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Ms. Gauri Venkatraman, Advocate for Petitioner.

Ms. K.S. Joshi, In-charge Government Pleader for Respondent Nos.1, 2 and 7.

Mr. S.P. Dharmadhikari, Senior Advocate, assisted by Mr. B.G. Kulkarni, Advocate, for Respondent Nos.3 and 4.

Ms. Nisha Burange, Advocate for Respondent No.5.

Mr. N.P. Lambat, Advocate for Respondent No.6.  
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**CORAM : NITIN JAMDAR AND  
ANIL L. PANSARE, JJ.**

**DATE : 19 APRIL 2022.**

**JUDGMENT (Per Nitin Jamdar, J.) :**

Rule in all the Petitions, returnable forthwith. Taken up for final disposal by consent of parties.

2. This group of petitions pertain to Manoharbai Patel Institute of Engineering and Technology, Gondia. This College is established and run by the Gondia Education Society, Gondia. A dispute has arisen between Management and its Employees. The Employees are demanding payment of their dues, and the Management intends to close down the College. The Rashtrasant Tukdoji Maharaj Nagpur University, The All India Council of Technical Education and the Department of Higher and Technical Education of the State of Maharashtra-the statutory Authorities have not granted permission for closure. A petition is filed by the

Management challenging the order of the University refusing to grant closure. Two petitions are filed by the Employees for a direction to the statutory Authorities not to grant closure. Eight petitions are filed by the Employees for payment of their dues. Since all these petitions are interlinked, they were heard together and are being disposed of by this common judgment.

3. The Gondia Education Society is registered under the Societies Registration Act, 1860 and is also a public trust registered under the Maharashtra Public Trusts Act, 1950. Manoharbai Patel Institute of Engineering and Technology was established in 1983-84 after obtaining permissions from the University, State Government and AICTE. The College is granted permission on the permanent no grant basis. The College has six branches of Engineering, i.e. undergraduate courses, Bachelor of Engineering Courses in Civil Engineering, Electronics and Communication Engineering, Computer Technology, Electronics Engineering, Information Technology and Mechanical Engineering. As per the norms prescribed by the statutory Authorities, the College has one Principal, four Professors, twenty Associate Professors, twenty-nine Assistant Professors and seventy non-teaching staff members.

4. We have referred to Manoharbai Patel Institute of Engineering and Technology, Gondia, as the 'College'. Gondia Education Society, Gondia as the 'Management'. The Rashtrasant Tukdoji Maharaj Nagpur University as

the 'University'. The All India Council of Technical Education as the 'AICTE'. Department of Higher and Technical Education of the State of Maharashtra as the 'State'. The teaching staff and, in some cases, non-teaching staff are Petitioners and, in some cases, are Respondents. They are referred to as the 'Employees'.

5. We have heard Mr. S.P. Dharmadhikari, learned Senior Advocate for the Management and the College, Mr. R.S. Parsodkar and Ms. Gauri Venkatraman, learned Advocates for the Employees, Mr. N.P. Lambat, a learned Advocate for the All India Institute for Technical Education, Mr. Anup Gilda, a learned Advocate for the University and Ms. K.S. Joshi, learned In-charge Government Pleader for the State Government.

6. The learned Counsel for the parties agree that the group of petitions concerning closure should be taken up first for consideration, and thereafter the group of petitions filed by the Employees in respect of their dues as the decision in the group concerning closure would have material bearing on the claim regarding dues.

7. There are three writ petitions in the first group relating to closure.

7.1 Writ Petition No.5134/2018 is filed by 95 staff members of the College for quashing and setting aside the action of the Management and College seeking closure of the College, direction to the statutory Authorities not to accord any approval to the closure of the College, direction to the College to admit students in the First Year Engineering Course for the year 2018-19 and for an injunction not to terminate services of the teaching and non-teaching staff. This petition was filed on 9 August 2018, and notice was issued on 14 August 2018. By interim order, it was directed that services of the Employees shall not be dispensed with.

7.2 Writ Petition No.6890/2018 is filed by the Management and the College with the State, AICTE, University, and a representative of Employees as the Respondents. The Charity Commissioner is joined as party respondent. This petition challenges the report dated 2 June 2018 of the Visiting Committee of the University and the communication dated 13 August 2018 issued by the Vice-Chancellor of the University informing the Management that its proposal to close down the College from the academic year 2018-19 is not accepted. The Management seeks a direction that the University and concerned Respondents be directed to grant permission for closure of the College.

7.3. Writ Petition No.3384/2019 is filed by 81 teaching staff members of the College for a direction that the Management and College should seek approval for the academic session 2019-20 and AICTE should

grant annual approval for First-Year degree course in Engineering and that Management and College should pay them regular salary from July 2018.

8. In the Second group of petitions, most of which are filed prior to the closure group, the relief sought is regarding arrears and payment of salary.

8.1. Writ Petition No.7395/2017 is filed by 14 Employees working in the College seeking a direction that the Management and College should release the amounts due and payable to the Petitioners as per 6<sup>th</sup> Pay Commission's recommendations with increased dearness allowance, Naxalite allowance as per Government Resolution dated 7 December 2004 and others along with interest. This petition was filed on 6 September 2017, and notice was issued to the Respondents on 29 November 2017.

8.2. Writ Petition No.7580/2017 was filed on 24 November 2017 by Employees-teaching staff for a direction to the Management and College to pay him pending dues similarly as prayed in Writ Petition No.7395/2017. Notice was issued in this petition on 29 November 2017.

8.3 Writ Petition No.745/2018 was filed by 15 teaching staff members of the College on 16 December 2017 for the same reliefs as in Writ Petition No.7395/2017, i.e. payment of their dues. Notice was issued in this petition on 7 February 2018.

8.4 Writ Petition No.3878/2018 was filed on 5 April 2018 by ten non-teaching Employees of the College for a direction to the Management and College to pay their dues as per 6<sup>th</sup> Pay Commission's recommendations, increased dearness allowance and allowances as applicable as per Government Resolution on the same lines as prayed for in Writ Petition No.7395/2017 filed by the Employees. Notice was issued in this petition on 4 July 2018.

8.5 Writ Petition No.8204/2018 was filed on 13 August 2018 by eight staff members with identical reliefs as Writ Petition Nos.745/2018 and 7395/2017, i.e. direction to the Management and College to pay the Petitioners' pending dues. Notice was issued in this petition on 4 December 2018, and it was directed to be heard along with other petitions.

8.6 Writ Petition No.3799/2019 is filed by ten teaching Employees of the College for a direction to the Management and College that they should pay the petitioners' dues with identical prayers as in Writ Petition No.7395/2017. Notice was issued in this petition on 25 June 2019.

8.7 Writ Petition No.1506/2021 was filed by three teaching staff of the College on 25 March 2021 with similar prayers as in other petitions filed by the teaching staff regarding arrears. In addition, it is prayed that the statutory Authorities should not grant permission to the Management to

close down the College without clearing all the dues of the Petitioners, and the Petitioners should be paid their proportionate share from the amount of Rs.5 crores, which was deposited pursuant to the interim order passed in the group of matters. Notice was issued in this petition on 30 March 2021.

8.8 Writ Petition No.1978/2021 was filed by teaching staff on 10 June 2021 for a prayer that Management and College be directed to pay arrears of pay scale, dearness allowance, etc., similarly as prayed for in other petitions filed by the teaching and non-teaching staff. Notice was issued in this petition on 16 June 2021.

9. Thus, the petitions filed by the teaching and non-teaching staff, the Employees for the direction that their dues as per the 6<sup>th</sup> Pay Commission, increased dearness allowance, and other allowances be paid were pending before the writ petition was filed by the Management and College challenging refusal to grant permission to close down the College. After that, some petitions were filed by the teaching staff to direct the statutory Authorities not to grant closure and direct the Management and College to pay them a salary and other dues.

10. For convenience, the discussion is separated into two parts, but there is some overlap between the two parts. Part I is regarding the closure, and Part II is regarding the claim for arrears and salary.

Part I

11. The Management passed a Resolution on 17 January 2018 that the College needs to be closed. The Management submitted a proposal to AICTE on 10 February 2018 after paying the prescribed fees. The Management also paid prescribed fees to the University on 20 February 2018. The University, on 20 February 2018, appointed a Committee of three members for inspection of the College in light of the proposal for closure. In terms of the proposal for progressive closure, the first-year admissions for the academic year 2018-19 were announced as zero. The Committee appointed by the University visited the College on 30 May 2018. The Committee submitted its report to the University. The reasons in the reports were briefly that the admissions in the College were satisfactory. This is only the Engineering College in Gondia District. The Financial position of the society is enough to sustain the current situation. Court cases have been filed against the Institute by the Staff members, which are pending. The Committee opined that the closure may not be permitted. The copy of the Committee's report was not forwarded to the Management. The Management wrote to the Vice-Chancellor of the University on 3 August 2018, which later, according to the Petitioner, was personally submitted on 7 August 2018. The Vice-Chancellor of the University accepted the report of the visiting committee, and the proposal of the Management to progressively close the College was disallowed, and



communication to that effect was issued on 13 August 2018. The State Government and AICTE did not grant permission for closure.

12. In its writ petition, challenging the decision to refuse closure, the Management has pleaded, briefs as follows. The expenses of the College, including payment of teaching and non-teaching staff, are exclusively out of the amount received by the College from the fees of the students. Compared to all other Colleges in Vidarbha, the Management has provided the best service benefits to its Employees. The State Government had constituted a Shikshan Shulk Samiti for deciding fee structure. It has worked out a theoretical fee structure but in reality, the situation was different, which substantially impacted the revenue available to the Management. The 6<sup>th</sup> Pay Commission's recommendations from 1 June 2011 for teaching and non-teaching staff increased the financial burden. The increase in dearness allowance was also substantial. The Management has never shirked making payments to its Employees. However, the increase in dearness allowance and implementation of the 6<sup>th</sup> Pay Commission substantially affected its financial position. Even though its financial position was not good, the petition filed by the non-teaching staff bearing No.6016/2013 regarding arrears of 6<sup>th</sup> Pay Commission and dearness allowance compromised was arrived at, which was taken on record by order dated 25 July 2017. By this compromise, the dues of non-teaching Employees were paid. From the year 2014-15 onwards, the strength of students declined. First, it was 12% deficit in 2014-15 and then 29% deficit

in 2015-16, 32% deficit in 2016-17 and 38% in 2017-18. The State Government had not paid fees of the students belonging to the reserved category, which amounted to Rs.9,59,20,825/- and liabilities of the Management exceeding the reserve fund. The Management thus had no other option to close the College and the action of the Vice-Chancellor and the University in denying closure was arbitrary and illegal. It is contended that thus the management is constrained to approach the Court to challenge the order, the report of the Committee of the University and the communication issued by the Vice-Chancellor refusing to grant permission for closure dated 13 August 2018.

