

23. August 2011.

ORDER

Subject : Petition under Section 108 of the Maharashtra Universities Act, 1994 from Dr. Vijay Khare, Associate Professor, Department of Defence and Strategic Studies, University of Pune, in the matter of election to the post of Dean, Faculty of Mental, Moral & Social Sciences held by the University of Pune on 10.05.2011.

- Reference:**
1. Petition dated 13.05.2011 from Dr. Vijay Khare, Associate Professor, University of Pune.
 2. My office letter No. CS/PU/38/11/D/1598 dated 16.05.2011 to the Vice-Chancellor, University of Pune
 3. Letter from the Vice-Chancellor, University of Pune dated 28.05.2011.
 4. Letter No. PUE/302 dated 02.06.2011 from Registrar, University of Pune.
 5. Rejoinders from Dr. Khare dated 02.06.2011, 21.06.2011, 04.07.2011.
 6. My office letter No. CS/PU/37/11/(7329)/2029 dated 24th June, 2011 to the VC, University of Pune.
 7. My office letter No. CS/PU/37/11/(7329)/2031 dated 24th June, 2011.
 8. Letter dated 04.07.2011 from Dr. Gautam Bhong, Pune
 9. Letter No. PUE/331 dated 14.07.2011 from Registrar, University of Pune.

10. My office letter No. CS/PU/37/11/(7329)/2330, dated 15th July, 2011.
11. Letter No. AT/Dean/1522 dated 18.07.2011 from the Vice-Chancellor, University of Pune.
12. Letter No. AT/Dean/1537 dated 19.07.2011 from Registrar, University of Pune
13. Letter No. PUE/337 dated 21.07.2011 from Registrar, University of Pune.
14. Letter No. PUE/338 dated 23.07.2011 from Registrar, University of Pune.
15. Letter dated 28.07.2011 from Dr. Khare.
16. Letter dated 28.07.2011 from Dr. Gautam Bhong, Abasaheb Garware College, Pune.

I have received the representation dated 13.05.2011 under Section 108 of Maharashtra Universities Act, 1994 (herein after referred as "Act") and rejoinders dated 02.06.2011 and 21.06.2011 from Dr. Vijay Khare, Associate Professor, Department of Defence and Strategic Studies, University of Pune against the process of counting of votes at the elections to the post of Dean, Faculty of Mental, Moral & Social Sciences held by the University of Pune on 10th May 2011. In the said Petition and the subsequent rejoinders, Dr. Khare has stated as under:-

- 1) He along with four other persons had contested the election to the post of Dean, Faculty of Mental, Moral & Social Sciences held on 10/05/2011. The process of counting of votes was carried out immediately thereafter. During the counting process due diligence was not maintained and there are serious lapses in the counting and the election process.

- 2) The impugned process of election is for the post of Dean of a faculty, leading to elections in Senate for Management Council, University of Pune. The elected members of the registered graduates to the Senate of the University of Pune were also a part and parcel of the present process of election. One of the candidates contesting the elections of the Registered Graduates to the Senate has actively participated in the process of counting votes.
 - 3) The counting was done without actually showing the ballots even when the number of votes were only 23. The signatures of the candidates were also taken hurriedly.
 - 4) The procedure of counting was preferential in nature and the process of counting was complex hence the possibility of inadvertent mistake to human error can not be ruled out.
 - 5) At the last count two candidates had received ten votes each and hence provisions of Statute S.387(3) should have been meticulously interpreted and followed. However, the provisions of the Statute have not been interpreted properly.
 - 6) There are serious lapses, probably intentional in the system of counting, eliminating and transferring of preferential votes. It was observed that votes of deleted candidates have not been exhausted. In absence of any note to that effect by the returning officer, any other explanation, whatsoever can not be assumed neither presumed when the Returning officer and his role in this election is already under objection and question.
 - 7) When candidate Shri Khandave Trimbak is deleted after second round he has four votes to his credit, however, the chart shows that only three votes are transferred and there is no mention of the missing vote on the entire chart.
 - 8) When candidate Shri Rasal Pundalik Vitthal is deleted after fourth round, he has seven votes to his credit, however, the chart shows that only six votes are transferred and there is no mention/note of the missing vote on the entire chart. By all probabilities, the same are sure to change the outcome of the results.
- 2) Dr. Khare has therefore requested for the correct interpretation of provisions of Statutes 387(3) regarding counting of votes and draw of lots in the circumstances mentioned therein and also requested for re-election/re-

