

**HIGH COURT OF GUJARAT****VIDABHAVAN TRUST & 1***Versus***NITIN D SHAH & 3****Date of Decision:** 18 December 2013**Citation:** 2013 LawSuit(Guj) 2011**Hon'ble Judges:** [K M Thaker](#)**Case Type:** Special Civil Application**Case No:** 17794 of 2013**Advocates:** [Mihir Joshi](#), [Nanavati Associates](#), [S I Nanavati](#), [M J Mehta](#)**Cases Referred in (+):** 4**K. M. Thaker, J.**

**[1]** This petition, according to the submissions by learned senior advocate for the petitioner, essentially and substantially, challenges the irregularity of procedure before the learned Tribunal, which, according to the petitioner, amounts to abuse of process.

1.1 The petition also challenges the order dated 30.10.2013 passed by the learned Tribunal in Application No.45 of 2013 on the ground that (a) the order is unreasoned and non-speaking order; and (b) the order is an outcome and result of apparent irregularity in procedure amounting to abuse of process.

**[2]** The petitioner has prayed, inter alia, that:

"8(A) Your Lordships may be pleased to issue an appropriate writ of certiorari, or any order or direction in the nature of writ of certiorari quashing and setting aside the impugned proceedings being Application No.45 of 2013, pending before the Gujarat Affiliated Colleges Services Tribunal;

(B) Your Lordships may be pleased to issue an appropriate writ of certiorari, or any order or direction in the nature of writ of certiorari quashing and setting aside the order dated 30th October, 2013, passed by the Gujarat Affiliated Colleges Services Tribunal in Application No.45 of 2013 (at Annexure-A);"

**[3]** So far as the relevant facts are concerned, the petitioner has averred and it has emerged from the record of the petition as well as from the submissions by learned advocates for the petitioner and the respondents that:-

3.1 The petitioner is a charitable trust registered under the Bombay Public Trusts Act, 1950 and is engaged, inter alia, in the activity of managing education institutions. As a part of its activity, the petitioner trust runs and manages a college viz. Principal M.C. Shah Commerce College (i.e. petitioner No.2). The petitioner trust also manages few other colleges, e.g. C.C. Sheth College of Commerce, Smt. Sushilaben Ramanikbhai Arts College, etc.

3.2 The petitioner has claimed that one of the colleges managed by the petitioner trust, i.e. C.C. Sheth College of Commerce was required to undergo re-accreditation process and since its Principal was going to retire with effect from 31.10.2013, the trust had taken decision to transfer one Mr.Mahesh Trivedi to the post of Principal of C.C. Sheth College of Commerce. The said Mr. Mahesh Trivedi is, presently, principal of petitioner No.2 college.

3.3 It is claimed by the learned advocate for the petitioner trust that the transfer of said Mr.Trivedi (i.e. the principal of petitioner No.2 college) to C.C. Sheth College of Commerce to the post of Principal of said college is only temporary measure for the administrative reasons. It is also claimed that the transfer is not of permanent nature and on completion of re-accreditation process, said Mr.Trivedi would return as Principal of petitioner No.2 college.

It appears that the petitioner trust expects that the tenure of said Mr.Trivedi to the transferred college would be for 6 to 9 months.

3.4 Since, according to the petitioner No.1, the post of Principal in petitioner No.2 college would fall vacant during the said period (on transfer of said Mr. Trivedi to the post of principal of said C.C.Sheth College of Commerce), a meeting of the staff of petitioner No.2 college was convened on 28.10.2013 to discuss the issue of appointing in-charge Principal for petitioner No.2 college and the said issue was discussed during the said meeting and necessary decisions were taken.

3.5 It is also claimed that present respondent No.1 was also present during the said meeting.

3.6 The petitioner has claimed that during the said meeting (which was convened on 28.10.2013) the decision to appoint present respondent No.4 as In-charge Principal of petitioner No.2 college was taken and the said decision was

communicated to all concerned persons including the staff members who were not present in the meeting.