13. The AICTE filed its reply on 12 December 2018. The gist of the reply is as follows. The AICTE is empowered under Section 10(k) of the All India Council for Technical Education Act, 1987 to grant approval for technical Institutions and the introduction of new courses and programmes. AICTE has framed Regulations for grant of approval for starting new technical institutions and introduction of courses and programmes and has also evolved a handbook for the approval process. The College was approved in 1993, and approval has been issued up to the academic year 2017-18 for undergraduate courses in Engineering and Technology. The Management had applied for closure of the College under Chapter I of the admission process of handbook 2018-19. The same was rejected due to the non-submission of a no-objection certificate from the State Government and affiliating University. The final rejection letter was

issued to the Management and College regarding the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2016. The factum of rejection and reasons were uploaded on its website.

14. The State Authorities filed their reply on 20 March 2019. It is stated that University has not issued any no-objection certificate for closure and, therefore, the Directorate of Technical Education has not submitted the application of the Management to close the College to the State Government for onward transmission to the AICTE.

15. The University filed a reply on 25 July 2019. The reply of the University in short is as follows. The expert Committee visited the College on 30 May 2018 and conducted an enquiry as per Clause 1(3)(b) of Direction No.55/2016 issued by the University. The Expert Committee verified all the documents provided by the Employees of the College. There are dues of the Employees as against the Management and that Management of the College has to clear dues of the Employees and after the closure, it will become extremely difficult for the Employees to get cleared their dues. The University had jurisdiction to look into the said issue, and the Committee has rightly mentioned the fact in its report dated 2 June 2018. It was stated that the College had given incorrect information to the Committee that no case was filed by the stakeholders before 30 May 2018. However, it was revealed that the petitions were filed by the

Employees of the Management and College on 7 September 2017, 20 November 2017 and 6 January 2018, which are pending. The Management and College attempted to mislead the Expert Committee. The Vice-Chancellor considered the matter under Section 12(7) of the Maharashtra Public Universities Act, 2016 (Universities Act), and after considering the report of the Expert Committee, the Vice-Chancellor took a decision on behalf of the Academic Council on 27 June 2018 giving reasons. The Vice-Chancellor exercised his emergency power under Section 12(7) of the Universities Act as the admission process was to commence in July 2018 (incorrectly mentioned as July 2019 as orally clarified by the learned Counsel for the University). There was no possibility of a meeting of the Academic Council to be held before that period. The allegations of Petitioners that the Vice-Chancellor mechanically accepted the report are totally incorrect. The report of the Expert Committee was given to the Principal of the College, but inadvertently acknowledgement of the report remained to be obtained. The order refusing the closure is legal and proper for the reasons stated therein.

16. Respondent Employees filed replies and in their Petition stated in short as follows. The College is one of the best Engineering Colleges in Vidarbha, which has good intake admissions of students. The teaching staff filed a writ petition seeking their legitimate dues, which the Management and College avoided paying, and because of this, out of vengeance, the Management stopped admission of students to bring it to

zero intake. When the Committee visited, the Committee discussed the matter with the Management, staff members and Principal. It is false to say that no opportunity was given by the Committee to the Management and College. The Expert Committee has noted out that the Management suppressed the fact of the pending petitions filed by the Employees. Despite closure being refused, the Management did not start admissions and deliberately and illegally made the intake of students to zero from 2018 to 2019. Since the fee structure is fixed by the Shikshan Shulk Samiti, which had fixed the fees looking at the viability, the contention of the Management that it has no source of income is false. The Management runs another Engineering College at Shahapur, Bhandara, where there are a sufficient number of students. It was stated that Management also runs two Engineering Colleges and forty other Colleges in Commerce, Science, Pharmacy, Education, etc.

17. An additional affidavit was filed by the Employees stating that the Management also runs another Institution, i.e. Manoharbai Institute of Engineering and Technology at Shahapur, District Bhandara, which are both Engineering Colleges are unaided and impart degrees in Engineering Technology. It was stated that at Shahapur College, 70% of teaching and non-teaching staff is temporary, and the staff of the present College can easily be accommodated there. Yet with malafide intentions, the Management wants to close down the present College. It was stated that College has 50 acres of land having a three-storeyed building. It runs a

military School, a Pharmacy degree College and a Pharmacy diploma course in the vicinity. It was also stated that the College at Shahapur is situated on 62 acres of land. Reference is made to the affidavit filed by the Secretary of the Management to the University dated 22 February 2018, stating that liability arising out of the closure of the College at Gondia would be solely of the Management, and it will be the liability of the Management to pay arrears of salary of teaching and non-teaching staff.

18. The Management filed an additional affidavit in its petition to place the management's financial position on record. It is stated in the additional affidavit that the AICTE included the College in no admission category in the year 2018-19, and from 3 April 2021, there is no student in the College, resulting in automatic closure. A chart of deficiency in fees from 2017 to 2021 was placed on record. Again financial details of the deficit were stated. Reference was made to the petitions filed by the Employees demanding their dues. It was stated that entitlement would be at the most three years prior to filing the petition. The details of the workload in the College were stated. Additional replies running into 44 pages were filed. In the additional reply, it was stated that the Management proposed that the 6<sup>th</sup> Pay Commission pay arrears and outstanding dues should be determined by applying the procedure adopted by the State Government and from three years prior to the dates of filing the petitions up to 30 April 2021, liability was Rs.13,49,11,775/-. It was stated that Petitioner No.1 in Writ Petition No.3878/2018 had accepted the balance

amount. It was stated that closure of the College had been practically achieved from 30 April 2021, and the University be directed to issue a no-objection certificate, and after that, AICTE would be directed. It was stated that the Management would pay the dues three years prior to filing the petitions after liquidating the immovable properties of the Management. The Management also filed an affidavit on 13 December 2020.

19. When this group of petitions came up for consideration, a statement was made by the learned Counsel for the Management on 18 February 2021 that to show bona fides, the Management will deposit an amount of Rs.5 crores. After that, by order dated 8 March 2021, instead of a deposit, the earlier order was modified that the amount to be proportionately distributed would be transferred to the Accounts of the teaching and non-teaching staff after deducting the TDS as applicable.

20. In March 2021, the Management filed the affidavit stating that it has distributed the amount of Rs.5 crores proportionately. It was stated that after deducting these amounts and considering the amount of salary already paid for 45 days, liability will be Rs.17,85,99,698/-. The Management stated that it has properties situated at Mouza Kudwa in Gondia in residential area with plotable area of 3627.75 square metres with ready reckoner valuation of the said land is Rs.614/- per sq. ft. and value would be around Rs.2000/- per sq. ft., and it is expected to fetch Rs.7.5

crores. The Management also stated about certain lands (place not mentioned in the affidavit) admeasuring 90,417 sq. ft., which may generate around Rs.8.5 crores. It was stated that it would take around 18 months for transaction of plots.

21. The Management stated that the total dues payable to the Employees, considering the claim from three years prior to filing the petitions, would be Rs.23,97,89,348/-. It was stated that teaching and non-teaching staff are not working from 2019-20 and 2020-21 and, therefore, Management cannot be held responsible for payment of full salary for the teaching and non-teaching staff for the years 2019-20 and 2020-21.

22. The Employees filed their response to this additional affidavit denying that their claim is to be restricted to three years prior to filing of the petitions. They stated that Employees are entitled to arrears from the date of appointments and not from three years prior to filing of their petitions, which they have filed for recovery of their dues. The Employees contended that in spite of the fact that closure was refused in June 2018, the Management has illegally reduced work and, therefore, it cannot take benefit of its own illegalities and must pay the amount.

23. Again, the Management filed an additional affidavit in light of their statement regarding payment and closure from 30 April 2021.



24. The Employees in their further additional affidavit stated that the College campus itself is worth Rs.200 crores having open spaces, landscaped area and three-storeyed buildings, having other projects like Pharmacy, Military and International School. The Management has various other properties and trustees are immensely wealthy and, therefore, contention of the Management about financial distress should not be accepted. Again affidavits were filed by the Management on 9 August 2021 and by the Employees on 28 October 2021, making assertions regarding the exact quantum of claim of the Employees, which was denied by the Management by filing reply.

25. During arguments, the Management tendered an affidavit that salary payment of teaching and non-teaching staff up to June 2019 has been cleared by the Management.

26. Before we proceed to analyse the rival contentions on the aspect of closure, the statutory provision in that regard will have to be noticed.

27. All India Council for Technical Education Act, 1987 establishes a Council under Section 2(b). The Act defines Technical Education and Technical Institutions. Section 3 deals with the establishment of the Council. Section 10 of the AICTE Act lays down functions of the Council under which the Council is empowered and duty-bound to take such steps as it may deem fit for ensuring coordinated and integrated development of

technical education. The Council lays down norms and standards for grant of approval for starting new technical institutions and introducing new courses or programmes as per Section 10(k) of the Act. It is empowered to inspect the Institution under Section 11 of the Act. AICTE has framed regulations for grant of approval for technical education, titled 'All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2016'. The AICTE publishes a handbook for approval process for the academic year. Clause 1.6 of the Handbook deals with the closure of Institution. The AICTE approved existing Institution seeking for progressive or complete closure has to apply on the AICTE Web-Portal as per norms. In case of progressive closure, closure at first level is allowed in the current academic year. However, subsequent years of working shall lapse at the end of each academic year progressively. The procedure for progressive or complete closure is prescribed in Clause 1.6.2. There is a Scrutiny Committee, which will verify the correctness of the documents submitted. The Committee's report is placed before the Regional Committee and closure is effected only on receipt of approval by the Council.

28. The AICTE Handbook 2018-19 states that documents to be submitted for approval of progressive or complete closure are:- no-objection certificate of the concerned State Government and no-objection certificate from affiliating university with a clear mention about alternate arrangement to be made to take care of education of existing students studying in the

institution. The list of documents includes a resolution by the trust approving closure of the institution, latest salary sheets giving details, such as scale of pay, gross pay, Provident Fund deduction and TDS for teaching and non-teaching staff and faculty students ratio. Apart from the status of the students, the status of faculty staff of the institution and liabilities thereupon has to be given. An affidavit has to be submitted by the applicant duly sworn stating that the applicant has no liability regarding faculty members, staff, etc. Details of pending court cases and serious charges against the institution has to be provided.

29. Chapter X of the Maharashtra Public Universities Act, 2016 deals with permission, affiliation and recognition of the Institutions. Section 121 which deals with closure of affiliated Colleges and recognized Institutions reads as under :

“121. Closure of affiliated college or recognized institutions :

*(1) No management of an affiliated college or recognized institution shall be allowed to close down the affiliated college or recognized institution without prior permission of the State Government.*

*(2) The management desirous of closing down the college or recognized institution shall apply to the university on or before the first day of August of the preceding year, stating fully the grounds for closure, and pointing out the assets in the form of buildings and equipment, their original cost, the prevailing market value and the grants so far received by it either from the*

University Grants Commission, the State Government or from public funding agencies.