counting of votes due to faulty process of counting of votes adopted by the University.

3) I had called for a detailed report from the Vice-Chancellor, University of Pune. As reported by the Vice-Chancellor of the University, the facts are as under :-

- a) There is no provision prescribed in the University Statutes for re-election/re-counting of voting papers.
- b) The allegations made by Dr. Khare to the effect that during the counting process due diligence was not maintained and there are serious lapses, are not true and correct and hence are denied by the University. The objections were required to be raised by Dr. Khare immediately after the announcement of the result of the said election for Dean of the Faculty of Mental, Moral and Social Sciences. As per Section 63(6) of the Conduct of Election Rule 1961, no application for re-counting shall be entertained after the result sheet is completed and signed by the Returning Officer. However, Dr. Khare did not raise any objection in writing during the process of scrutiny and counting of voting papers and has also signed the said result-sheet without any objection. The Vice-Chancellor vide letter dated 14/19 May 2011 has also informed Dr. Khare that his said request can not be granted since there is no provision in the Statutes for recounting.
- c) Dr. Khare's contention about active participation of one of the candidates contesting the elections of the Registered Graduates to the Senate of the University in the process of counting of votes is totally unfounded. It is true that Shri Pramod Bhadkwade, one of the candidates contesting election to the Senate from the constituency of Registered Graduates was nominated by the Vice-Chancellor as per Statutes 382 for the purpose of scrutiny and counting of the voting papers of the election for the Dean, it is pointed out that Shri Bhadkwade was not elected to the Senate. The said election was conducted as per the provision of Section 15(2) (a) of the Act. As this was not the election to the Senate, the participation of one of the candidates contesting election to the Senate from the constituency of Registered Graduates in the process of counting votes does not in any way make the process invalid. Further Dr. Khare or any other candidate or his agent did not raise any objection to that effect before commencement of counting process and also during counting process.

- d) The process of counting was done by the officers and other staff of the University nominated for that purpose as per Statute 382 and the whole process of scrutiny and counting of voting papers was carried out as per the Statutes framed by the University in that respect.
- e) As regards Dr. Khare's contention that counting was done without actually showing ballots, it is mentioned that as per Statute 382, the candidates or their authorized agents were permitted to remain present at the time of scrutiny and counting of voting papers. Names of each candidate was called out before dropping the votes into the box marked for that particular candidate. However, no objection in this respect was raised by Dr. Khare and any of the candidates or their agents even at the time of count or even after the announcement of result of the said election.
- f) The allegations made by Dr. Khare that the possibility of inadvertent mistake or human error in counting can not be ruled out are totally false and baseless.
- g) As per the provisions of Statute 387 (3) when a candidate has to be excluded from two or more candidates having same number of votes and lowest on the poll, the candidates with lowest number of votes at the first count at which the candidates in question have an unequal number of votes shall be excluded and when the number of votes credited to these candidates are equal at all counts, the Registrar shall draw lots and the candidate in whose name lot is drawn stand excluded. During the counting of the voting papers, Dr. Gautam Bhong and Dr. Khare each had ten votes at the last count. The details of the number of votes credited to Dr. Bhong and Dr. Khare at each count are as under:-

Name of the Candidate	First Count	Second Count	Third Count	Fourth Count
Dr. Gautam Bhong	06	07	08	10
Dr. Vijay Khare	06	06	07	10