3.7 The petitioner has asserted that it was made clear to all staff members i.e. those present in the meeting and those who were not present as well as to other concerned persons that the arrangement of appointing respondent No.4 would be temporary in nature and respondent No.4 was not being regularly promoted to the post of Principal but would be given charge as Principal of petitioner No.2 college for temporary period.

3.8 It appears that the said arrangement did not find favour with respondent No.1 who opposed the said suggestion and the proposed arrangement. Respondent No.1 raised objection against the appointment of respondent No.4 as In-charge Principal of petitioner No.2 college.

3.9 It appears that despite the objection by respondent No.1, the petitioner trust and petitioner No.2 college decided to proceed with the decision taken during the meeting held on 28.10.2013.

**[4]** In this background and upon feeling aggrieved by the said decision of petitioner No.2 college, present respondent No.1, on 29.10.2013 (i.e. very next day after the meeting held on 28.10.2013) approached the Gujarat Affiliated College Services Tribunal (hereinafter referred to as 'the learned Tribunal') by filing an application which came to be registered as Application No.43 of 2013.

**[5]** The cause title of the said Application No.43 of 2013 reads thus:

"Dr. Nitin D. Shah

41, Netra Bungalows,

B/h Lion Sharad Mehta Party Plot,

Beside Saurabh Society,

Navrangpura, Ahmedabad-380009

Applicant

V/s

1. Vidyabhavan Trust, (Notice to be served through the Managing Trustee, Vidyabhavan Trust, P&T Dispensary Building, 3rd Floor, Usmanpura village, Ahmedabad-14.

2. Principal M.C. Shah Commerce College, Navgujarat Campus, Ashram Road, Ahmedabad-14.

3. Gujarat University (Notice to be served through Registrar/in-charge Registrar, University campus, Navrangpura, Ahmedabad-9.

4. State of Gujarat (Notice to be served through Commissioner of Higher Education, Block No.12, Dr. Jivraj Mehta Bhavan, Gandhinagar).

5. Prof. C.A. Shah C-501, Prestige Tower, Near Judges Bungalow, Ahmedabad. Opponents"

5.1 The above described opponent No.1 is present petitioner No.1 in this petition and opponent No.2 is present petitioner No.2 whereas the opponent No.5 is present respondent No.4.

**[6]** Having regard to the controversy raised in present petition, it is also relevant and necessary to take into account the reliefs prayed for by present respondent (i.e. applicant in Application No.43 of 2013), which read thus:

"6(A) to admit this application;

(B) to declare that the action of the opponent No.1 in making appointment to the post of in-charge Principal of Principal M.C. Shah Commerce College as against the rules, regulations and UGC guidelines and this Hon'ble Tribunal by passing appropriate orders, declare the same to be illegal and against the statutory rules.

(C) to direct the opponent No.1 not to make appointment of Prof. C.A. Shah as in-charge Principal of Principal M.C. Shah Commerce College as he is not possessing requisite qualifications;

(D) to declare that Prof. C.A. Shah is not possessing requisite qualifications and he is not the senior-most person and therefore he cannot be appointed as in-charge Principal of the college and for the same appropriate order may please be passed;

(E) Pending admission, hearing and final disposal of this application, the opponent No.1 be restrained from making appointment of Opponent No.5 Prof. C.A. Shah as in-charge Principal of the Principal M.C. Shah Commerce College by passing appropriate orders.

(G) to expedite the final hearing of this application."

**[7]** The said application No.43 of 2013 was taken up for consideration / hearing by the learned tribunal on 29.10.2013. From the record, it appears that on the said date i.e.

on 29.10.2013, learned tribunal hearing learned counsel for the applicant (of said application No.43 of 2013 i.e. present respondent No.1) and passed below mentioned order:-

"Heard, L.A.Mr. K.R.Mishra for the applicant, Admit notice returnable on dt. 7/11/2013. D.S. Is Permitted, S.o. to 07/11/2013."

**[8]** The above quoted order came to be passed on 29.10.2013. It is pertinent that on the said date, learned tribunal did not grant any interim relief as prayed for and instead, passed order admitting the application and making the notice returnable after about 9 days i.e. on 7.11.2013.

