



20 November, 2013

ORDER

Subject : Representation from Dr. Dilip Vairagade regarding his disqualification from the membership of the Senate by the Rashtrasant Tukdoji Maharaj Nagpur University under Section 44 (e) of the Maharashtra Universities Act, 1994.

- Reference :**
1. Letter No.VC/C-8(iii)/R/10/190 dated 18th November 2010 from the Acting Vice Chancellor, RTMNU.
 2. This office letter No.CS/NU/37/10/(7222)/4327 dated 29th November 2010 to the Secretary to Government, Higher & Technical Education Department, Mantralaya, Mumbai.
 3. Representation dated 24th October 2011 submitted by Dr. Dilip Vairagade to the Chancellor.
 4. This office letter No.CS/NU/37/11/(7447)/3699 dated 31st October 2011 to the Vice Chancellor, RTMNU.
 5. Letter No.VC/C-8(iii)/R/11/350 dated 31st December 2011 from the Vice Chancellor, RTMNU.
 6. Letter No.VC/C-8(iii)/R/12/80 dated 14th February 2012 from the Vice Chancellor, RTMNU.
 7. Letter No. DR/VCO/12/88 dated 17th February 2012 from the Deputy Registrar, RTMNU.
 8. Letter No. DR/VCO/12/91 dated 18th February 2012 from the Deputy Registrar, RTMNU.
 9. Letter No. RTMNU/R/2012/132 dated 26th March 2012 from the Registrar, RTMNU.
 10. This office letter No.CS/NU/37/11/(7447)/1124 dated 26th March 2012 to the Principal Secretary to Government, Higher & Technical Education Department, Mantralaya, Mumbai.

11. Letter No.Sankirn-2012/(115/12)/ViShi-4 dated 23rd August 2012 from the Under Secretary to Government, Higher & Technical Education Department, Mantralaya, Mumbai.
12. Letter No. RTMNU/Kus/Tanis/2012/165 dated 3rd September 2012 from the Registrar, RTMNU.
13. Letter No.VC/C-8(iii)/R/13/76 dated 8th August 2013 from the Vice Chancellor, RTMNU.
14. This office letter No.CS/NU/37/11/(7447)/3574 dated 3rd October 2013 to the Vice Chancellor, RTMNU.
15. This office letter No.CS/NU/37/11/(7447)/3575 dated 3rd October 2013 to Dr. Dilip Vairagade.

I had received the Representation dated 24.10.2011 from Dr. Dilip Vairagade, Associate Professor, Women's College of Arts and Commerce, Nagpur regarding his disqualification from the membership of the Senate by the Rashtrasant Tukdoji Maharaj Nagpur University (hereinafter referred as the "University") under Section 44 (e) of the Maharashtra Universities Act, 1994 (hereinafter referred as the "Act"). Dr. Vairagade in his representation stated that:-

2. The applicant was elected as Dean, Faculty of Commerce; Chairman of Board of Studies in Commerce; Member of Senate and Board of University Teaching & Research of the University during the year 2001 to 2006. However, he was disqualified by the University from the aforesaid posts under Section 44 (e) of the Act, on the ground that while he was examinee/student at M.A. Part-II examination in the year 1987, he was found to be involved in unfair means of copying and hence he was punished by way of disallowing him to appear in the said examination and further debarred from the next examination. Further, he had also contested the election for the Senate of the University from the Teachers' Constituency for the five years term from the year 2011 to 2016 and was elected as Member on the Senate of the University. However, the Vice Chancellor of the University vide Order dated 29.9.2011 from the Senate disqualified him under

Section 44 (e) of the Act on the aforesaid same ground. According to Dr. Vairagade, the disqualification under Section 44 (e) of the Act is for the persons who are appointed as Invigilator, Officer-in charge, Paper Setters, Moderators, Valuers, Chief of Spot Valuation Centre, Scrutinizers, Tabulators, Examination-in-Charge, Practical Examination-in-Charge, Controller of Examination and all those concerned in the matter of conduct of examination as contemplated by Section 32 of the Act and Ordinance No. IX of the University. It is attached to and relatable to conduct of examination and the person who appears in the examination or writes examination or sits in the examination does not conduct the examination. Therefore, the Code of Conduct that is applicable to the Teachers/employees is not applicable to the students. Dr. Vairagade pointed out that the Direction No. 10/2010 issued by Dr. S.N. Pathan, then Vice Chancellor of the University on 31.5.2010 which clarifies that the disqualification is attached to work as 'Teacher' and not as 'Student'. Dr. Vairagade has requested to decide his representation and reference made by the Acting Vice Chancellor under Section 108 of the Act regarding the validity of Direction No. 10/2010 and restore him as a Senate Member of the RTMNU.