(3) On receipt of such an application, the Academic Council shall cause to make inquiries as it may deem fit, to assess and determine whether the affiliated college or recognized institution be permitted to effect the closure. The Academic Council may examine whether the closure should be avoided by transferring it to another management.

(4) If the Academic Council decides to recommend the closure, it shall prepare and submit to the Management Council, a report on the extent of damages or compensation to be recovered from the management for the assets created utilizing the funds provided by the University Grants Commission, the State Government or other public funding agencies.

(5) The Academic Council shall, with prior concurrence of the Management Council and approval of the State Government, decide whether the affiliated college or recognized institution be permitted the closure.

(6) The university may transfer the college or a recognized institution to another management with prior approval of the State Government and after following the procedure prescribed in that behalf.

(7) The procedure to effect the closure shall be in phases, to ensure that the students already admitted to the affiliated college or recognized institution are not affected, and that the first year shall be closed first and no new admissions shall be effected. The procedure to phase out the closure shall be such as may be prescribed.

(8) The procedure for closure of affiliated colleges, or recognized institutions, referred to in sub-sections (1) to (7)

*shall, mutatis-mutandis apply in the case of closure of faculties, courses of studies or satellite centres.*

(emphasis supplied)

Thus, the Management desirous of closing down the College has to apply to the University on or before the first day of August of the preceding year. The application must contain the grounds for closure, the details of assets in the form of buildings and equipment, their original cost, the prevailing market value and the grants so far received by it either from the University Grants Commission, the State Government or from public funding agencies. It is this application, which is processed further.

30. The norms for closure, change of site/location, change of Management, etc. have been issued by the Respondent University under Direction No.55/2016. These norms listed in Appendix I are as follows :

*“I. Closure of the Course/College or recognised Institution :-*

*(1) No management of college or recognised institution shall be allowed to close down the course/college or recognised institution without prior permission of the State Government;*

*(2) The management desirous of closing down the course/college or recognised institution shall apply to the University on or before the first day of August of the preceding year with prescribed fees as per Annexure-I stating fully the grounds for closure, and pointing out the assets in the form of buildings and equipment's, their original cost, the prevailing*

*market value and the grants so far received by it either from the University Grants Commission, the State Government or from public funding agencies;*

*(3) On receipt of such an application, the Academic Council shall cause to make enquiries as it may deem fit by appointing an Expert Committee, to assess and determine whether the college or recognised institution be permitted to affect the closure.*

*The Academic Council may examine, whether the closure should be avoided by providing necessary assistance or taking over of the college or institution by the university or transferring it to another management by appointing an Expert Committee.”*

31. With this brief overview of the statutory provisions governing the procedure of closure, we turn to the facts of the case.

32. As stated earlier, the AICTE and State Government have declined to grant no-objection certificate to the Management and the College. AICTE has placed on record letter of rejection, which is not placed on record by the Management in the petition. The final letter of rejection states that no-objection certificate by the State Government is not presented. Also no-objection certificate by the University is not presented and, therefore, final letter of rejection is issued. There is no specific challenge in the prayers that the orders of AICTE and State Government be set aside though a prayer is made that they be directed to issue permission for closure of the Institution.

33. One of the staff members had applied under Right to Information Act as to status of the Management's application for closure to the State Government and the Joint Director, Directorate of Technical Education, State of Maharashtra informed him that since the University did not grant no-objection certificate, the proposal was not forwarded to the AICTE. The response under the Right to Information Act also furnished a report of the Committee appointed by the Directorate of Technical Education, Nagpur. Specific remarks of the Committee were that there are Court cases filed by the faculty staff members and the salary is not paid since June 2017. The overall observations and remarks of Regional Office signed by the Joint Director were :

***“Overall Observations and Remarks of the Regional Office:-***  
*(1) Total admitted students in the A.Y. 2018-19 in numbers in all six branches. (2) There are three court cases filed against the Institution. (3) No certificate yet to be received from RTM Nagpur University, Nagpur for closure of the Institution. (4) Average position of last three years for the first year is 70.33%. (5) There are 57 (4 on lien) UGC approved teaching faculties and 70 supporting staff working in the Institution (6) Salary of staff not paid since June 2017. Recommended subject to obtain the no-objection certificate from RTM Nagpur University, Nagpur for complete closure of the Institution and accommodation of all students & settlement dues of working staffs as per affidavit submitted by the Institution.*

(emphasis supplied)

34. Both AICTE and State have taken a stand that for them to proceed further, permission from the University is necessary and, therefore, the main challenge by the Management and College is to the order of the Vice-Chancellor of the University refusing to grant the closure.

35. The grounds for rejection the Management's prayer for closure of the College given by the Committee and the Vice-Chancellor are as under :

- a) *The admissions in the college are satisfactory.*
- b) *This is only the Engineering College in Gondia District.*
- c) *Financial position of the society is enough to sustain the current situation.*
- d) *Salary delay and related problems have been aroused due to non-released of scholarship fund pending with the State Government.*
- e) *Court cases has been filed against the institute by the Staff members, which are pending till date.*
- f) *With reference to provision in para 1(3)(B)(4) of Annexure of Direction No.55 of 2016, the court cases filed by staff is pending against the college. The matter is sub judice in the court of law the committee is in the opinion that the closure may not be permitted."*

36. The broad main contentions advanced by the Counsel for Management regarding the legality of the order passed by the Vice-Chancellor are as follows. Under Section 121 of the Maharashtra Public



Universities Act, 2016 and Direction No.55/2016, framed by the University, the power to decide the proposal for closure exclusively vests with the Academic Council of the University. Admittedly, the proposal of the Management and College was never placed before the Academic Council. The Vice-Chancellor can act on behalf of the Academic Council as per Section 12(3) of the Act, but *interalia* only upon the existence of an extraordinary situation. No reason is given in the order passed by the Vice-Chancellor as to why such an extraordinary power was being exercised. Further, in the reply filed by the University, the explanation given for the exercise of this power does not fall within the ambit laid down under Section 12(3) of the Act. Therefore, the power exercised by the Vice-Chancellor is bad in law in passing the impugned order. A copy of the report of the Committee, which formed the basis of the impugned order passed by the Vice-Chancellor, was never supplied to the Management and College and considering civil consequences that ensue, such action on the part of the University is violative of principles of natural justice. The stand taken that copy of the report was supplied is without any documentary proof and cannot be accepted. Each of the reasons given by the Committee and mechanically accepted by the Vice-Chancellor would show that they are imaginary and perverse and not borne from the record. On the other hand, conclusions have been rendered without examining the core issue of the financial viability of the Management and College. The stipulation regarding cases filed against the Institution will have to be read along with other phrases in the said provisions, such as charge sheets, cases of ragging,

etc. The cases filed by the staff do not fall within the ambit of this stipulation. Since the aspect of financial position was not considered, it has not been considered that the cases were the result of the poor financial condition of the College. Clause B(4) of Direction No.55/2016 cannot be considered as closure cannot be granted unless all dues are settled. As regards direction to the University, AICTE and State as prayed for in the petition to grant closure, it has to be seen that closure has practically been achieved as of 30 April 2021 in view of the zero intake capacity order dated 30 April 2018 filed by the AICTE. The learned Senior Counsel for the Management furnished a chart showing details, which according to Management, depicted financial crisis. It was contended that statements in the charts are not being disputed. It is also not disputed that there is a fall in students and a shortfall, and there is also no allegation of mismanagement and maladministration. That the College is the only Engineering College in Gondia District cannot be held against the Management as it is the right of the Management to closure. It was contended that neither Vice-Chancellor nor the Committee had seen and examined the accounts and liabilities. It is contended that it is correct that all dues of scholarship have been received, and the amount has been disbursed. However, the bad financial position persisted. The Committee has observed that students' strength was satisfactory without any basis. There is no expert input, and Vice-Chancellor has mechanically accepted the report. The Respondents' action in not granting the closure is perverse and arbitrary, and the Petitioner's prayer to close the College should be granted.

37. At the outset, reference needs to be made to the procedure under Section 121(2) of the Universities Act. It states that Management desirous of closing down the College or recognised Institution has to apply to the University, setting out the grounds for closure and the financial position assets etc. Upon receipt of such an application, Academic Council is required to make an enquiry. Since we did not find any application made by the Management or the College to the University on record of these petitions, we had queried with the learned Counsel regarding the same. It was accepted that there is no specific independent application made to the University. In the petition, there is no specific assertion on this aspect. In paragraph 20 of the petition, there is a reference to the proposal made to the AICTE and only a reference that, similarly, the Management paid fees of Rs.45,000/- as per the requirement to the University. There is a reference to a compliance report for progressive closure of the Institution dated 15 February 2018. It states that with reference to public notice of AICTE, the compliance report for progressive closure of the Institution is submitted to the University. This is only a covering letter addressed to the Assistant Registrar, College Section of the University. What is the exact information that was placed before the University is not clarified by the Management and College during arguments.

38. To a query to the learned Counsel for the AICTE and University as to whether a specific application under Section 121(2) of the Universities Act is contemplated or all that is required is forwarding letter

annexing report submitted to the AICTE, the learned Counsel for the AICTE and University have categorically stated that application under Section 121(2) of the Universities Act is required. The learned Counsel for the Management had to accept that there is no such application made under Section 121(2) of the Universities Act nor placed before us what was placed before the University. A faint oral argument was sought to be advanced that a copy of the proposal given to the AICTE submitted to the University should be considered as an application under Section 121(2) of the Universities Act. No provision of the law was shown that this is the procedure followed. Forwarding a report in February 2018 to the University to ascertain the factum of closure will not aid the Management when its prayer is to quash the order refusing closure and to direct closure based on the said application. Apart from this position, the Employees had filed petitions, i.e. Writ Petition Nos.5134/2018 and 3384/2019, opposing the closure.

39. The Division Bench of this Court in the case of *Rajendra G. Kulkarni and others vs. State of Maharashtra and others (Writ Petition No.5363/2015, decided on 12 January 2018)*, was considering the provisions of Section 35(2) of the Maharashtra State Board of Technical Education Act, 1997, which is *pari materia* with Section 121 of the Universities Act. Construing this provision, the Division Bench emphasised on making an application listing out of assets, original cost, prevailing market value, grant received and public funding Agencies. Thereupon the

authority has to assess the issue. Therefore, it is only after the application is made for closure under Section 121 of the University Act that duty is cast on the University to process on the same.