**[9]** From the record and from the submissions by learned Senior Counsel for the contesting parties, it has emerged that on the very next date, i.e. on 30.10.2013 the same applicant (i.e. present respondent No.1) who had filed the above mentioned application No.43 of 2013, filed another substantive application before the learned tribunal.

9.1 The second application filed by present respondent No.1 came to be registered as application No.45 of 2013. The said second application being Application No.45 of 2013 came to be filed by same applicant (who filed application No.43 of 2013) and against same opponents (i.e. opponents in application No.43 of 2013) and for same main relief (as prayed for in application No.43 of 2013).

9.2 A glance at the cause title of the application would show that it is filed by the same applicant and against the same opponents. The cause title of the said second application No.45 of 2013 reads thus:-

"Dr. Nitin D. Shah

41, Netra Bungalows,

B/h Lion Sharad Mehta Party Plot,

Beside Saurabh Society,

Navrangpura, Ahmedabad-380009

Applicant

V/s

1. Vidyabhavan Trust, (Notice to be served through the Managing Trustee, Vidyabhavan Trust, P&T Dispensary Building, 3rd Floor, Usmanpura village,

Ahmedabad-14.

2. Principal M.C. Shah Commerce College, Navgujarat Campus, Ashram Road, Ahmedabad-14.

3. Gujarat University (Notice to be served through Registrar/in-charge Registrar, University campus, Navrangpura, Ahmedabad-9.

4. State of Gujarat (Notice to be served through Commissioner of Higher Education, Block No.12, Dr. Jivraj Mehta Bhavan, Gandhinagar).

5. Prof. C.A. Shah C-501, Prestige Tower, Near Judges Bungalow, Ahmedabad. Opponents"

9.3 The cause title In the said second application No.45 of 2013 demonstrates that the parties in both applications are same, the applicant (who is the same person who, on previous day i.e. on 29.10.2013 filed first application No.43 of 2013). In said second application No.45 of 2013, the applicant prayed inter alia that:-

"6(B) to declare that the action of the opponent No.1 in making appointment to the post of in-charge Principal of Principal M.C. Shah Commerce College as against the rules, regulations and UGC guidelines and this Hon'ble Tribunal by passing appropriate orders, declare the same to be illegal and against the statutory rules.

(C) to declare that the appointment of Opponent No.5, Prof. C.A.Shah vide appointment order dated 29.10.2013 is illegal, arbitrary, high handed, malafde and against the rules and regulations of the State Government, Gujarat University and UGC.

(D) to declare that Prof. C.A. Shah is not possessing requisite qualifications and he is not the senior- most person and therefore he cannot be appointed as in-charge Principal of the college and for the same appropriate order may please be passed;

(E) Pending admission, hearing and final disposal of this application, the operation, implementation and execution of the order dated 29.10.2013 be stayed."

9.4 The prayer clause in application No.45 of 2013 gives out that the applicant (who is the same persons in both applications) has prayed for relief of similar nature and effect and in respect of same subject matter as in first application No.43 of 2013.

**[10]** The said application was taken up for hearing before the learned Tribunal on 30.10.2013 (the first application No.43 of 2013, the application was taken up for



hearing on 29.10.2013 and the above quoted order was passed on 29.10.2013) and the learned Tribunal after hearing the learned counsel for the present respondent No.1 (i.e. the applicant in the said second application No.45 of 2013) passed below mentioned ex-parte order:-

"Heard, L.A. Ms. R.D.Upadhayay for the applicant. Admit notice returnable on dt.07/01/2014. D.S. Is Permitted Ad interim relief is granted in terms of Para 6(e) till 07/01/2014 S.o. to 07/01/2014."

**[11]** The respondent No.1 appears to have approached the learned Tribunal with the above mentioned applications on the premise that the proposed appointment as in-charge principal of MC Shah Commerce College is contrary to rules, regulations and UGC guidelines and that therefore, such appointment cannot be made and consequently, learned Tribunal should declare such appointment illegal. It appears that it is also the case of the respondent No.1 before the learned Tribunal that even when the appointments are made on ad-hoc basis, the very same criteria as are considered relevant at the time of substantive appointment should be applied, however, in case of the proposed appointment by the petitioner trust, the said requirement is not being followed.