3. Shri B.V. Gopala Reddy, then Acting Vice Chancellor of the University had also submitted a reference dated 18.11.2010 to me. He had stated that Dr. S.N. Pathan, the then Vice Chancellor of the University, had issued Direction No. 10/2010 dated 31.5.2010 in exercise of the powers vested in him under Section 14 (8) of the Act, restricting and limiting the scope of Section 44 (e) of the Act. The Direction No. 10 issued by the then Vice Chancellor governing the procedure of Disqualification for Membership of Authority reads as under :-

“The teacher who has been punished after conducting enquiry by the competent authority for indulging in or promoting unfair practices in the conduct of any examination of the RTMNU or any other University shall not be eligible to contest the election to the authorities of the University provided :-

- (a) The teacher is permanently debarred from being appointed as the Paper Setter, Examiner, Junior Supervisor, Senior Supervisor etc., would be a permanent disqualification.
- (b) The teacher is debarred for a specific period from being appointed as the Paper Setter, Examiner, Junior Supervisor or Senior Supervisor etc. then he/she shall not be eligible to contest the election to the authorities of the University during the period of debarment.
- (c) If the non-teaching employee is debarred from any of the examination work permanently, it would be permanent disqualification for his/her nomination to the authority of the University.
- (d) If the non-teaching employee is debarred from examination work for a specific period, then he/she shall not be eligible for being nominated to the University authority during the period of debarment.”

4. The then Acting Vice Chancellor of the University Shri B.V. Gopala Reddy stated that it could be seen from the above Direction that the disqualification is held to be operative during the period of punishment and a person who has already undergone the punishment is entitled to contest the election and become the member of authorities or bodies of the University. Similarly the scope has been restricted only to those persons who were punished in their capacity as teachers and a student who was punished earlier for misconduct in the examination has been excluded by the aforesaid Direction No. 10. According to the then Acting Vice Chancellor, the scope of Section 44 (e) of the Act has been curtailed because of the said Direction. The above Direction runs contrary to the object of Section 44 (e) of the Act. The Act does not restrict or limit the scope of punishment because any punishment anywhere and in any capacity is included under Section 44 (e) of the Act. It envisages that a person who has been punished for the misconduct in the examination shall not become the member of the authority or body of the University. Section 44 (e) of the Act provides for disqualification of a person for becoming the member of the authority or body of the University. The plain reading of the said Section makes it clear that the punishment for improper conduct in

examination in any University, for any period and in any capacity is a disqualification to such person which is perpetual in nature.

5. The then Acting Vice Chancellor of the University stated that the process for elections of authorities of the University was started and because of above Direction No. 10/2010 issued by the then Vice Chancellor, it has become difficult to implement the provisions of Section 44 (e) of the Act. According to him, as a matter of fact the Direction itself being contrary to the object and scope of Section 44(e) of the Act cannot be implemented and hence, he issued orders that the implementation of the said Direction No.10/2010 be kept in abeyance till the decision of the Chancellor. He had, therefore, requested the Chancellor to evaluate the validity of the Direction No. 10/2010.

6. I had called for a detailed report from the Vice Chancellor on the representation dated 24.10.2011 submitted by Dr. Dilip Vairagade. As reported by Dr. V.S. Sapkal, present Vice Chancellor of the University, the facts in brief are as under :-

The elections of various authorities of the University were held in the year 2001. Dr. Vairagade had submitted his nomination papers to contest the election. However, he was disqualified under Section 44 (e) of the Act for the reason that he was punished and debarred in two examinations of 1987 as he was found to be guilty of mal-practice in the conduct of examination. Dr. Vairagade had, therefore, challenged the decision of the University before the Civil Court in Regular Civil Suit No. 765/2001 and the matter was pending before the Civil Court. In view of the interim order passed by the Civil Court, Dr. Vairagade's membership on the authorities continued. Thereafter, the aforesaid RCS No. 765/2001 was dismissed by the Civil Court.