40. Further, as per Section 121(2) of the Universities Act, the application to the University by the Management desirous of closing down the College has been made before the first day of August of the preceding year. This requirement is stated in Direction No.55/2016 issued by the University. Thus even assuming that a copy of the proposal made to the AICTE was placed before the University, Section 121(2) of the Universities Act mandates that the application should be made on 1 August of the preceding year. The application of the Management to the University is of 8 February 2018. According to the Management, it intended to effect prospective closure of the College from 2018-2019. It is not shown before us by the Management how making an application (assuming it to be an application) in February 2018 for effecting closure from the academic year 2018-19 can be considered a lawful application under Section 121(2) of the Universities Act, which mandates that it should have been made on 1 August of the preceding year.

41. We are unable to appreciate this conduct of the Management in not filing a separate application under Section 121(2) of the Universities Act and, if filed, withholding this material from the Court. Therefore, we find a fundamental flaw in the arguments of the Management, which is

sought to be glossed over, regarding the compliance of procedure. It has not been satisfactorily demonstrated that the Management had made an application to the University as specifically required under Section 121(2) of the Universities Act. The issue as to whether the application for closure made under Section 121 of the Universities Act by the Management is lawful or otherwise is of importance. It is clear that there was no such lawful application as envisaged under Section 121(2) of the Universities Act neither it was in the format prescribed with necessary details nor within the time mandated by the said provision.

42. As regards the argument of the Management regarding its financial condition as a ground for closure, a distinction has to be made regarding the scope of scrutiny in writ jurisdiction in two situations. First, when the challenge is to an order after the applicant has disclosed all the necessary facts regarding financial worth to the authorities. The second, when the applicant does not disclose all the necessary facts and seeks to advance them for the first time in writ jurisdiction. In the second case, such as the present one, the Writ Court is not expected to hold a civil trial, but will proceed on broad probabilities of the matter.

43. We now turn to the argument of financial unviability as a ground for the closure of the College. As emphasised earlier, a detailed argument regarding financial viability with documentation, etc., is made first time in the writ petition. The resolution passed by the Management on

17 January 2018 is annexed to the petition. In the petition, it is stated how the number of students dropped, College depended only on receipt of fees, how State Government did not pay huge scholarships of the students belonging to the backward class and how the increase in salaries of the staff placed a huge burden on the College. Therefore, it was only an alternative for the Management to close down the College by liquidating the assets and accordingly, a Resolution was passed by the Management. However, the resolution passed by the Management on 17 January 2018, which is the basis of the closure, does not refer to any of the facts sought to be urged before us. The Resolution states that the Management, in its executive meeting on 17 January 2018, has resolved that Manoharbai Patel Institute of Engineering and Technology shall apply for progressive closure, and the Management will allocate required funds for meeting liability on account of closure. After that, no application is placed on record in furtherance of the statement.

44. The affidavit of the Secretary of the Management Mr. Rajendra Jain regarding progressive closure simply states that the Management has applied for progressive closure and liabilities out of closure would be solely of the Management, and the Management shall allocate required funds for meeting liabilities. This affidavit is not annexed to the petition, but brought on record by the university's affidavit-in-reply. This affidavit of the Secretary ought to have been placed on record and is being suppressed by the Management. Neither the Resolution nor affidavit states that the

reason for progressive closure is complete financial unviability, and that even Employees' dues cannot be paid. On the other hand, it is asserted that the Trust will bear all the liabilities. If that be the sand, it is the financial worth of the trust that will be material.

45. However, the case of the Management proceeds as if the College is a standalone self-financed institution. Only the accounts pertaining to the College regarding the fees received from the students and scholarship amounts are projected on one side and the salaries of Employees and other expenses on the other hand. There is no reference whatsoever to the financial worth of the Management both in the Resolution dated 17 January 2018 and the affidavit of the Secretary dated 22 February 2018. A clear statement is made that as regards financial aspect is concerned, it will be the responsibility of the Management. The Petitioner Employee in Writ Petition No.1506/2021 has filed an affidavit, wherein it is stated that the Management is one of the wealthiest Managements in the State of Maharashtra, which runs several educational institutes.

46. The Employees have argued before us that the Management as defined under Section 2(37) of the Universities Act also include the trustees or the managing or the governing body, by whatever name called and, therefore, if the financial inability is being projected as a ground, then it shall also include the trustees or the managing or governing body. The



financial worth of its trustees, as sought to be shown from documents in the public domain, is not controverted by the Management during the arguments. The Management has only argued that it is registered under Section 8 of the Societies Registration Act, 1860 and enforcement of a judgment against the Society cannot be against the properties of the trustees and against the only property of the Society and, therefore, the aspect of properties of the trustees is not material. In the facts of this case, we find no merit in this contention. In the backdrop of the conduct of the Management, we are considering the argument of financial distress of the Management and in writ jurisdiction this factor cannot be considered as irrelevant. Employees have filed an affidavit stating that an affidavit was filed in the year 2015 by one of the Trustees/members of Governing Council of the Management filed before the Returning Officer for an election disclosing his wealth. It is stated that this trustee shows a declaration of assets worth Rs.1,43,66,72,179/-. The Employees have sought to contend by placing additional material on record that the managing trustee of the Management leads a lavish lifestyle and has several assets, and has spent extravagant amounts on family weddings. It is stated that the ground of the financial crunch is merely a facade, and the writ court should take note of the same. Apart from the legal aspects, the anguish of the Employees-teachers, who have not been paid their salary for the last 48 months in pointing out this disparity cannot be totally brushed aside.

47. The following factual position put-forth by the Employees has not been disputed by the Management i.e. the Management runs another

Engineering College at Shahapur, Bhandara, where there are sufficient number of students. It was stated that Management also runs two Engineering Colleges and forty other Colleges in Commerce, Science, Pharmacy, Education, etc. The College at the complex of the College has 50 acres of land with three-storeyed building. There is a Military School, Pharmacy Degree College and Pharmacy Diploma Course in the vicinity. The College at Sahapur is situated on 62 acres of land. The College campus itself is worth more than Rs.100 crores.

48. In writ jurisdiction, when we are considering financial worth as a ground advanced for progressive closure and the inability to pay the dues of the staff members prior to applying for closure, the aspects pointed out by the Employees cannot be stated as irrelevant. Ultimately the Management and College have invoked equity jurisdiction of the Court, and they are bound to satisfy the conscience of the Court as regards their bona fides. Section 121(2) of the Universities Act requires pointing out the assets, their cost, market value and grants received from the Universities Grants Commission, State Government or Public Funding Agencies. This is not an academic exercise, but it is towards finding out what prejudice would be caused if the closure is permitted.

49. The Management was obliged under law to pay the dues to its Employees, and it is for it to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay

the revised pay scale. That the Management runs various other colleges and has substantial landed properties, and its trustees have declared immense wealth are all factors that would be relevant in equity jurisdiction of this Court not to accept the argument of impossibility put forth by the Management. We are not convinced to record a conclusive finding that it is impossible for the Management to perform its statutory obligation to pay the legitimate dues of its Employees. Therefore, we do not find that the Management has demonstrated that the ultimate conclusion of the University (Vice-Chancellor) that the Management is not financially unviable, is illegal or arbitrary.

50. The Legislature has not accepted an unfettered right of a management to close down an institution at will. The closure of an institution impacts the education/studies and staff employed therein. Under Section 71 of the Universities Act, the university is empowered to frame statutes on various matters. Under Section 71(20), Statute can be framed prescribing qualifications, recruitment, terms of office and conditions of service of Employees and Officers of the affiliated Colleges. Under the Approval Process Handbook of AICTE, details regarding the status of faculty and staff and liabilities thereupon are also to be submitted. Under Section 108(1)(j) of the Universities Act, as a condition of affiliation and recognition, the Management has to give an undertaking that the College or Institution shall not be closed without the university's permission. All India Council for Technical Education (Grant of Approvals for Technical

Institutions) Regulations, 2016 mandates under Clause 4.16 submission of an affidavit in the format as given in the Approval Process Handbook at the time of applying both for grant of approval for technical Institutions and closure emphasising on assets and liabilities. These aspects are relevant to ascertain the impact of the closure on the Institution by providing conditions for taking permission for progressive closure from the statutory Authority. Since State Government, AICTE and University are vitally concerned with the aspect of education; the Legislature contemplates their permission.

51. It is in this context that Section 121(3) of the Universities Act states that the Academic Council will make enquiries as it deems fit to assess and determine whether the affiliated College or recognised Institute will be permitted to effect the closure. It cannot be argued that the fate of the Employees upon closure is irrelevant criteria while examining the aspect of closure. In the affidavit filed by the University, it is stated that as provided under Direction No.55/2016, one of the important requirements for granting permission for closure is that the Management has to clear the Employees' dues. Therefore, the University has taken a stand that unless the dues of the teaching and non-teaching staff, which they have raised through petitions and representations, are paid, the prayer of the Management and College for closure cannot be accepted. The said stand of the University cannot be considered an illegal stand. The learned Counsel for the University, AICTE and the State Government has also made it clear that

the main ground of refusal for closure is the non-payment of Employees' dues.

52. The Employees have placed on record a Circular issued by the Department of Technical Education dated 20 September 1995 addressed to all unaided technical Colleges that Colleges shall pay its teaching and non-teaching staff all the pay and allowances, bonus, travelling allowance, medical facility, etc. as directed by the State Government. The Circular also states that this is a condition for grant of approval to start technical courses.

53. When the Expert Committee visited the College on 30 May 2018, it discussed the matter with the Principal, staff members and members of the Management. It was reiterated that the Management is ready to make all payments of statutory requirements as per prevailing Government norms. The Committee noted that as per the specific statement made by the Management, no pending Court cases are filed against the Institution by a stakeholder. The Employees immediately submitted a representation to the Expert Committee on 30 May 2018 that, as per Appendix I of the conditions for closure under Ordinance No.55/2016, it is mandatory that no court cases are pending against the Institution/College and there are four writ petitions, i.e. Writ Petition Nos.7395/2017, 7580/2017, 745/2018, and 8147/2018, filed by the staff members are pending in respect of their dues. It was stated that liabilities arising out of progressive closure as regards absorption of faculty, even

though there is another Engineering College of the same Management, were neither discussed nor communicated. The Employees stated that liabilities out of retrenchment had not been discussed or communicated, or settled. Nothing is discussed or communicated about liabilities arising out of progressive closure, such as compensation, gratuity, etc. Several months' salary remains to be paid to the staff. The staff stated that more than 1356 students are enrolled. The staff members complained that this is not a natural closure due to paucity of funds, but it is a malafide move to kill a healthy Institution, and the funds received from fees have been siphoned off. The Employees pointed out that more than ten students have secured merit positions on the merit list of the University. They also pointed out that the College was the only Engineering College for the students desirous of pursuing the course in Engineering and Technology in this rural and Naxalite affected area of Maharashtra. Therefore, during the inspection of the Committee, the Management and College attempted to mislead the Committee by making a positive assertion that no cases are pending filed by the stakeholders.