11.1 On such premise, the above mentioned two applications came to be filed by the present respondent No.1 for same relief in both petitions.

**[12]** In the first application i.e. application No.43 of 2013 which was presented for hearing on 28.10.2013, learned Tribunal after hearing the learned counsel for the applicant present respondent No.1 did not grant interim relief and issued notice making it returnable after about 10 days i.e. on 7.11.2013.

12.1 Whereas, in the second application i.e. application No.45 of 2013 which came to be filed on the very next date by the same respondent in connection with the same subject matter, learned Tribunal, while entertaining the said second application No.45 of 2013 and while issuing notice to the respondents, granted ex-parte interim relief and fixed the returnable date after about 2 1/2 months.

12.2 In the second application, i.e. application No.45 of 2013, the learned Tribunal without recording reasons not only granted ex-parte interim relief, but also considered it appropriate to make the notice returnable after almost two and half months i.e. on 7.1.2013.

**[13]** The petitioner is aggrieved by the said action of the learned Tribunal of entertaining the second application which is filed on the next date and by the ex-parte adinterim relief without recording any reasons and that too despite the fact that on

previous date, the same learned Tribunal had not granted any relief in the first application.

13.1 In the aforesaid background, the petitioner has taken out present petition.

**[14]** Mr. Joshi, learned Senior Counsel, has appeared with Mr. Gandhi, learned advocate for the petitioner, and Mr. S.I. Nanavati, learned Senior Counsel, has appeared with Mr. Mehta, learned advocate for the respondent No.1, who had filed caveat and therefore, advance copy of the petition was served. Accordingly, the respondent No.1 has appeared as caveator-respondent and he represented by learned Senior Counsel Mr. S.I. Nanavati and Mr. Mehta, learned counsel.

The respondent No.3, according to the petitioner is a formal party whereas the respondent No.4 is not opposing the petition and any relief is not prayed for against him.

**[15]** Mr. Joshi, learned Senior Counsel for the petitioner, reiterated the factual details. He particularly emphasized the chronology demonstrating how the second application by same applicant for similar relief came to be filed.

15.1 He also emphasized the details related to the staff meeting which was convened and the decisions which were taken during the staff meeting and the order which came to be passed in pursuance of the said staff meeting. During his submissions, Mr. Joshi, learned Senior Counsel, emphasized certain averments made by the respondent No.1 in the above mentioned two applications as well as the relief prayed for by the respondent No.1 in the above mentioned two applications and submitted that actually two similar applications have been successively filed by the respondent No.1 before the learned Tribunal and the learned Tribunal has entertained both matters and after having refused to grant ex-parte interim relief, granted such relief in successive / second application. He also emphasized that almost similar relief have been prayed for by the respondents in the two applications. While emphasizing the said aspects, Mr. Joshi, learned Senior Counsel for the petitioner also submitted that in the first case, learned Tribunal issued notice and did not grant the interim relief, however, on the next date, when second application was presented, learned Tribunal granted ex-parte order and the notice is made returnable after almost two and half months. Mr. Joshi, learned Senior Counsel, also submitted that actually learned Tribunal does not have jurisdiction to even entertain such application. According to the petitioner, learned Tribunal ought not to have and could not have entertained second and successive application by the same applicant for similar relief and on similar factual background.



15.2 According to Mr. Joshi, learned Senior Counsel for the petitioner, the action of the learned Tribunal amounts to serious procedural irregularity. According to learned Senior Counsel for the petitioner, the applications filed by the respondent No.1, more particularly the second / successive application is clear abuse of process of law which ought not have been entertained by the learned Tribunal. So far as the impugned order is concerned, Mr. Joshi, learned Senior Counsel for the petitioner, submitted that the said order is completely unreasoned order and the learned Tribunal has not recorded any reason whatsoever in support of and in justification for granting the ex-parte relief. Mr. Joshi, learned Senior Counsel for the petitioner, also submitted that the need to record reasons was even more in present case, more particularly in view of the fact that in first application by the same applicant the learned Tribunal on previous date did not grant any relief whereas in second application, the learned Tribunal granted the interim relief, however, the learned Tribunal failed to record any reasons and therefore, the order is unsustainable. So as to support and justify the submissions that the learned Tribunal could not have passed unreasoned order granting ex-parte relief, learned Senior Counsel for the petitioner relied on the decision in case of [Shiv Kumar Chadha v. Municipal Corporation of Delhi & Ors.](#), 1993 3 SCC 161 and in case of [3 I Infotech Consumer Services Ltd. v. Gujarat Narmada Vally Fertilizers Co. Ltd. & Anr.](#), 2009 3 GLH 49.

