



1 April 2013

ORDER

Subject : Petition for deciding the validity of election of Shri M.R. Pawar as Member to the Management Council of the Sant Gadge Baba Amravati University under Section 27 (1) (j) of the Act by setting aside the decision of appellate Authority to reject the nomination of Dr. A. S. Rathod.

- Reference
1. Petition dated 25th February 2011 submitted by Dr. A. S. Rathod to the Chancellor under Section 108 of the Maharashtra Universities Act, 1994.
 2. Letter No.SGBAU/1/121/A-715/2011 dated 19th April 2011 from the Registrar, SGBAU.
 3. Letter dated 30th August 2012 from Dr. A.S. Rathod
 4. Letter No.SGBAU/1/121/A-1790/2012 dated 15th September 2012 from the Registrar, SGBAU.
 5. This office letter No. CS/AU/37/ 11/(7298)/ 556 dated 22nd February 2013 to the Vice Chancellor, SGBAU.
 6. This office letter No. CS/AU/37/ 11/(7298)/ 555 dated 22nd February 2013 written to Dr. A.S. Rathod.
 7. This office letter No.CS/AU/37/11/(7298)/557 dated 22nd February 2013 written to Dr. M.R. Pawar.
 8. This office letter No.CS/AU/37/12/(7298)/569 dated 25th February 2013 to the Principal Secretary to Government, Law & Judiciary Department, Mantralaya, Mumbai.
 9. Letter dated 4th March 2013 from Shri M.R. Pawar.
 10. Letter No.06/Civil/Confn/A'Br dated 8th March 2013 from the Deputy Secretary to Government, Law & Judiciary Department, Mantralaya, Mumbai.

1. I had received a petition under Section 108 of the Maharashtra Universities Act, 1994 (hereinafter referred as the "Act") from Dr. A.S. Rathod, Principal, Matoshri Vimalabai Mahavidyalaya, Amravati for deciding the validity of election of Shri M.R. Pawar as member

to the Management Council of the Sant Gadge Baba Amravati University (hereinafter referred as the "University") under Section 27 (1) (j) of the Act in view of the alleged wrong decision of the Vice Chancellor of the University cum appellate authority to set aside the nomination form of Dr Rathod vide order dated 13.2.2011.

2. Dr. Rathod in his petition has stated that the University held the election for the Management Council for which two Principals were to be elected on the Management Council from the Senate from amongst the Principals who are members of the Senate. Out of these two Principals, one seat was allotted to DT/NT category by rotation. According to Dr. Rathod, though he represents the DT/NT category so far as his caste is concerned, he contested the election to the Senate from general category under provisions of Section 25 (2) (1) of the Act and was declared elected, amongst the category of 18 Principals, to the Senate on 23.12.2010. Accordingly, he had filed the nomination for the election to the Management Council of the University under Section 27 (1) (j) of the Act.

Section 27 (1) (j) of the Act provides that –

"Two principals, elected by the Senate from amongst the principals, who are members of the Senate, of whom one principal shall be a person belonging to the category of the Scheduled Caste or Scheduled Tribes or Denotified Tribes / Nomadic Tribes or Other Backward Classes, by rotation"

3. Shri M.R. Pawar and Shri S.G. Motke had also submitted their nominations for the said election to the Management Council of the University. However, the Registrar & Returning Officer by his communication dated 13.2.2011 rejected the nomination of the petitioner Dr. Rathod as well as that of Shri Motke with the result that Shri M.R. Pawar was declared as elected unopposed to the Management Council from DT/NT category. Aggrieved by this, he filed an appeal before the Vice Chancellor of the University. But the Vice Chancellor also upheld the decision of the Registrar & Returning Officer and rejected his appeal vide order dated 14.2.2011. Since the nominations of Dr. Rathod and Shri Motke were rejected by the Appellate Authority, Shri M.R. Pawar came to be declared elected as unopposed to the Management Council from DT/NT category which is violation of his fundamental rights to represent public body in terms of Management Council. Dr. Rathod, therefore, requested to take a judicial review of the decision given on 13.2.2011 by the Registrar and on 14.2.2011 by the Vice Chancellor whereby his nomination came to be rejected and consequently to decide the validity of the election of Shri M.R. Pawar.