54. It is not the case of the Management that the Management produced all the financial details before the Expert Committee, and they were brushed aside. There is no positive statement to that effect. The Management should have produced all the necessary documents before the Committee, and the Management seems to be under the impression that all they have to do is express the desire to close the Institution and thereafter

entire burden is on the University to demonstrate why closure should not be granted. Such an impression is contrary to the provisions of law.

55. Appendix I B(4) of Ordinance No.55/2016 that the Expert Committee should verify the pending court cases and serious charges, violation of norms and pending ragging cases against the College and Institute. During the oral arguments, Management sought to contend that it was not necessary to mention the cases of the Employees as the phrase pending cases will have to be read in conjunction with other categories appearing in this clause. There is no merit in this contention. This contention is an after-thought to get over obvious suppression by the Management. The phrase “pending court cases” would mean those cases which will have relevance for the decision to be taken regarding the application for closure. Cases filed by the Employees regarding pending dues are relevant for consideration of the grant of closure.

56. The positive assertion of the Management that there are no pending cases, which the Employees immediately corrected, was an attempt to mislead the Expert Committee. When writ jurisdiction is invoked, such conduct cannot be countenanced. The Employees have placed it before us by filing their additional affidavits that the Management runs another Engineering College. They have one common roster. These facts are not denied. It has not been satisfactorily demonstrated that it is impossible for

the Management and College to either absorb the existing staff members to another Engineering College or that they were unable to pay the dues.

57. The Management then has sought to contend that the Vice-Chancellor could not have exercised emergency power under Section 12(7) of the Universities Act, and it should have been the decision of the Academic Council. It is contended that the decision under Section 12(1) of the Universities Act is of the Academic Council, and it is the collective informed decision and, therefore, it could not have been taken by one Authority, i.e. Vice-Chancellor. It is contended that Section 12(7) of the Universities Act empowers that if there are reasonable grounds for Vice-Chancellor to believe that there is an emergency, which requires immediate action, then he shall take such actions as necessary. But there is no such immediate emergency. Even though the Management asked for the exercise of this power, the Vice-Chancellor should not have exercised power, and the action does not become legal as jurisdiction cannot be conferred by consent. The Management places reliance on the decision of the Division Bench of this Court in the case of *Shri Ramdeobaba Sarvajanik Samiti, Nagpur and another vs. Rashtrasant Tukdoji Maharaj Nagpur University and another*<sup>1</sup> and *Pravin Balisingh Raghuwanshi (Dr.) vs. State of Maharashtra and others*<sup>2</sup>

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1 2011 (1) Mh.L.J. 226

2 2010 (6) Mh.L.J. 531



58. Before we examine the legal position, the conduct of the Management itself will have to be noted as to whether it can raise this ground. On 3 August 2018, through its Secretary, the Management wrote to the Vice-Chancellor directly that the Management had submitted a proposal for issuance of a no-objection certificate for closure, and no communication has been received for the last two months, and no-objection certificate has been issued. It is stated that delay in action is detrimental to the Management. The Management called upon the Vice-Chancellor to take up the issue with top priority and take urgent steps for issuing the no-objection certificate in the matter; otherwise, the Management will have to approach the Court of law for the inaction of the University. In light of this specific request made directly to the Vice-Chancellor to exercise his emergency power, the matter was taken up before the Vice-Chancellor under Section 12(7) of the Universities Act. The request of the Management to appoint an Expert Committee was placed before the Vice-Chancellor under Section 12(7) of the Universities Act. It was stated that the matter then was moved by the Office of the University. It was stated that the issue falls within the powers of the Academic Council. The reason that was given was that meeting of the Academic Council was not likely immediately and, therefore, it was on the Management's own proposal that the Vice-Chancellor exercise power under Section 12(7) of the Universities Act and appoint an Expert Committee. On 16 April 2018, the College called upon the University to urgently constitute a Committee. On 11 May 2018, the University communicated

to the Management and College that their application had been received and Enquiry Committee was being appointed, and an order to that effect was passed by the Vice-Chancellor under Section 12(7) of the Universities Act. Therefore, the Management was fully aware of the exercise of power by the Vice-Chancellor. Thereafter when the Enquiry Committee visited the College, a representative of the Management appeared and did not raise any objection.

59. The decisions cited by the Management do not apply to the facts of the present case. In the case of *Shri Ramdeobaba Sarvajanic Samiti* (supra), the Petitioners therein had approached the Court for direction to exercise the emergency power to grant approval to the syllabus of the Courts of M.Tech, and the Division Bench observed that though the powers are conferred on the Vice-Chancellor to take action in an emergency, whether an emergency exists or not is a matter to be decided by the Vice-Chancellor and there is a wide latitude conferred on the Vice-Chancellor. In the case of *Pravin Balisingh Raghuwanshi* (supra), the learned Single Judge of this Court, in the facts of the case, found that there was no such emergency in the case. In none of these facts, such as present exist, whereupon Petitioner's insistence the Vice-Chancellor exercised power, and when the exercise of power ultimately went against the Petitioner, the same was challenged.

60. In light of the conduct of the Management to take up the matter on an emergency basis threatening legal action, the principle of akin

to estoppel applies in the facts of the present case. It is true that that jurisdiction cannot be conferred by consent of the parties, but the High Court under Article 226 of the Constitution of India can decline to interfere if it is satisfied that an objection relating to a defect of procedure or jurisdiction which could be and ought to be raised at the earliest opportunity was not so raised by a party. The party's conduct belatedly making a grievance about the jurisdiction of the authority disentitles it to invoke the Writ jurisdiction of the High Court. This principle is not based on acquiescence conferring jurisdiction but because High Court will be justified in refusing to entertain the petition of a person who remained on the fence, allowing the authority to pass an order and, if it has gone against him, it turn round to challenge its competence. In such a case, it can be inferred that the party making the grievance about the competence of the authority acted unfairly in not objecting at the very outset; it would also be reasonable to assume that he did so deliberately hoping that the final order to be passed by the authority would be in his favour. This principle has been explained in detail by the Division Bench of Karnataka High Court in the case of *C.Y. Parthasarathy vs. Syndicate of the Mysore University*.<sup>3</sup> Here the conduct of Management is even worse. It actively urged the Vice-chancellor to use the power to bypass the procedure under Section 121 of the University Act, and having seen that the endeavour has failed, is now raising all the arguments of competence, lack of authority etc. According to us by its conduct the Management is disentitled to urge these grounds. Even otherwise, we have found no merit in the same, as according to the

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3 I.L.R. 94 Karnataka 2603

Management itself there existed an emergency. Thus, we conclude that the objection of that the Vice-Chancellor could not have exercised power under Section 12(7) of the Universities Act is completely without merit and, therefore, cannot be accepted.

61. Furthermore, it is placed on record by the University by filing an additional affidavit on 24 March 2022 that in the Academic Council meeting of 10 October 2018, the action of the Vice-Chancellor in appointing the Expert Committee and rejecting the proposal for closure was approved.

62. The next argument of the Management is that copy of the Expert Committee's report was not given to the Management and, therefore, there is a breach of principles of natural justice. We have seen the rival pleadings. The University has pleaded on oath that the copy of the report was supplied to the representative sent by the Principal of the College in the second week of June 2018, but the acknowledgement remained to be obtained. In the Petition, the Management has stated that after issuance of the impugned letter dated 13 August 2018, the report was received by the Management, but it has not given particulars as to on which date this report was received. Having filed thirty-nine pages petition with various details, this particular fact has been avoided to be mentioned. The Management has also not pleaded that it placed an official endorsement of its receipt when it received the report. Therefore it cannot be said to be

improbable that the University gave the report of the committee in June 2018, as asserted on oath. This specific pleading is not categorically denied by specific counter pleadings. There is thus no reason why the statement made on oath by the University that report was given to the Management in July 2018 be not accepted. The learned Counsel for the University has correctly pointed out that it is not the case of the Management that the report was asked for and refused. On the other hand, the request was made to take an urgent decision. There is, therefore, no merit in the contention that the copy of the report was not given, and consequently, there was no breach of principles of natural justice in the facts of the case on this count.

63. Next argument of the Management based on breach of principles of natural justice is that it was obligatory on the part of the Vice-Chancellor to give an opportunity to the Management before accepting the report of the Expert Committee and issuing the impugned communication as civil consequences ensued from the said decision. It was contended that since various facts formed the basis of the decision, had the opportunity been given; these facts would have been controverted. The Management relied upon the decision of the Hon'ble Supreme Court in *Kanachur Islamic Education Trust (R) vs. Union of India and another*<sup>4</sup>, more particularly paragraphs 20 and 21 therein to contend that a fair hearing, which requires the affected party should be given the opportunity to meet the case, has to be given and every executive authority empowered

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4 (2017) 15 SCC 702

to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

64. The grounds for rejection given in the report and the impugned order were as follows. The admissions in the college are satisfactory, and the College is only the engineering college in Gondia District. The Financial position of the Management is enough to sustain the current situation. Court cases have been filed against the institute by the Staff members, which are pending till date.

65. Regarding the aspect of being the only Engineering College in Gondia District, it is a factual assertion that is not denied. Therefore, the grant of opportunity to controvert this assertion is academic. Regarding salary-related problems, due to the non-release of the scholarship fund, it is the case of the Management itself that it could not pay salary due to the non-release of the scholarship fund pending with the State Government. Therefore, there is nothing that the Management could state concerning this aspect of the matter. Regarding the fall in the strength of students is concerned, the Management in its petition has annexed a chart in para 28. The chart shows that there is no rapid deterioration in the number. Various students were coming to the College still.

66. About the contention of the Management that the failure of the Vice-chancellor to give the opportunity to show the financial position of the Management resulted in the breach of principles of natural justice, it is not disclosed what the Management had placed before the University as it is duty-bound to do under Section 121(2) of the Universities Act. The law does not contemplate that there is no application under Section 121 of the Universities Act or that it would give no details at all and the entire obligation is on the part of the University to find out the financial position on its own to ascertain whether the Management would sustain the current situation. Through the application, the applicant is expected to put forth the current situation. No position of law is pointed out to us without placing any particulars in the application under Section 121(2) of the Universities Act, a hearing is to be given by the Vice-Chancellor on the report of the Expert Committee. In this decision of the Hon'ble Supreme court in *Kanachur Islamic Education Trust* (supra) relied upon by the Management, the provision under consideration, i.e. Section 10-A(4) of Indian Medical Council Act, 1956, has been reproduced. That Section contains a specific stipulation that reasonable opportunity needs to be given. There is no such specific provision that governs the facts of the case.

