

S. C. JAMIR
GOVERNOR OF MAHARASHTRA



RAJ BHAVAN
MUMBAI 400 035

22 October 2009.

To,

The Management Council
of RTM Nagpur University
(through Vice-Chancellor of the University and
Chairman of the Management Council)
RTM Nagpur University,
Nagpur - 440 001

Subject: Regarding the decisions of the Management Council to give University ground on rent to political party and relax the condition 11 of the Contract of Service of the Vice-Chancellor.

I have received letters dated 22 January 2009 and 24 January 2009 from Dr. S. N. Pathan, Vice-Chancellor, RTM Nagpur University (hereafter referred as "the University") informing that:-

- i) the Management Council at its meeting held on 19 January 2009 has resolved to accept the request of Shri Nitin Gadkari, President, Bhartiya Janta Party, Maharashtra State to hold "National Executive Meeting" of BJP at the University ground from 6 to 8 February 2009 and levy the rent of Rs. 25,000/- per day.
- ii) the Management Council at its meeting held on 24 January 2009 has resolved to relax Condition 11 of the Agreement (Service Contract) executed by the Vice-Chancellor after his appointment as Vice-Chancellor of the University which was prohibiting the Vice-Chancellor to allow the University buildings and premises for the political activities.

2) From the letters of the Vice-Chancellor, the facts in brief are as under :-

- i) Shri Nitin Gadkari, President, Bhartiya Janta Party, Maharashtra State vide his letter dated 31 December 2008 had requested the University to avail the University ground on rent for 3 days from 6 to 8 February 2009 to hold "National Executive Meeting" of BJP on the said ground.
- ii) The University took the legal opinion from its Counsel on whether the University can give its ground on rent to which he had opined that the University can give its buildings / grounds on rent.
- iii) On the basis of legal opinion, the Management Council at its meeting held on 19 January 2009 resolved to accept the request of Shri Nitin Gadkari and give its University ground on rent of Rs. 25,000/- per day to BJP for holding the "National Executive Meeting" from 6 to 8 February 2009.
- iv) The Vice-Chancellor took the opinion of the Advocate General of Maharashtra on 22 January 2009. The Advocate General has opined that the Vice-Chancellor is ordinarily bound and liable to carry out the directions of the Management Council as per the mandate of Section 14 (5) of the Act. No provision of the Act or rules or regulations is shown to him, which specially prohibits the Council from giving their premises to a political party for the meetings. In the present case, Management Council can waive the terms of clause 11 of terms of employment as agreed between the University and the Vice-Chancellor, which prohibit him from permitting the use of University buildings or its campus by any political party. This would clear the way in as much as he would be implementing the decision of the Management Council and would not be giving permission on his own accord and would not breach the terms of his Agreement with an University.
- v) The Vice-Chancellor of the University referred back the matter on the following grounds to the Management Council by calling an emergent meeting held on 24 January 2009 for reconsideration of the matter after taking the legal advice from the Advocate General:-
 - a. the decision of Management Council in its meeting held on 19 January 2009 to give University ground to BJP for its "National Executive Meeting" on the request of Shri Nitin Gadkari is in contravention of condition 11 of Agreement

(Service Contract) executed by the University with the Vice-Chancellor.