According to the present Vice Chancellor, Dr. Vairagade was appointed as Lecturer in the Women's College of Arts & Commerce in the year 1986 and when

he had appeared in M.A. examination in 1987, he was already a teacher in the said College and he was found to be guilty of unfair means in the conduct of examination. The said matter was enquired and the competent authority of the University had imposed the punishment of debarring him for two examinations for the said misconduct. The object of Section 44 (e) of the Act is to ensure that a person, whether a student or a teacher, if punished for indulging in unfair means in the conduct of examination should not be permitted to be a member of the University authorities. A student appearing in the examination is always a person participating in the conduct of examination is integral part of the examination and student punished in unfair means in the process of examinations would always be disqualified under Section 44(e) of the Act wherever the said person submits nomination paper for contesting the elections. Therefore, the reference made by Dr. Vairagade does not carry any merit.

7. In the circumstances mentioned above, I was, prima-facie, satisfied that the contention of the University appeared to be correct. Therefore, my office had sought the views of the State Government in Higher & Technical Education Department in the matter.

8. The views expressed by the Higher & Technical Education Department in the matter are as under :-

“The action taken by the Rashtrasant Tukdoji Maharaj Nagpur University with regard to disqualification of Dr. Dilip Vairagade under Section 44 (e) of the Maharashtra Universities Act, 1994 and debarring him from contesting the election of the University authorities is proper. The views of the Higher & Technical Education Department on the basis of the opinion received from the Law & Judiciary Department are as under :-

Dr. Dilip Vairagade had filed a Regular Civil Suit No. 765/2001 before the Civil Court, Nagpur in the matter and the said RCS is dismissed by the Civil Court on 22.8.2011. If the petitioner has not challenged the aforesaid order dated 22.8.2011 in the High Court, then the decision of the Civil Court will be permanent and binding to the Government”.

9. According to the Registrar of the University, the High Court of Bombay, Bench at Nagpur vide judgment dated 8.8.2012 directed the District Judge, Nagpur to decide the Appeal No. 425/2011 filed by Dr. Vairagade preferably within a period of 8 months from the date of receipt of the order.

10. In his judgement dated 3.5.2013 in the Appeal No. 425/2011 filed by Dr. Vairagade, the District Judge has stated that “Dr. Vairagade was disqualified by the Rashtrasant Tukdoji Maharaj Nagpur University vide order dated 23.3.2001 under Section 44 (e) of the Act alleging that Dr. Vairagade was punished for indulging in unfair means at examination of M.A. Part-II Economics. Submission of the University is that reliefs claimed by Dr. Vairagade relates to his membership on the various authorities of the University. This question is to be decided by or challenged before the Chancellor of the University. The specific right is created and Forum is provided also finality is given to the orders of the said authorities. Further, on reading of Section 108 of the Act, it is clear that it is open to the aggrieved plaintiff to approach the Chancellor for decision regarding his eligibility to be a member of authority of University. In such circumstances when finality is given to the decision of the Chancellor, impliedly jurisdiction of the Civil Court gets barred. The Civil Court has no jurisdiction to decide the subject raised in the Suit and it is exclusive jurisdiction of other universities, any observations about the disputed points raised in the suit by Civil Court can not be held proper. If the Court has no jurisdiction on the subject, it is not expected that the Court should proceed to decide the subject. Hence, the Appeal is dismissed.”

11. I gave an opportunity of being heard in person to Dr. Dilip Vairagade. I also called the Vice Chancellor and the Registrar of the University for the hearing. Accordingly, Dr. Dilip Vairagade, Dr. V.S. Sapkal, Vice Chancellor and Shri Gomashe, Registrar, Rashtrasant Tukdoji Maharaj Nagpur University appeared before me on Monday, 21st October 2013 at 1130 hrs. at Raj Bhavan, Mumbai.

12. During the hearing, Dr. Vairagade made oral submission that he had appeared in M.A. Part-II examination in the year 1987 and at that time he was a student and not an authority. Section 44 (e) deals with only conduct of examination which is applicable to the teachers. Further, there is provision in the Statute-655 of the Shivaji University pertaining to "Disqualification for Membership of Authority" (framed under Section 51 of the Act), in which the Shivaji University has made definition of word "Conduct" is applicable to their employees i.e. teaching and non-teaching employees under Section 44 (e) of the Act.

13. During the hearing, Dr. Vairagade also submitted the written submission which he has reiterated what he had already stated in his earlier representation.

14. During the hearing, when Dr. Vairagade was asked by me whether a student can copy in the examination, his reply was negative.