67. It is not the case of the Management that the Management produced all the financial details before the Expert Committee, and they were brushed aside. There is no positive statement to that effect. The Management should have produced all the necessary documents before the

Committee, and the Management seems to be under the impression that all they have to do is express the desire to close the Institution and thereafter entire burden is on the University to demonstrate why closure should not be granted. Such an impression is contrary to the provisions of law.

68. The factum of the pending court cases, as stated earlier, was attempted to be suppressed, and it is only upon the Employees pointing out in their representation that the same was disclosed. In spite of this fact, Management seeks to contend that they should be heard even though Management sought to conceal the fact and not give them an opportunity vitiates the impugned order. The ground concerning Direction No.55/2016 is a legal argument. The main rejection based on the pendency of Court cases and non-settlement of dues was not a matter of debate, but it was accepted by the Management itself. Therefore, in the facts of the case, there is no grave prejudice that resulted from the Vice-Chancellor not giving the hearing.

69. Furthermore, under Section 121(2) of the Universities Act, it is the Academic Council that causes to make an enquiry. After Academic Council decides to recommend closure, it is supposed to make a report, and the Academic Council, with the prior concurrence of the Management Council and State Government, takes a decision on whether Institution is permitted to be closed. Section 121 of the Universities Act provides a complete procedure regarding the closure of affiliated Colleges and



recognized Institutions. In this case, not only the Management did not submit an application as contemplated under Section 121(2), but called upon Vice-Chancellor to exercise emergency power under Section 12(7) of the Universities Act. It is at the instance of the Management itself that the procedure under Section 121 was sought to be deviated from. The language of Section 121 does not specify any hearing either before the Academic Council or before the Management Council. On the other hand, it contemplates specific applications with details. Having called upon the Vice-Chancellor to exercise power under Section 12(7) by appointing an Expert Committee, various legal arguments are sought to be advanced only after the decision had gone against the Management. It is clear from the report that the Expert Committee had deliberations with the Management and staff members, which fact is not denied by the Management. The representation of the staff members and their grievances regarding pending cases is also not denied to be made known to the Management during deliberations. Therefore, this is not the case where the Management was totally unaware as to what would be the facts against it and, therefore, the argument made regarding the need to give a hearing are an after-thought. As the Hon'ble Supreme Court has reiterated in various decisions that principles of natural justice are not formulae, and they have to be applied in light of the facts of each case. In the facts of this case, we do not find that there is breach of principles of natural justice resulting to prejudice to the Management.

70. Similarly, we find no merit in the Management's contention that the order passed by the Vice-Chancellor is cryptic and bereft of any reasons and, therefore, the same needs to be quashed and set aside. In the decision of *National Highways Authority of India and others vs. Madhukar Kumar and others*<sup>5</sup> relied upon by the University, the Supreme Court has observed that it is one thing to say that there should be reasons which persuade the authority to take a particular decision and a different thing to find that the reasons must be incorporated in a decision. It was held that if the law provides for a duty to record reasons in writing, undoubtedly, it must be followed, and it would amount to a violation of the Statute if it were not followed. Even if there is no duty to record reasons or support order with reasons, there would be, and there must be, a reason for every decision. The Supreme Court held that in certain situations, the reason for a particular decision might be gleaned from the pleadings of the authority when the matter is tested in a court. From the materials, including the file notings, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the court may conclude that there was sufficient justification, and the mere absence of reasons would not be sufficient to invalidate the action of the public authority. The Vice-Chancellor was not expected to write a judgment as to why closure is not being given effect to. Six grounds in the impugned order are clear and cogent, and there is no ambiguity. The Management itself has understood the purport of these observations of the Vice-Chancellor. It has dealt with these observations in the petition and

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5 2021 SCC OnLine 791

during the oral arguments. This is not the case where Management is at a complete loss to understand why closure is not being granted. It is not substantiated before us that under Section 121, read with Section 12(7) of the Universities Act, the Vice-Chancellor uses quasi-judicial powers.

71. The Management relied upon the decision of the Hon'ble Supreme Court in the case of *Khetri Vikas Samiti vs. Director, College Education, Government of Rajasthan and others* Civil Appeal No.4806/2019, decided on 9 May 2019 to contend that unless and until the decision of the Management was found to be malafide with some oblique reason, it was not open to interfere with the decision and when an institution has taken a decision to abolish the post on the ground of financial constraints, the balance-sheet and entire correspondence had to be considered. It was contended that Vice-Chancellor and Expert Committee did not consider any of these aspects and neither recorded any finding that the action was malafide. As pointed out by the learned Counsel for the University, the decision of *Khetri Vikas Samiti* (supra) arose from the order passed by the Educational Institution Tribunal and, after that, the order passed by the High Court. In this case, the educational institute intended to abolish the posts. The judgment mentions that the decision of the Educational Institution Tribunal to abolish the post was not under challenge, and the Supreme Court held in the absence of challenge, it was not open for the Tribunal or High Court to hold that abolition of the post was bad in law. The judgment also mentions that in this case, there was no

Rule that required prior permission for the abolition of the post. Therefore, the decision in the case of *Khetri Vikas Samiti* (supra) will not aid the argument of the Management.

72. The Management next contended that there is a *de facto* closure as State Government and AICTE have already implemented the decision of prospective closure. There is no merit in this assertion. Both State and AICTE have refuted this assertion. The AICTE has stated that no-objection was specifically refused. Once there is a specific rejection by the AICTE, and a similar stand is taken by the State Government, the Management cannot argue that there is a closure by implication.

73. Thus, the Management and the College have attempted to bypass the process under Section 121 of the Universities Act by insisting the Vice-Chancellor exercise emergency power and have raised challenges to the legality of the order when the outcome has gone against them. The Management has not placed the exact material before the University on record. Management has substantial properties, and it runs various colleges, the persons behind the Management are not shown to be living in penury. The University has made it clear that the application for closure of the Management was refused primarily for non-payment of staff dues. In totality of the circumstances, we do not find that stand of the University to refuse permission for closure is perverse, arbitrary or that no authority in the right mind would have come to such a conclusion. We are not

considering an appeal from the order of closure. Exercise of writ jurisdiction, which is rooted in equity, is not automatic and judicial conscience must be satisfied that if the Court does not intervene, there will be a failure of justice. In this case, no intervention is necessary. That being the position, we refuse to entertain the challenge of the Management to the order of closure in writ jurisdiction.

74. In light of our conclusion that Writ Petition No.6890/2018 deserves to be dismissed, as made clear by the learned Counsel for the Employees-Petitioners in Writ Petition Nos.5134/2018 and 3384/2019, the challenge in those Petitions does not survive, and these two petitions will have, therefore, to be disposed of.

## Part II

75. This leads us to the next limb of controversy, i.e. the group of petitions filed by the Employees in respect of their dues. These are Writ Petition Nos.7395/2017, 7580/2017, 745/2018, 3878/2018, 8204/2018, 3799/2019, 1506/2021 and 1978/2021.

76. The controversy in these petitions is narrow. Though the affidavits and counter-affidavits give various figures in respect of the monetary entitlement of the Employees, we do not need to burden the record with analysis as certain basic positions are accepted. The Management and College have not disputed the entitlement of the teaching

and non-teaching staff as per the monetary claim put forth in their petitions. The main stand of the Management is that Employees can claim the financial benefits only three years before filing their petitions and not before that. The Management further states that for payment of amounts arrived at, it intends to sell its immovable properties. It has approached the Charity Commissioner and would require some time. The Management has suggested various permutations and combinations to resolve the dispute. The Employees do not accept the solutions and, therefore, they cannot be forced to accept the same.

77. Regarding the 6th Pay Commission, Employees have relied upon Government Resolution dated 20 August 2010 making 6<sup>th</sup> Pay Commission's benefits applicable to the staff of the Management and college staff. The Employees have based their entitlement regarding Naxalite allowance on the Government Resolution date 7 December 2004. Regarding Dearness Allowance's claim, the Employees have relied upon various decisions from 26 October 2010 till 1 September 2016. According to the Employees, as on the date of filing petitions, they were entitled to a 132% dearness allowance, but the same was not paid, and only 72% was being paid.

78. In Writ Petition No.6890/2018 reply-affidavit is filed by the Management stating as under :

*“06. It is submitted that the Management does not dispute the fact that the Management is liable to pay lawful claims of teaching staff, outstanding salary of non-teaching staff, Gratuity of teaching staff and gratuity of non-teaching staff. The teaching staff in the above mentioned petitions is claiming arrears of D.A. and arrears of 6<sup>th</sup> Pay Commission with effect from 01.01.2006. The petitions have been filed in the year 2017, 2018 and 2019 and before that at no point of time any grievance or claim was put forth by the petitioners. Hence the claim with effect from 01.01.2006 is not admissible.”*

This stand is reiterated during the arguments by the Management. Therefore, the only question to be considered by us in this group is whether the Employees are entitled to their dues, i.e. pay as per the 6<sup>th</sup> Pay Commission, revised dearness allowance, Naxalite allowance from the date of their appointment or three years from the date of filing the petitions. The Management has relied upon the following decisions in support of its contention that the arrears of salary would be payable from three years before filing the petition and not before. These are *Union of India and others vs. Tarsem Singh*<sup>6</sup>, *Shiv Dass vs. Union of India and others*<sup>7</sup>, *Jai Dev Gupta vs. State of Himachal Pradesh and another*<sup>8</sup>, *State of Punjab and others vs. Kulbir Singh*<sup>9</sup>, *Jaswant Singh vs. Punjab Poultry Field Staff Association and others*<sup>10</sup>, *M.R. Gupta vs. Union of India and others*<sup>11</sup>, *Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir and others*<sup>12</sup>, *Sakal Deep Sahal*

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6 (2008) 8 SCC 648

7 (2007) 9 SCC 274

8 1997 (11) SCC 13

9 (1997) 11 SCC 394

10 (2002) 1 SCC 261

11 (1995) 5 SCC 628

12 AIR 1981 SC 122

*Srivastava vs. Union of India and another*<sup>13</sup> and *Anand Swarup Singh vs. State of Punjab*<sup>14</sup>

79. A brief note is tendered by the Management stating as to how in each matter, the arrears are calculated and what would be the liability. These are as under :

*“14. The difference of salary as well as unpaid salary has been worked out from the dates three years prior to dates of filing of the petitions. The employees who were not the petitioners in those cases also difference of salary has been calculated with effect from 01.11.2015 [The petitioners in W.P.Nos.1506/2021 and 1978/2021 are also held to be entitled for the arrears with effect from 01.12.2015 even though the petitions have been filed on 24.03.2021 and 10.06.2021].*