Thus, it is evident from the above mentioned chart that although Dr. Khare and Dr. Gautam Bhong had equal number of votes at last count, the number of votes credited to them were not equal at all counts (Dr. Khare has less number of votes than the votes of credited to Dr. Bhong at second and third count). Thus as per the provisions of Statutes 387, since Dr. Kahre and Dr. Bhong did not have equal number of votes at all counts, it was not required to draw lots for exclusion of the candidate and since Dr. Khare has less number of votes at earlier counts, he was excluded as per provisions of Statutes 387(3) without drawing lots and Dr. Bhong was subsequently declared elected. Thus the allegations made by Dr. Khare that the provisions of Statute 387(3) were not properly interpreted by the

University are not correct and the Petition made by him deserves to be rejected.

- 4) I had also received a representation dated 4/07/2011 from Dr. Gautam Bhong, Abasaheb Garware College, Pune, raising objection against the candidature of Dr. Khare for election to the post of Dean of Mental, Moral and Social Sciences, University of Pune on the ground that Dr. Khare does not have 3 years of experience as Head of the Department which is an eligibility condition for contesting election of Dean.
- 5) After scrutiny of the facts as reported by the Vice-Chancellor of the University and the points raised by Dr. Khare, I called Dr. Khare, Dr. R. K. Shevgaonkar, Vice-Chancellor, Dr. M. L. Jadhav, Registrar, the scrutiny officers of the University for personal hearing. I also gave Dr. Bhong an opportunity of personal hearing. Accordingly, Dr. Khare, Dr. Bhong, Dr. Shevgaonkar, Vice-Chancellor, Dr. Jadhav, Registrar, Dr. S. M. Ahire, Controller of Examinations and counting officer and Shri P.R. Bhadkawade, Assistant Registrar and Counting Officer appeared before me for the hearing on 28th July 2010 at Raj Bhavan, Mumbai to submit their say and arguments personally.
- 6) During the hearing, Dr. Khare also made oral and written submissions. He submitted the details of his qualifications, experience, research, publications and the various positions held by him etc. He reiterated the same what he had already submitted in his petition and rejoinders. In additions to his written submission, Dr. Khare also made the following submissions during the hearing:-
 - 1) As regards the University's contention that there is no provision prescribed in the University Statutes for recounting the votes, he pointed out the precedence of recounting of votes in the elections of Shri P. D. Patil and late Shri Vasant Pawar to the Management Council from the Senate in the month of October

1995 and the elections of Shri Y.G. Shinde and Prin. Agale held in February 2001.

- 2) He had preferred his objection to the Vice-Chancellor, University of Pune on the same day and immediately after the Counting and that the irregular and illegal act can not be condoned for delay in seeking redressal.
 - 3) The Vice-Chancellor has admitted the fact that one of the employees of the University, who had contested the elections, was appointed as officer for counting of votes at the said election.
 - 4) The election sheet does not account for eliminated/ transferred votes. It is sufficient to indicate the haste made in the process of counting.
 - 5) The counting of preferential votes was not carried out as per the Statutory provisions and as per existing laws.
- 7) During the hearing Dr. Gautam Bhong reiterated the same what he had already submitted in his written representation.
- 8) During the hearing, Dr. R. K. Shevgaonkar, Vice-Chancellor clarified that the University has strictly followed the provisions of Statutes 387(3) and conducted the process of counting of votes exactly as per the provisions therein. The counting was done in the presence of candidates or their representatives. The results were signed by all the candidates and the two nominees who were appointed by the Vice-Chancellor. As regards Dr. Khare's objection for counting of votes in the round 4, the Vice-Chancellor said that the elimination procedure followed at the time of elimination of Dr. Rasal against Dr. Khandave, the same elimination procedure was followed at the time of elimination of Dr. Khare against Dr. Bhong.
- 9) The Registrar clarified the transfer of preferential votes during the process of counting of votes. He further clarified that during the process of

counting, some of votes may be deemed to have become non-transferable (exhausted) votes in the following circumstances:

- (i) There is no next preference recorded on the voting paper, or
- (ii) The candidate who is next in the order of preference, has already been excluded, or
- (iii) The names of two or more candidates next in the order of preference, are marked with the same number, or
- (iv) The name of candidate next in order of preference is marked by a number not following consecutively after some other number on the voting paper, or by two or more numbers, or
- (v) It cannot be determined for which of the counting candidate the next available preference is recorded.