4. Dr. A.S. Rathod has referred the case law in case of Kasambhai Ghanchi V/s. Chandubhai Rajput, Mh.L.J.1998 [1] which contemplates that "when candidate is eligible to represent N/T category, he is entitled to submit nomination by virtue of his caste category". He has also referred to the parallel case of Dr. Babasaheb Ambedkar Marathwada University and pointed out that one Dr. D.B. Aghav from P.V. Patil College has been elected on the Senate of Dr. Babasaheb Ambedkar Marathwada University in Principal's category under Section 25 (2) (1) from Open Category and later filed his nomination paper for the Management Council from the DT/NT category and got elected as Member of the Management Council.

5. Section 108 of the MU Act, 1994 reads as under:-

"If any question arises regarding the interpretation of any provision of this Act, or of 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."

6. My office had called for a factual report from the University. As reported by the Registrar of the University, the facts in brief are as under:

The election to the Management Council of the University under Section 27 (1) (j) of the Act was held on 15.2.2011, The petitioner submitted the nomination Form for contesting election for one seat of reserved category (DT/NT) on the Management Council under Section 27(1)(j) of the Act. The scrutiny of nomination was done by the Committee constituted by the Vice Chancellor of the University. The Registrar & Returning Officer went through the decision of the Scrutiny Committee, and after satisfying himself, rejected the nomination of the petitioner on the ground that the petitioner had submitted nomination for reserved category of DT/NT, whereas he was elected on the Senate from General Category. The Petitioner had made appeal to the Vice-Chancellor of the University against the decision of the Registrar. The Vice Chancellor of the University upheld the decision of the Registrar & Returning Officer for election and gave the following ruling on the appeals of Dr. A.S. Rathod and Dr. S.G. Motke: *'the nomination forms of Dr. A.S. Rathod, Principal, Matoshri Vimalabai Mahavidyalay, Amravati and Dr. S.G. Motke, Principal, Phulsingh Naik Mahavidyalaya, Pusad are rejected for contesting the election to the Management Council as per provisions of section 27 (1) (j) in the category of one Principal from the DT/NT category as they are not elected from DT/NT category on the Senate under Section 25 (2) (1) of the Act.'*

7. According to the Registrar of the University, The contentions of the petitioner were not admitted because as per Section 27(1)(j) of the Act, two Principals are to be elected from the Senate on the Management Council, one of whom has to be from SC/ST/DT(VJ)/NT/OBC by rotation. For the purpose of the election in question, the seat was allotted to DT/NT category as per the rotation. The petitioner, though belongs to DT/NT category, was elected on Senate from the General Category. Therefore, he could not represent the Management Council from DT/NT category.

8. As regards the law referred by Dr. Rathod, which mentions "the law settled by Apex court in Mh.L.J.1998(1) page, Kasambhai Vs Chandabhai Rajput which contemplated that, when candidate is eligible to represent NT category, he is entitled to submit nomination by virtue of his caste category" the Registrar clarified that the article 243T(4) of constitution of India empowers the State Legislature to make provision for reservation of seats in any municipality or office of Chairperson in the municipalities in favor of SC, ST and Backward class citizen.

9. The Registrar has stated that in view of the reservation criteria specified under Section 25 (2) (l) and 27(1) (j) of the Act, in respect of Section 25(2) and Section 27(1) of the said Act, for being elected as member of the University Senate and Management Council, the reservation policy specified by the Government time to time, appointment on the basis of caste category and its application is different than the reservation for seats prescribed by the Act, for the purpose of election/nomination of members on the authorities. Hence, the criteria of appointment on the post of a particular reserved category, is not justified to have for contesting election to authorities of the University to which the legality in light of the Act, is prescribed and therefore, it is the opinion of law, the petitioner's fundamental right has not been snatched for representing public body in term of Management Council, though the Management Council is an executive authority of the University & not a public body.

10. After going through the petition of Dr Rathod and the report submitted by the Registrar of the University, I was, prima-facie, of the view that the contention of Dr. A.S. Rathod appears to be correct. Therefore, in order to have the matter examined legally, my office had sought the legal advice in the matter from the State Government in Law & Judiciary Department.