- b. The condition 11 of the Agreement prohibits the Vice-Chancellor to give University premises to the political parties and exception cannot be made to give the premises on rent to the political parties.
 - c. If the Vice-Chancellor violates the condition 11 of the Agreement, he will be liable for action under Section 12 (13)(d-1) of the Maharashtra Universities Act, 1994, [hereinafter referred as "the Act"].
- vi) The Management Council at its meeting held on 24 January 2009 resolved that :-
- a. The opinion given by the Advocate General is valid. And the said opinion has been given to the University by clarifying the interpretations of the provisions in the Act.
 - b. The para 3 of the opinion is very clear and in that it has been clarified that there is no provision in the Act or rules or regulations to prohibit the Management Council to give the University premises to the political party. The Management Council has taken note of the same.
 - c. In para 3, the Advocate General has clarified that in the present case, the Management Council can relax the condition 11 in the Agreement between the University and the Vice-Chancellor.
 - d. Therefore now, the Management Council by the Resolution clarifies that as it is clear from the opinion of the Advocate General that as per the Section 28 (d) of the Act, the Management Council has all the powers to give the University premises on rent and as per the opinion of the Advocate General it is being resolved to relax the condition 11 of the Agreement in the present case and as the condition has been relaxed it has been unanimously resolved to give the University premises through the Vice-Chancellor on rent to the political parties.
 - e. As clarified by the Advocate General in para 3 of the opinion, the Vice-Chancellor is implementing the aforesaid decision of the Management Council and therefore the Management Council clearly resolves that the Vice-Chancellor has not violated the Agreement by giving the University ground on rent to the political party.

- f. By clarifying that the Management Council has accepted the opinion of the Advocate General in para 3 and as per the said opinion the condition 11 of the Agreement has been relaxed and if the Vice-Chancellor gives the University premises on rent to the political parties, it would not mean that the Vice-Chancellor has violated the Agreement and on these basis the Management Council resolved that the University premises be given to Shri Nitin Gadkari, President , BJP on rent for "National Executive Meeting" of the BJP.
- g. The Management Council also resolved that eventhough the Vice-Chancellor has mentioned that the matter has been referred back the earlier resolution for reconsideration on technical difficulty under Section 14 (6) of the Act, considering the aforesaid resolution of the Management Council on the basis of the opinion of the Advocate General and the said technical difficulty has been removed and therefore the Section 14 (6) of the Act is irrelevant in the present case.

After the resolutions were passed, the Vice-Chancellor who is Chairman of the Management Council opined that as per condition 17 of the Agreement, it is necessary to take the approval of the Chancellor to the resolution of approval of the Management Council to relax the condition 11 of the Agreement. And decision of the Chancellor will be final in the present case. However, all the members of the Management Council expressed the views that there is no need to take the said action.

3) The Section 11 (3) of the Act, reads as under :-

"(3) Save as otherwise provided the emoluments and terms and conditions of services of the Vice-Chancellor and Pro- Vice Chancellor shall be determined by the State Government from time to time."

4) As per Section 28 (d) of the Act, the Management Council shall hold, control and arrange for administration of assets and properties of the University.

5) As per Section 28 (f) of the Act, the Management Council can enter into, vary, carry out and cancel contracts on behalf of the University.

6) The Clauses 11, 16 and 17 of the Agreement (Service Contract) executed by the Vice-Chancellor and Pro- Vice Chancellor of the University are as under :-

(11) The Vice-Chancellor shall not use or permit the use of the buildings and campus of the University or any part thereof, and the facilities of the University or any of them, for or by any political party or for the propagation, dissemination of political , religious or sectarian ideas, beliefs or views except in so far as it may be necessary for a leader or any student to explain any particular doctrine, without bias for or against , in the context of social sciences or in an academic journal or as part of a thesis to be offered for a Doctorate degree of the University , the subject thereof has been accepted by the University, without their expression any opinion thereon.

(16) Notwithstanding anything contained in Clause (1) hereof, in the event of the Chancellor being satisfied that the Vice-Chancellor has committed a breach of any of the terms and condition hereof, or has failed to duly carry out any regulations made or deemed to have made under it, or to have acted in a manner prejudicial to the interest of the University or has conducted himself in a manner unbecoming of a Vice-Chancellor, the Chancellor may terminate the appointment as Vice-Chancellor or take such other action as he thinks fit, after giving him a reasonable opportunity to show cause why his appointment should not be terminated or such action should not be taken.

(17) If any doubt or question arises with regard to any matter under this Agreement, the decision of the Chancellor shall be final.”