10) As regards the objection of Dr. Khare of not recording the reasons for elimination and the details of transferred/excluded votes, the Registrar clarified that the Statutes framed by the University of Pune and other Universities in Maharashtra are based on provisions for the conduct of the Central and State Elections etc. as provided in the Central Act 1951. The Proforma for preparing the election result sheet is also based on the provision contained in the said Act. The said Act also does not provide for quoting the reasons for excluded votes. The Counting officer, Dr. S. M. Ahire also clarified that he has been participating in the election process of the University since 1995 onwards and that the University has never mentioned the reasons for eliminations so far. The same procedure is followed by the University for counting of votes in the present case and all the votes were shown to the representatives and candidates as the case may be.

11) As regards Dr. Khare's objection that the person who has contested the election in Registered Graduates Constituency to the Senate the same person was appointed as Counting Officer for the counting of votes, the Vice-

Chancellor clarified that the person who was appointed as a Counting Officer had contested the election in January 2011 and that the said election was over and its results were also declared. Therefore he was no more candidate at the time of election to the Dean, Faculty of Mental, Moral and Social Science.

12) As regards Dr. Bhong's objection regarding the candidature of Dr. Khare, the Registrar has clarified that the last date of nomination was 29th April 2011 and on that date Dr. Bhong was present in the process of scrutiny of applications and he did not raise any objection regarding candidature of Dr. Khare. He has made representation on 4th May 2011. Therefore Dr. Bhong did not raise any objection at the time of scrutiny of the nomination of Dr. Khare.

13) The Vice-Chancellor has also clarified that, the candidature of Dr. Vijay Khare was considered as valid as he fulfilled all eligibility conditions including the minimum three years experience as a Head of the Department required for contesting the said election of the Dean of Faculty of Mental, Moral and Social Sciences.

14) After going through the written and oral submissions made by Dr. Khare and Dr. Bhong, the Vice-Chancellor and the University Officials, I have observed as under:-

Section 108 of the Maharashtra Universities Act 1994 reads as under:-

"If any question arises regarding the interpretation of any provision of this Act, or any Statutes, Ordinance, Regulation Or Rule, or whether a person has been duly elected or appointed or nominated or co-opted as or is entitled to be a member of any authority or body of the University, the matter may, be referred, on petition by any person or body directly affected, or suo motu by the Vice-Chancellor to Chancellor, who shall after taking such advice as he thinks necessary, decide the question and his decision shall be final"

From the above it will be seen that Section 108 of the Act is attracted when there is dispute about (i) the interpretation of any provisions of the

Act/Statutes/Ordinance /Regulations of the University or (ii) the correctness of election/appointment/ nomination/Co-option of a member or his entitlement to be such a member.

15) The provisions of the Statute 387(3) provide as under -:

"if, when a candidate has to be excluded two or more candidates have each the same number of votes and lowest on the poll, the candidates with the lowest number of votes at the first count at which the candidates in question have an unequal number of votes shall be excluded and when the number of votes credited to these candidates are equal at all counts, the Registrar, (shall draw lots and the candidate in whose name lot is drawn would stand excluded)"