The State Law & Judiciary Department has opined as under :-

“ Dr. A.S. Rathod is elected by the Electoral college consisting of Principals as a member of the Senate of the SGBAU as provided under Section 25 (2)(l) of the Act, which reads as under –

Section 25 (2) (l) :- The Senate shall consist of the following members, namely –

(l) “eighteen principals of the affiliated, conducted and autonomous colleges, of whom not less than two shall be women and at least one shall be a person belonging to the SC or ST or DT (Vimukta Jatis)/NT or OBC, by rotation, elected by the electoral college consisting of Principals.”

Hence, from the above provision it appears that there is specific provision that one of the Senate members under Sub Section 25 (2)(l) shall be elected from the category of SC, ST or DT (V.J.)/NT.

Further, as per provided under Section 27 (1)(j), the Management Council of the University shall consist of following members namely :-

“Two principals, elected by the Senate from amongst the principals, who are members of the Senate, of whom one principal shall be a person belonging to the category of the SC or ST or DT/NT or OBC, by rotation”

From the wording of the above provision it appears that two Principals are to be appointed as a member on the Management Council from category of eighteen Principals who are elected as Senate member from amongst the Principals, of whom one Principal shall be a person belonging to the category of SC or ST or DT/NT or OBC by rotation.

The point involved in the matter is not remained res integra. The Full Bench of Hon'ble Supreme Court in the case of Kasambhai F. Gandhi Vs. Chandubhai D. Rajput & others reported in 1998(1) Mh.L.J.1, has specifically held that when the post of President is reserved for a particular category, all candidates who belong to that category are eligible to contest. It is not necessary that the candidate must have got elected from a ward reserved for that particular category.

The Full Bench of Hon'ble Supreme Court in para 14 has, inter alia, observed that the appellant who belongs to the Backward Class was eligible to stand for the office of the President even though he had been elected as a member of the municipality not from a reserved seat but from general seat.

11. The Law & Judiciary Department has, therefore, given the following opinion :-

(a) Dr. Rathod, Principal, who belongs to DT/NT category and though elected to the Senate under Section 25 (2)(1) of the Act under the Principal's open category, is eligible to contest the election to the Management Council under Section 27 (1)(j) of the Act.

(b) The decision of the Vice Chancellor (Appellate Authority) and the Registrar & Returning Officer to reject the nomination of Dr. Rathod for contesting election to the Management Council under Section 27 (1)(j) in the category of one Principal from the DT/NT category, on the ground that Dr. Rathod is not elected from the DT/NT category on the Senate under Section 25 (2)(1) of the Act, is not in accordance with the Law."

12. In order to meet the principals of natural justice, my office vide letter dated 22 February 2013 had also called for written explanation from Dr. M.R. Pawar, elected candidate from DT/NT category to the Management Council of the University.

13. Dr. M.R. Pawar, in his written submission dated 4.3.2013, has stated that Dr. Rathod was elected to the Senate from the general category and not from the reserved caste category. His appeal is already rejected by the Vice Chancellor of the University. Submission of nomination and its rejection cannot be the subject matter of the reference in question under Section 108 of the Act before the Chancellor. When Statute has contemplated that on the Management Council, one Principal shall be of the person belonging to the category of reservation, then how the Principal from general category could have claim over reserved category? Dr. Pawar has referred the Judgment of the Bombay High Court in 2007(3) Mh.L.J. Page 605 in which it is held that "the same person cannot be on the Senate as representative of different categories. Person cannot claim to be representative of more than one category in the scheme of constitution of Senate under Section 25 of the Act". In view of the aforesaid judgment, the appellant cannot claim himself to be the representative of the reserved category when he was elected from the General category. Further, Shri Pawar stated that the claim of Dr. Rathod for a judicial review of the decision is beyond the scope of Section 108 of the Act. Therefore, there is no merit in the petition submitted by Dr. A.S. Rathod to the Chancellor.

14. I gave an opportunity of being heard in person to Dr. A.S. Rathod and Dr. M.R. Pawar. I also called the Vice Chancellor and the Registrar of the University for the hearing. Accordingly, Dr. A.S. Rathod (petitioner), Dr. M.R. Pawar (elected candidate), Dr. Mohan Khedkar (Vice

Chancellor) and Shri Sikkchi (I/c. Registrar), Sant Gadge Baba Amravati University appeared before me on Wednesday, 13 March 2013 at 1130 hrs. at Raj Bhavan, Mumbai.