**[16]** Per contra, Mr. S.I.Nanavati, learned Senior Counsel for the respondent No.1, justified the action of the respondent No.1 in preferring second successive application and submitted that there is neither any irregularity by the learned Tribunal nor there is any abuse of process of law and there is no irregularity or illegality in the order dated 30.10.2013 passed by the learned Tribunal whereby the learned Tribunal granted the adinterim relief.

16.1 Mr. Nanavati, learned Senior Counsel, emphasized the fact that the respondent No.4 who is proposed to be appointed as in-charge Principal in petitioner No.2 college does not possess the requisite qualification for being appointed on the said post and therefore, the action of the petitioner trust and the petitioner college of considering respondent No.4 for appointment on the post of principal though as in-charge principal is contrary to rules and regulations and such appointment cannot be made. Mr. Nanavati, learned Senior Counsel, submitted that it is in view of the said settled legal position that the learned Tribunal considered it appropriate to pass the order dated 30.10.2013 i.e. granting ad-interim relief. So as to support and justify his submission that even when appointment is being made on ad-hoc or in-charge basis, any person who does not possess qualification, appointed on regular posts cannot be appointed, Mr. Nanavati, learned Senior

Counsel relied on the decision in the case between [State of J & K & Ors. v. Sat Pal](#), 2013 2 Scale 256. Mr. Nanavati, learned Senior Counsel for the respondent No.1, made reference of paragraph 6(c) of the second application No.45 of 2013 and he also referred to paragraph No.6(c) of the first application i.e. application No.43 of 2013, and drawing distinction between the said two prayer clause, he submitted that the second application cannot be said to be a similar or identical and the second application was filed in light of the fact that after the application No.43 of 2013 was presented, the petitioner trust and the petitioner college passed order dated 29.10.2013 whereby the respondent No.4 came to be appointed as in-charge principal. According to learned Senior Counsel for the respondent No.1, it is because of the said order that the respondent No.1 filed another application and therefore, the respondent No.1 cannot be said to have abused the process of law and the learned Tribunal cannot be said to have committed any error. Mr. Nanavati, learned Senior Counsel for the respondent No.1, submitted that there is no illegality or irregularity in the impugned order and therefore, the petition does not deserve to be entertained and may be rejected.

**[17]** I have heard learned Senior Counsel for the contesting parties. I have also considered the material on record as well as the impugned order(s) passed by the learned Tribunal in application Nos.43 of 2013 and 45 of 2013 as well as other material and documents on record.

**[18]** So as to appreciate the rival contentions, it is relevant and necessary to conjointly and simultaneously read the relief prayed for by the applicant in the both the applications. The prayer in both the applications reads thus:-

<b>Application No.43 of 2013.</b>	<b>Application No.45 of 2013.</b>
6(B) to declare that the action of the opponent No.1 in making appointment to the post of in-charge Principal of Principal M.C. Shah Commerce College as against the rules, regulations and UGC guidelines and this Hon'ble Tribunal by passing appropriate orders, declare the same to be illegal and against the statutory rules.	6(B) to declare that the action of the opponent No.1 in making appointment to the post of in-charge Principal of Principal M.C. Shah Commerce College as against the rules, regulations and UGC guidelines and this Hon'ble Tribunal by passing appropriate orders, declare the same to be illegal and against the statutory rules.
(C) to direct the opponent	(C) to declare that