7) Since as mentioned earlier the terms and conditions of the service of the Vice-Chancellor are decided by the State Government under Section 11(3) of the Act and the Management Council has power to enter into, vary, carry out and cancel the contract on behalf of the University under Section 28(f) of the Act, the State Government in Higher & Technical Education Department was requested to give its opinion in consultation with the Advocate General whether the Management Council under Section 28(f) of the Act can vary the service conditions of the Vice-Chancellor, among other issues. Accordingly, the Advocate General has given opinion on 5th October 2009 in which he has opined that there is no provision under the Act which permits the Management Council to vary or

relax the service conditions of the Vice-Chancellor. Although the service contract is executed within the University and the Vice-Chancellor, its conditions are fixed by the State Government. Since the contract is between the University and the Vice-Chancellor without consent of the State Government, the terms and service conditions can not be varied or relaxed.

8) After the scrutiny of the report of the Vice-Chancellor, facts on record, State Government's views and the opinion given by the Advocate General to the State Government, I have found that :-

a) The conditions of service of the Vice-Chancellor shall be such as may be determined by the State Government from time to time under Section 11(3) of the Act. The conditions of service are determined by the State Government which includes the power of the State Government to alter and amend the conditions of service. There is no provision under the Act which permits the Management Council to vary or relax the service conditions of the Vice-Chancellor. When the service conditions are to be determined by the State Government under the Act, the Management Council is not competent to alter or amend the service conditions of the Vice-Chancellor as determined by the State Government. If the Management Council does so, it would not be consistent with the provisions of the Act. At the most, the Management Council, if it is of the view that it is necessary to alter or to amend the service conditions of the Vice-Chancellor, the Management Council can make resolution to suggest or recommend to the State Government which is the competent to determine the service conditions of the Vice-Chancellor to amend or alter the service conditions of the Vice-Chancellor and only after the State Government considers and approves the said amendments under section 11(3) of the Act, it becomes legally valid and enforceable.

b) The Section 28 of the Act prescribes the powers and duties of the Management Council. The Section 28(f) provides for the Management Council to enter, vary, carry out and cancel the contracts on behalf of the University. However, this does not construe that the service conditions that are determined by the State Government under Section 11(3) can be subject to powers of the Management Council under Section 28(f). The Section 28(f) applies only to those contracts, the contents of which can be determined by the University and cannot cover those contracts whose contents are determined by the State Government under the Act as is the case of the service conditions of the Vice-Chancellor under Section 11(3) of the Act. Therefore, the act of the Management Council to relax the service condition 11 of the contract signed by the Vice-Chancellor with the University is not in accordance with the law.

c) The provision in Condition 11 in the Service Contract has been to prevent not only the Vice-Chancellors but also Universities from permitting the use of premises of the Universities for the political activities of any political party. The provisions of Section 42(1) of the Act, which prevents the Students Council from engaging the political activities, are also aimed at the similar objective. Any political activity of a political party is not in the best interest of the University. Moreover, if one party is permitted to use the premises/land then the Universities can not refuse such permission to other political parties. Such political activities may spoil the atmosphere of the University and have adverse effect on the quality of the education.

9) I am therefore prima facie of the view that the decision of the Management Council to accept the request of BJP to hold its "National Executive Meeting" at University ground from 6 to 8 February 2009 is not in the best interest of the University and also its decision to relax

conditions of service of the Vice-Chancellor as prescribed under Clause 11 of the Agreement (Service Contract) for the purpose is not in accordance with the law and as such this is a fit case to invoke Section 9 (4) of the Act.

10) Therefore in exercise of the powers conferred upon me under Section 9 (4) of the Maharashtra Universities Act 1994, I hereby call upon you, the Management Council of RTM Nagpur University, Nagpur to show cause within fifteen days from the receipt of the Notice, why the resolutions passed by the Management Council at its meetings held on 19 January 2009 and 24 January 2009 should not be treated as not proper. If you fail to submit your explanation within the stipulated time, it is presumed that you have no explanation to offer.


(S. C. Jamir)
Chancellor
RTM Nagpur University.