15. During the hearing, Dr. A.S. Rathod reiterated what he had stated in his petition and said that he belongs to VJ category and at the time of filling nomination, he proved his credential that he belongs to VJ category by submitting the caste certificate to the University. According to Dr. Rathod, he was not given fair opportunity for contesting the election to the Management Council and his nomination paper has been rejected by the Registrar and the Vice Chancellor of the University arbitrarily.

16. During the hearing, Dr. M.R. Pawar reiterated what he had already submitted in his written submission and said that he was elected from the VJNT category on the Senate where, out of 18 Principals, 15 principals were elected from general category, 2 from women members and one was reserved for DT/NT category. During the hearing, I also asked Dr Pawar whether he had any objection to the caste as claimed by Dr Rathod, to which he replied in negative. It is, therefore, clear that the claim of Dr Rathod, being a member of DT/NT community, is not disputed.

17. During the hearing, Dr. R.D. Sikchi, Finance & Accounts Officer and the I/c. Registrar reiterated what the Registrar had submitted in his written report and said that the person contesting the election should be elected from that category.

18. The Vice Chancellor said that the decision on the Appeal of Dr. Rathod was taken by his predecessor and he read out the said decision.

19. A bare perusal of the section 27(1)(j) of the Act reveals that "two principals of whom one principal shall be a person belonging to the category ofby rotation." Therefore, what is required is that one principal should belong to the SC/ST/DT/NT/OBC category. It nowhere mentions that such person should have been elected from a constituency reserved for SC/ST/DT/NT/OBC. Admittedly, the caste of a person does not change just because he has fought election from an open seat and won, The caste of Dr Rathod was and continues to be of DT/NT community, as admitted by Dr Pawar during the hearing. Moreover, only one out of 18 seats of Principals in the Senate is reserved for the SC/ST/DT/NT/OBC category. If the argument advanced by the Registrar and Dr Pawar is accepted and analysed, it becomes clear that only one principal who has been elected in Senate from the seat reserved for SC/ST/DT/NT/OBC, would ever be eligible to contest for the Management Council. He would thus be automatically elected unopposed as there can never be any other person eligible to contest! This would eventually mean that there will never be an election for that reserved post. This clearly is not the intention of the Act, as is evident from a plain reading of Section 27(1)(j) of the Act.

20. The Supreme Court, in the case referred above, has observed that if a person who belongs to the reserved category, contest from an open seat and wins, it would mean that he is more popular. I find no justifiable reason that in a democratic setup, a more popular person should be discriminated and held ineligible to represent his own caste.

21. After careful consideration of all the facts and records on the file, the points raised in the Petitions and oral submissions made by Dr. A.S. Rathod and Dr. M.R. Pawar, the report received

from the Registrar of the University thereon, the legal opinion of the State Law & Judiciary Department in the matter and my observations as above, I am of the opinion that the decision of the Registrar & Returning Officer and the Vice Chancellor & Appellate Authority to reject the nomination of Dr. A.S. Rathod for contesting the election to the Management Council of the University under Section 27 (1)(j) of the Act from reserved category of DT/NT solely on the ground that Dr. Rathod is not elected from the DT/NT category to the Senate is not in accordance with the Law. Consequently the election of Dr. M.R. Pawar to the Management Council is also not in accordance with the law and, therefore, the entire process of election of Dr. Pawar to the Management Council is therefore vitiated by illegalities.

22. Therefore, I, K. Sankaranarayanan, Chancellor, Sant Gadge Baba Amravati University in exercise of the powers conferred upon me under Section 108 of the Maharashtra Universities Act, 1994, hereby set aside the decision of the Registrar and Returning Officer and the Vice Chancellor and the Appellate Authority to reject the nomination of Dr. Rathod for contesting election to the Management Council and consequently declare the election of Dr. M.R. Pawar to the Management Council of the University under Section 27 (1) (j) of the Act as void ab-initio.

4. ✓
1.04.17

(K. Sankaranarayanan)
Chancellor,

Sant Gadge Baba Amravati University