<i>Sr. No.</i>	<i>Writ Petition No.</i>	<i>Date of filing</i>	<i>Date from which arrears are calculated</i>
1.	7395/2017	04.09.2017	01.09.2014
2.	7580/2017	21.11.2017	01.12.2014
3.	745/2018	14.12.2017	01.12.2014
4.	8204/2018	06.08.2018	01.08.2015
5.	8799/2019	25.10.2018	01.11.2015
6.	1506/2021	24.03.2021	01.11.2015
7.	1978/2021	10.06.2021	01.11.2015

*15. In so far as writ petition No.3878/2018 is concerned it has been filed by the non-teaching employees of MIET. Hence their entitlements are governed by the terms and conditions of*

13 AIR 1974 SC 338

14 AIR 1972 SC 2638



*the compromise petition dated 27.07.2017 filed in Writ Petition No.6013/2013. [page 60 to 67 of W.P. No.6890/2018].*

*16. It is submitted that computation sheets in case of the petitioners about difference/arrears of salary of 6<sup>th</sup> pay commission, arrears of DA as well as unpaid salary from May-2019 upto 30.04.2021 have been filed on record from page Nos.654 to 757 in writ petition No.6890/2018. (Document No. 49 to Document No. 106)*

*17. Hence the total liability of the Management on all counts (upto 30.04.2021) has been worked out as under [page nos.1035 and 1036 of writ petition No.6890/2018].*

- |   |                          |
|---|--------------------------|
| <i>a) Total amount towards arrears of 6<sup>th</sup> pay, D.A. and unpaid salary of the teaching staff of the college(upto 30.04.2021).</i>       | <i>Rs.14,48,07,942/-</i> |
| <i>b) Amount payable to the teaching staff towards gratuity.</i>  | <i>Rs.3,60,44,837/-</i>  |
| <i>c) The total amount payable to non-teaching staff (outstanding salary as well as arrears payable to the petitioners in W.P. No.3878/2018).</i> | <i>Rs.4,52,21,036/-</i>  |
| <i>d) Amount payable to non-</i>  | <i>Rs.3,17,09,407/-</i>  |

*teaching staff towards  
gratuity.*

e) <i>The liability of the Management towards its share for E.P.F.</i>	<i>Rs.42,24,600/-</i>
<i>Total amount</i>	<i>Rs.26,20,12,822/-</i>
i) <i>Minus amount of salary of 45 days already paid.</i>	<i>Rs.1,07,14,517/-</i>
ii) <i>Minus amount paid to the staff who are not petitioners</i>	<i>Rs.75,98,111/-</i>
iii) <i>Minus amount paid to the employees as per undertaking.</i>	<i>Rs.5,00,00,000/-</i>
<i>Outstanding Liability</i>	<i>Rs.19,37,00,194/-</i>

80. According to Employees, the total liability of the Management and College as of 31 January 2022 is Rs.42,41,07,079/-, including the unpaid salary of 48 teaching staff. In support of their contention that no such limitation of three years prior to the filing of the petition can be placed on them, they have relied on the decisions in the cases of *D.Y. Patil College of Engineering, Pune and another vs. All India Council for Technical*

*Education, New Delhi and others*<sup>15</sup>, *Kiran s/o Manikrao Bhusare and others vs. State of Maharashtra and others*<sup>16</sup>, *Amrutraj Pratapji Vyas and others vs. Hind Seva Mandal and others*<sup>17</sup> *Dr. Suryaprakash Dhaneria vs. State of Maharashtra and others*<sup>18</sup>, order of Hon'ble Supreme Court in Special Leave Petition No.8124/2018, orders of High Court in Writ Petition Nos.11343/2018, 3285/2018, 11259/2017 and 481/2019.

81. In the decision in the case of *Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and others*<sup>19</sup> while applying the 6<sup>th</sup> Pay Commission to unaided educational Institutes, the Supreme Court observed that the objects sought to be achieved by the periodic revision of the pay scales are to comply with the constitutional mandate. If that is the object, there is no rationale behind the classification made by the State of Maharashtra between aided and unaided colleges. People employed in educational institutions run by non-State actors are not treated any more kindly by the market forces and the economy than the people employed either by the Government or its instrumentalities or institutions administered by non-State actors receiving the economic support of the State. The Supreme Court observed that, therefore, there was no justification in excluding the employees of the unaided educational institutions while extending the benefit of the revised pay scales to the employees of the aided educational institutions. Such a classification would

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15 2019(2) Mh.L.J. 86

16 2018(4) Mh.L.J. 852

17 2018(2) Mh.L.J. 615

18 (2018) 3 Mh. L.J. 567

19 (2017) 4 SCC 449

be violative of Article 14 of the Constitution of India. The Supreme court also dealt with the argument of the financial burden on the non-grant institutions. It rejected the submission of the appellants therein that since the appellant therein does not receive any financial aid from the State, calling upon the appellants to pay its employees in terms of the revised pay scales would be compelling them to perform an impossible task. The Supreme Court held that unaided educational Institutes are obliged under law, and it is for them to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales.

82. On the legal issue regarding restricting the monetary claim in writ jurisdiction to three years prior to filing the petition, though the parties have cited various decisions, we intend to examine the decisions which are close to the facts of the case. In *Tarsem Singh* (supra), the Hon'ble Supreme Court made a distinction between the grant of claims, which affects others and which claims do not affect the rights of third party such as difference between grant of permissions and arrears for the past period. In the case before the Hon'ble Supreme Court the delay was of 16 years where the respondent was discharged from Indian Army in the year 1983 and approached the High Court in the year 1999. In *Shiv Dass* (supra), the Hon'ble Supreme Court took note of inordinate delay of the Petitioner before the Court and emphasized even in the case of recurring cause of action such as payment of pension may not be the ground to overlook the

delay, however, the Hon'ble Supreme Court clarified that it would depend on the fact of each case and in that context held that normally the reasonable period would be of three years. The case of *Kulbir Singh* (supra), was arose from a civil suit filed and, therefore, entirely different considerations would apply. It is not necessary to refer all the cases as it is not in dispute that normally the Court would restrict the monetary claim to three years preceding filing of cases even in the case of continuous wrong if there is a gross and unexplained delay. However, this rule will have to be applied after examining the facts of each case. The decisions relied upon by the Employees, where facts and circumstances are identical to the case at hand, a view has been taken not to restrict the payment of arrears to three years preceding. We will examine those decisions as they would be most relevant.

83. The decisions relied upon by the Employees are in the cases of *Kiran s/o Manikrao Bhusare and others* (supra), *Pradip Kaduba Mokusare and others vs. The State of Maharashtra and others* (Writ Petition No.11343/2019, decided on 30 January 2020); *Hemant s/o Vanaji Chaudhari and others vs. The State of Maharashtra and others* (Writ Petition No.3285/2018, decided on 24 January 2019); and *Vinayak s/o Laxmanrao Gadhekar and others vs. The State of Maharashtra and others* (Writ Petition No.11259/2017, decided on 28 August 2019). In these petitions teaching and non-teaching staff of unaided Institutions of Technology were seeking the very same relief of arrears of 6<sup>th</sup> Pay

Commission. According to us, two issues would be critical, the upholding of entitlement to Employees of the non-grant educational institutes by the Supreme court in the year 2017 in the case of *Secretary, Mahatma Gandhi Mission* (supra) and the factum of making representation before the decision.

84. In the case of *Vinayak Laxmanrao Gadhekar and others* (supra) before the Division Bench a petition was moved by the non-teaching staff of Pharmacy College to pay them as per the pay scale prescribed by the Government and arrears of pay including 6<sup>th</sup> Pay Commission. The Division Bench referred to the case of the *Mahatma Gandhi Mission* (supra) and upheld the right of the Petitioners therein to receive the amount. The Division Bench rejected the defence of the institution of lack of financial resources. The Division Bench, in the case of *Vinayak s/o Laxmanrao Gadhekar and others*, (supra) noted that the educational institute was not disputing that petitioners are in their employment from the respective dates as referred to in the petition. The Division Bench referred various judgments of this court of the Supreme Court in the case of *Bhartiya Kamgar Sena and others vs. the State of Maharashtra and others*<sup>20</sup> and the decision in the case of *Kiran s/o Manikrao Bhusare and others* (supra), concerning the teaching staff. The Division Bench observed that when the AICTE grants recognition to the colleges affiliated with the universities, an undertaking is taken from the colleges that will comply with the directions given by the Universities and

AICTE. The policy decision taken by the government is binding on the Management, and Management is bound to implement the revision of pay scales accordingly. It was observed that the affordability of the Management would not be a proper consideration. The education institute therein was directed to implement the pay scales prescribed by the 6<sup>th</sup> Pay Commission as adopted by the State of Maharashtra with effect from 1 January 2006 and give and pay the benefits accordingly to petitioners therein. In the case of *Pradeep Kuduba Mokashare and others* (supra), the Division Bench, after accepting the contention that teaching and non-teaching staff of the institution therein were entitled to the arrears of 6<sup>th</sup> Pay Commission with effect from 1 January 2006 had made it applicable to the Petitioners therein from the date of their appointment.

85. In the case of *Dr. Suryaprakash Dhaneria* (supra), the petition was filed by the teaching staff of a private educational Institute in respect of arrears of the Pay Commission. The Division Bench dealt with the submission of the institution that the petitioner therein approached the Court in the year 2006 for the benefits of 5<sup>th</sup> Pay Commission recommendations, which were made applicable from 1996, and there was a gross delay. It was contended that benefits should be restricted to the period of three years preceding the date of filing the petitions. The Division Bench observed thus :

*15. It is obvious that the moment the Government Resolution was introduced on 27-1-2000, employees like the*

*petitioner became alert and started pursuing their demand against a private management. The representations made by the petitioner to the management are dated 8-7-2000, 25-8-2000, 30-8-2000 and the last one being dated 8-9-2000. After resigning, he has forwarded few more representations dated 11-11-2000, 27-4-2001 and in March 2005.*

*16. It is, therefore, apparent that, with the representations forwarded by the petitioner, the management was made aware of the demand of the petitioner for salary at the rate of the Vth Pay Commission recommendations. It is strenuously contended by the learned counsel for the Medical Institution that the petitioner cannot be permitted to take advantage of the delay caused, and the delay would be fatal to his case, keeping in view the law laid down by this Court in the matter of Hukumchand s/o Shivram Kumbhar and ors. (supra).*

*17. There is no dispute that this petition was filed in 2006, inasmuch as, there is no dispute that after the Government Resolution dated 27-1-2000 was introduced, accepting the Vth Pay Commission recommendations, it led to a cause of action as the management declined to make the payment as per the Vth Pay Commission recommendations. In this backdrop, it needs no debate that it is the respondent management which has declined to extend the benefits to the petitioner, and keeping the law in view, can be said to have committed a wrong. The issue, therefore, is as to whether the said management can be permitted to take advantage of its own wrong.*

*18. Once it is concluded that it was obligatory on the part of the management to make the payment of salary as per the Vth Pay Commission recommendations, refusal or denial to make the payment would not shift the blame to the petitioner. By refusing to make the payment, the management has committed a wrong and when the petitioner waited for the management to*



*take a decision and approached this Court after he was exasperated and exhausted, accepting the contention of the management that delay would deprive him of the benefits, would amount to accepting the contention that delay would legalise an illegality. We are of this view since we are taking cognizance of the representations made by the petitioner to the management, which would indicate that he was not sleeping over his rights. We are conscious of the view taken by a coordinate Bench of this Court in Hukumchand Shivram Kumbhar's case. However, in the case in hand, the representations were put forth by the petitioner from 8-7-2000 till he finally resigned from employment on 9-9-2000 and he continued to make such representations till March, 2005.”*

This decision has referred to representations made and did not restrict the entitlement to a time period. Therefore, though Management has relied upon various decisions, the Division Benches of this Court, specifically in the case of arrears of Pay Commission, have taken the view that three years embargo will not apply because payment under 6<sup>th</sup> Pay Commission was the liability of the Management which ought to have been discharged, representations were made and after everything failed recourse to the Court of law was taken.

