need not be invoked where grant of hearing would be a futile exercise.

33. In the present matter, the provisions of Section 7-B of the Citizenship Act, 1955, did not and do not permit the petitioner to aspire for the post of the Vice-Chancellor with respondent No.3 – University. Moreover, even as per Maharashtra Act, the Vice-Chancellor needs to be a Citizen of India. Admittedly, the petitioner is not a Citizen of India. In these facts, grant of hearing to the petitioner cannot result in any relief to him. The contract entered into with him under Section 57 of the Maharashtra Act is itself void and unsustainable. Though, we cannot blame the petitioner in this situation, no benefit can also be

extended to him. Use of word “*termination*” at the end of the impugned order by the office of the Chancellor only means termination of services i.e. contract. Therefore, it does not vitiate the action. In earlier para of impugned order, it has been expressly mentioned that the Chancellor possesses power to appoint the Vice-Chancellor and that power includes power to remove him also. It is also mentioned that the appointment has become void ab-initio. The office of the Chancellor did issue necessary show cause notice, obtained reply from the petitioner. It also obtained opinion from the Ministry of Law and Judiciary, Ministry of External Affairs of Union of India and from the learned Advocate General for the State of Maharashtra. A perusal of impugned order reveals that after studying the opinions so received, the decision was reached and action has been taken. Which part of such legal advice, should be mentioned in the order and how or to what extent it should be reproduced is the prerogative of that office. No right of the petitioner is violated thereby. Office of the Chancellor has adopted a fair procedure and given necessary opportunity to the petitioner in the matter. Even otherwise, his tenure was to expire on 13th August, 2017. So, he has hardly lost service of two weeks in the process. Petitioner, knowing fully well his status as an OCI and import of Section 7-B of Citizenship Act, ought to have been more cautious or vigilant in the matter. However, this observation applies with full vigour to the Respondent No.3 also. Hence, neither he nor the respondents can be

blamed for the recruitment and its termination.

34. We therefore, find no case made out for warranting interference. Writ petition is accordingly dismissed. Rule discharged. No order as to costs.

JUDGE

JUDGE

Choulwar