15. During the hearing, Dr. V.S. Sapkal, Vice Chancellor of the University explained that Dr. Vairagade joined the service as Lecturer in the Women's College of Arts & Commerce on 18th July 1986 and during the Winter 1987 examination he was caught copying. As per the provision, the matter was referred to the Disciplinary Action Committee. The Committee has imposed a punishment of cancellation of his winter examination and further debarring him from one more examination of the University. The University had issued Notification in 2001 in which Dr. Vairagade was disqualified under Section 44 (e) of the Act from becoming member of any authority of the University. Meanwhile, he approached the Civil Court, Nagpur on 2.5.2001. The Civil Court had given interim direction to the University to restore the position of Dr. Vairagade till final disposal of the case. Accordingly, his membership on the authorities of the University continued. In 2011 this case was decided and the Suit was dismissed with cost on 22nd August 2011. Against this judgment, he approached the District Court and in the District Court also his appeal was dismissed with cost on 3rd May 2013. The University has

made the reference to the Chancellor regarding explanation of Section 44 (e) in which it is clearly mentioned that a person shall be disqualified from being a member of any authorities of the University if he has been punished in unfair means in the conduct of examination. Section 44 (e) does not have limited scope but is wide in nature so as to cover the cases of punishment irrespective of University where the person is punished, irrespective of period of punishment and irrespective of the fact that the person so punished was a teacher or student. Meanwhile, Direction was issued by the then Vice Chancellor, Dr. S.N. Pathan, based on the decision taken by the Management Council in 2010 and the then Acting Vice Chancellor Shri V.G. Gopal Reddy has kept the said decision in abeyance and submitted a reference to the Chancellor under Section 108 of the Act stating that taking into consideration the scope of Section 44 (e), the stand taken by the University is correct.

16. In the light of the facts stated above, I have observed as under :-

Dr. Dilip Vairagade appeared for M.A. Part-II (Economics) examination held in the year 1987 and was found to be copying in unfair means. After enquiry in the matter, Dr. Vairagade was found to be guilty of indulging in unfair means in the conduct of examination by the Disciplinary Action Committee of the University. Therefore, the Competent Authority of the University disqualified him from being a member of any of the authorities of the University as contemplated under Section 44 (e) of the Act.

Section 44 (e) of the Act reads as under :-

“(e) – A person shall be disqualified for being a member of any of the authorities of University, if he has been punished for indulging in or promoting unfair practices in the conduct of any examination in any form any where.”

On perusal of above Section 44 (e) of the Act, I am of the view that Section 44 (e) has a wider scope as the words “in any form any where” are suffixed to sub

section (e) of Section 44 of the Act. The students are an integral part of the process of conduct of examination. It is therefore not correct to restrict the scope of the provision by including only the teacher or examiner etc. After all, the purpose of the provision is to keep persons of doubtful integrity, who have scant regard about the sanctity of the examination process, away from the august bodies of Universities. If a student resorts to unfair means, it is clear that he has no respect for the sanctity of the assessment system and such a person, if elected/nominated/co-opted to any body or authority, would have no moral authority to further the cause of higher education. It is not possible to make an artificial distinction between the unfair means adopted by the teachers/examiners etc. and that by the students as the end result is the same – i.e. corruption of the examination process. Therefore, the action taken by the University in disqualifying of Dr. Vairagade from the membership of various authorities of the University under Section 44 (e) of the Act is correct. In the Writ Petition No.808/2010 before the Aurangabad Bench of Bombay High Court, the Hon'ble Court has also observed that considering that the authorities of the University are entrusted with the avowed jobs and are involved in policy matters and for such decision, the University would not like to have tainted persons as member of the authorities. The Court has also observed that such disqualification is permanent in nature. Further, the reference dated 18.11.2010 made by the then Acting Vice Chancellor Shri B.V. Gopala Reddy under Section 108 of the Act for the interpretation is also answered accordingly.

17. After careful consideration of all the facts and the records on the file, the points in the representation and the reports received from the Vice Chancellor thereon as well as oral and written submissions made by Dr. Dilip Vairagade and the Vice Chancellor during the hearing and the opinion of the State Government in Higher & Technical Education Department in the matter, I am satisfied that the disqualification of Dr. Dilip Vairagade from the membership of the Senate by the

Rashtrasant Tukdoji Maharaj Nagpur University under Section 44 (e) of the Maharashtra Universities Act, 1994 was in accordance with the law.

18. Therefore, I, K. Sankaranarayanan, Chancellor, Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur, in exercise of the powers conferred upon me under Section 108 of the Maharashtra Universities Act, 1994 hereby dispose off the representation of Dr. Dilip Vairagade accordingly.

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(K. Sankaranarayanan)
Chancellor,
Rashtrasant Tukdoji Maharaj Nagpur University.