16) As regards Dr. Khare's objection about the process of counting of votes, adopted by the University and therefore seeking interpretation of the provisions of the Statute 387(3), the correct interpretation of the provisions under Statute 387(3) would be that the lots would be drawn where if and only if two or more candidates have equal number of votes at all the rounds. In the present case during the counting process candidates were excluded after following the provisions of Statute 387(3) as these were no equal votes at all rounds. The whole process of counting of votes was carried out in the presence of the candidates or their representatives who were permitted to remain present by the University as per the provision of Statute 382. After first count Dr. Bhamre was excluded as per Statute 387(3) after drawing lot since he and Dr. Khandve had equal number of votes at the first and only count. Dr. Khandve was excluded after 2nd count being lowest on the poll. After 3rd count, Dr. Khare and Dr. Rasal had equal number of votes. However, since Dr. Khare and Dr. Rasal did not have equal number of votes at the first count, Dr. Rasal was excluded (having lesser votes at the first count) after the 3rd count as per Statute 387(3) without drawing lots. Dr. Bhong and Dr. Khare had equal number of votes at the last count. Since Dr. Bhong and Dr. Khare did not have equal number of votes at all counts, Dr. Khare was excluded after 4th count (having lesser votes at the second count) without drawing lots.

It is also noted that even though the same principle for exclusion of Dr. Rasal was followed at the 3rd count, Dr. Khare did not raise any objection in this respect at that time. After completion of counting process, the result of the election was announced and the result sheet was completed and signed by the Registrar, candidates and also by Dr. Khare without any protest. The Vice-Chancellor has also categorically stated that the University has strictly followed the provisions of the University Act and Statutes in the conduct of election and the process of counting of votes. Further there is no express provision in the University Statutes for re-counting of votes. Therefore considering all the facts mentioned here in above, I am of the view that the University has followed the provisions of the Act and Statutes in conducting the aforesaid election of Dean and in the process of counting of votes and no irregularities appears to have taken place in the process of counting of votes adopted by the University in the said election.

17) As far as Dr. Bhong's representation is concerned, the Vice-Chancellor has categorically mentioned that the appointment of Dr. Khare as Head of the Department is as per the Rules and Regulations and the provisions of the University Acts and Statutes. Further Dr. Khare has not been elected in the election in question. I would therefore not like to go into the objection raised by Dr. Bhong about the eligibility of Dr. Khare for contesting the election on the ground of validity of Dr. Khare's appointment as HOD and whether he has 3 years of experience as HOD required for contesting the election, as the same is out of the scope of Section 108, which deals with an elected candidate.

18) As regards the precedence cited by Dr. Khare in his petition when I asked Dr. Khare whether one should go by precedence or Rules and Regulations and the provisions of the University Act and Statutes to which Dr.

Khare agreed that we should go by rules and regulation and not by precedence.

19) As regards the appointment of Shri Bhadkavade as Counting Officer at the said election, he was one of the candidates contesting the election to the Senate from Registered Graduates Constituency, but he was not elected to the Senate. The participation of Shri Bhdkavade in the counting process of the said election does not in any way make the process of counting illegal and invalid. Moreover Dr. Khare has not brought out any specific provision of the Act or Statutes which bar a person from acting as counting officer who has contested the election earlier. The election quoted by Dr. Khare was already held and its results were also declared which does not bear any impact on the Counting Officer's appointment. Dr. Khare has not made out any case against Shri Bhadakawade suggesting any manipulation/irregularities in the counting process.

20) After careful consideration of all the facts and the records on the file, the points raised in the Petition and rejoinder made by Dr. Khare and the representation of Dr. Bhong, the reports received from the Vice-Chancellor thereon and the written and oral submissions made by Dr. Khare, Dr. Bhong, the Vice-Chancellor and Registrar of the University of Pune during the hearing, I do not find any justification to interfere with the decisions taken by the University authorities in the matter.

The Petition submitted by Dr. Vijay Khare, under Section 108 of the Maharashtra Universities Act 1994, is therefore, disposed of accordingly.

4. 23.8.11

(K. Sankaranarayanan)
Chancellor
University of Pune.