86. The Employees have also relied on the decision of the Supreme Court in the case of *Rangnath Vishnu Raskar vs. The State of Maharashtra and others (Special Leave Petition No.8124/2018)*. Here the Supreme Court set aside the stipulation in the impugned judgment of the High Court, which confined relief to the Petitioner only to three years prior to

the filing of this petition. It is however sought to be contended by the Management that this order was in the exercise of jurisdiction under Article 142 of the Constitution of India and the Supreme Court has not deviated from the earlier legal position of 3 years embargo. However, it has to be noted that the Hon'ble Supreme Court, while setting aside the order of the High Court, observed that it was doing so because petitioner therein was agitating for the salary in accordance with the report of the 6<sup>th</sup> Pay Commission from the year 2011. Therefore, considering the observations made in the order passed in the case of *Rangnath Vishnu Raskar (supra)* and the observations of the Division Bench in the case of *Dr. Suryaprakash Dhaneria (supra)*, the factor of making representations cannot be considered as irrelevant. Ultimately whether to restrict the Petitioners' claim to only three years preceding will depend on the totality of circumstances, and the facts of the case cannot be ignored. We may also note here that the Management, recognising the entitlement of the non-teaching staff, had paid their dues by a compromise dated 25 July 2017, without raising the argument of 3 years embargo.

87. In Writ Petition No.7395/2017, it is placed on record that the Teachers Welfare Association, Gondia, had made a representation to the College on behalf of the staff, stating that it is a third and last reminder for the release of the balance of dearness allowance and release of 6<sup>th</sup> Pay Commission arrears from January 2006 to March 2010. Details of how the Management has paid dearness allowance irregularly are enumerated in

paragraph 15 of Writ Petition No.7395/2017. In Writ Petition No.7395/2017, the Petitioners seek release of salary of teaching and non-teaching staff from 1 July 2019 till date. It is an admitted position that from 1 July 2019 onwards, salary is not paid to the teaching and non-teaching staff except deposit under the interim order. In Writ Petition No.1506/2021 filed by the staff members, representation made by the Teachers Welfare Association to the College dated 23 September 2011 seeking benefits of 6<sup>th</sup> Pay Commission, dearness allowance and other allowances is on record. A series of representations were made, i.e. on 16 October 2011, 23 December 2011, 23 February 2012, 19 April 2012 and 26 April 2012. These representations continued till 2017. Therefore, it cannot be considered as the Employees had given up their rights or were not interested. The Employees have contended that the Management deliberately reduced seats and students. Based on the 6<sup>th</sup> Pay Commission report, after the Supreme Court, in the case of the *Secretary, Mahatma Gandhi Mission* (supra), delivered the judgment in 2017, immediately after that, writ petitions were filed. Thus, the Employees were continuously agitating for their dues. In the totality of the circumstances, it will be unfair to the Employees to restrict their entitlement to three years prior to filing of the petitions.

88. We also do not find any merit in the contention of the Management that the salary need not be paid to the Employees from 1 July 2017 onwards. In Writ Petition No.3384/2019, AICTE filed an

affidavit stating that the AICTE has evolved a handbook for the approval process. It is stated that the extension of approval for 2018-19 was not issued as College had applied for closure. College had not applied either for an extension of approval or for closure in the year 2019-20. AICTE pointed out the provisions in AICTE Regulation and Approval Handbook 2019-20 regarding non-payment of salary to the teaching and academic staff. Therefore, when an application for closure was specifically rejected by the University and not granted by the State and AICTE, the Management and College cannot make virtue that the students' strength had become zero because of their application employer-employee relationship continues. It is the creation by the Management itself that students' strength was reduced and thus the principle of "no work – no pay" cannot be invoked as it is not established that Employees were not ready to work. Because there is no closure, the relationship between Management/College and Employees of employer-employee continues. The Management and College are duty-bound in law to pay the monthly salary payable to the Employees till services of the Employees are dispensed with by procedure known to law or closure is effected. It is open to the Management to utilise the services of the Employees in its other institutions, if it so desires.

89. Having considered the above position, it is clear that there is a liability cast upon the Management to pay the arrears of the 6<sup>th</sup> Pay Commission and other dues. It is not a matter of charity. At the time of

seeking recognition/approval, the Management has to give an undertaking that all stating dues will be paid. The issue as to whether the 6<sup>th</sup> Pay Commission would apply to un-aided Institutions, such as present Management, was decided by the Supreme Court in the case of *Secretary, Mahatma Gandhi Mission* (supra). This decision was rendered on 5 January 2017. The Employees and their Association had made representations to the Management. All the Petitioners in these petitions are appointees prior to the date of the decision of the Supreme Court. The Petitioners Employees filed the petitions once the Supreme Court rendered the decision and legal rights arose. There is no indication in the decision of the Supreme Court in the case of *Secretary, Mahatma Gandhi Mission* (supra) that the dues need to be restricted to three years.

90. The Division Benches of this Court, having considered the legal position, have taken the view that if a representation is made, it will be unjust to deprive the teaching and non-teaching staff of the benefits of the 6th Pay Commission. There is no reason why we should take a different view. We, therefore, uphold the contention of the Employees that they are entitled to their dues as prayed for from the date of their entitlement and reject the contention of the Management that its liability to pay the Employees will be three years prior to filing of the petitions.

91. Since we have found that the Employees were wrongfully deprived of their legal entitlement, we do not find any reason to reject their

claim of interest. In the facts and circumstances, we direct that the dues will carry interest at 6% per annum from the date of their entitlement. Considering the amount involved, we grant four months time to the Management and the College to pay the arrears to the Petitioner Employees. In case of failure to pay the salary and other benefits along with arrears within the time stipulated, interest will be at the rate of 8% per annum until its realisation. The amount paid by the Management during the pendency of the petitions will have to be adjusted towards the dues.

92. It is open to the Management and College to place a copy of this order before the Charity Authorities for expeditious disposal their applications. However, this is not to be construed that till the assets are disposed of, dues of the Employees are not to be paid.

93. Needless to state that we have not barred the future applications of the Management and the College under Section 121 of the University Act, after following the methodology as per law and after payment of all dues of the Employees to be considered on its own merits.

94. In Writ Petition No.1506/2021, the Petitioner Employees have made an additional grievance that when an amount of Rs.5 crores was disbursed, a proportionate share was not paid to them. The learned Counsel for the Management has accepted that this was a mistake and has pointed out that it was rectified, and the concerned Employees have been paid the

amount. A pursis to that effect is already placed on record. This grievance has been redressed.

95. To conclude, the challenge of the Management to the impugned order passed by the Vice-chancellor of the respondent University is dismissed. The prayer of the Management to direct the Respondent-statutory Authorities to grant permission to close the College is rejected. It is declared that the Employees are entitled to the dues as claimed by them to be paid to them from the date of their respective entitlements along with the interest at the rate of 6% per annum. The contention of the Management that the dues be restricted to the three years prior to filing the Petitions by the Employees is rejected. The Management shall pay the arrears as of 31 March 2022 along with the interest at the rate of 6% per annum within four months from today, failing which it will carry interest at the rate of 8% per annum. The Management will be entitled to adjustment of the amount already paid to the Employees. The Management shall start paying the Employees monthly salary as applicable from 1 April 2022 every 15<sup>th</sup> day of the every month until severance of employer-employee status is brought about by the procedure established by law.

96. Accordingly the following order :

(A)(i) Writ Petition No.6890/2018 filed by the Management and the College is dismissed. Rule discharged. No costs.

(ii) Writ Petition No.5134/2018 and 3384/2019 filed by the Petitioner Employees do not survive in view of the dismissal of Writ Petition No.6890/2018 and are accordingly disposed of. Rule discharged. No costs.

(B)(i) In Writ Petition Nos.7395/2017, 7580/2017, 745/2018, 8204/2018, 3799/2019, 1506/2021 and 1978/2021, it is declared that Petitioner Employees are entitled to receive the arrears and dues payable as prayed for in these petitions from the Management and the College, that is 6<sup>th</sup> Pay Commission recommendation with increased dearness allowance as applicable from time to time and Naxalite allowance from the date of their entitlement, along with 6% interest per annum. The Management and the College shall pay these amounts due and payable as of 31 March 2022 to the Petitioner-Employees within a period of four months, failing which, the amounts will carry the interest at the rate of 8% per annum till their realisation.

(ii) In Writ Petition No.3878/2018, it is declared that the Employees are entitled to receive the arrears and amounts as prayed for in these petitions from the Management and the College, that is 6<sup>th</sup> Pay Commission recommendations with



increased dearness allowance from time to time and Naxalite allowance. Petitioner Nos. 1, 3, 4, 5 and 7 are entitled to receive gratuity on their retirement/superannuation and the entire provident fund on their respective dates as shown in the statement against their names at Annexure-3 along with leave encashment as per present dearness allowance at the rate of 135%. The Management and the College are directed to pay these amounts to the Petitioner-Employees as of 31 March 2022 along with the interest at the rate of 6% per annum within a period of four months from today, failing which, it shall carry interest at the rate of 8% per annum till its realisation.

(iii) The contention of the Management and the College that the entitlement of Petitioner Employees be restricted to three years is rejected.

(iv) The Management and the College shall pay the salary as applicable to the Petitioner-Employees (except the ones who have retired on superannuation) from 1 April 2022 onwards, on or before every 15<sup>th</sup> day of the month till there is a legal severance of the status as employer and employee.

(v) Rule is made absolute in Writ Petition Nos.7395/2017, 7580/2017, 745/2018, 3878/2018, 8204/2018, 3799/2019, 1506/2021 and 1978/2021 in above terms. No costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

VIJAY