<p>No.1 not to make appointment of Prof. C.A.Shah as in-charge Principal of Principal M.C. Shah Commerce College as he is not possessing requisite qualifications;</p>	<p>appointment of Opponent No.5, Prof. C.A.Shah vide appointment order dated 29.10.2013 is illegal, arbitrary, high handed, malafide and against the rules and regulations of the State Government, Gujarat University and UGC.;</p>
<p>(D) to declare that Prof. C.A. Shah is not possessing requisite qualifications and he is not the senior- most person and therefore he cannot be appointed as in-charge Principal of the college and for the same appropriate order may please be passed;</p>	<p>(D) to declare that Prof. C.A. Shah is not possessing requisite qualifications and he is not the senior- most person and therefore he cannot be appointed as in-charge Principal of the college and for the same appropriate order may please be passed;</p>
<p>(E) Pending admission, hearing and final disposal of this application, the opponent No.1 be restrained from making appointment of Opponent No.5 Prof. C.A. Shah as in-charge Principal of the Principal M.C.Shah commerce College by passing appropriate orders.</p>	<p>(E) Pending admission, hearing and final disposal of this application, the operation, implementation and execution of the order dated 29.10.2013 be stayed.</p>

18.1 On perusal and consideration of the relief prayed for by present respondent No.1 (i.e. the common/same applicant in both applications) against present respondent No.4, it emerges that the relief prayed for in both applications are similar nature and effect and that the subject matter of both applications is also similar viz. appointment of present respondent No.4 as in-charge Principal of petitioner No.2 college.

18.2 Besides the above mentioned relief, it is also relevant to take into account certain details mentioned by the applicant in his two applications. In this contest, it is relevant to simultaneously considered paragraph No.2.8 in the application No.43 of 2013 and 45 of 20134. The said paragraph 2.8 in both the applications read thus:-

<b>Application No.43 of 2013.</b>	<b>Application No.45 of 2013.</b>
<p>2.8 The applicant says that today i.e. 28.10.2013 in the morning around 10.30 A.M. the Managing Trustee Shri Mukesh M. Shah without informing the staff i.e. without any prior intimation called a meeting of staff of Principal M.C. Shah Commerce College and he declared in the meeting that as Principal Mansuri of C.C. Sheth College of Commerce is retiring on attaining age of superannuation, in his place the present Principal of Principal M.C. Shah College of Commerce will be transferred after office hours on 31.10.2013 as full-fledged Principal and Professor C.A. Shah of Principal M.C.Shah Commerce College would be appointed as In-charge Principal with effect from 31.10.2013 after office hours.</p>	<p>2.8 The applicant says that today i.e. 28.10.2013 in the morning around 10.30 A.M. the Managing Trustee Shri Mukesh M. Shah without informing the staff i.e. without any prior intimation called a meeting of staff of Principal M.C. Shah Commerce College and he declared in the meeting that as Principal Mansuri of C.C. Sheth College of Commerce is retiring on attaining age of superannuation, in his place the present Principal of Principal M.C. Shah College of Commerce will be transferred after office hours on 31.10.2013 as full-fledged Principal and Professor C.A. Shah of Principal M.C.Shah Commerce College would be appointed as In-charge Principal with effect from 31.10.2013 after office hours.</p>

18.3 The respondent No.1 is opposed to the nomination and appointment of respondent No.4 as in-charge Principal of petitioner No.2 college. The respondent No.1 had raised objection in this regard/ against such proposal and action in the meeting convened on 28.10.2013.

18.4 Then on next day, i.e. on 29.10.2013, he filed the application No.43 of 2013 seeking declaration/direction against appointment of respondent No.4 as in-charge of petitioner No.2 college.

18.5 That is the subject matter of the application No.43 of 2013.

18.6 Then the same applicant filed another / second application being application No.45 of 2013 on the next date, i.e. on 30.10.2013. In the said application No.45 of 2013 also the applicant respondent No.1 prayed for similar declaration/direction.

18.7 Thus, in the said second application No.45 of 2013 also the subject matter is prayer for declaration/direction against appointment of respondent No.4 as in-charge Principal of petitioner No.2 college.

**[19]** In this view of the matter, it emerges that the subject matter of both applications is same.

19.1 Moreover, the details mentioned in para 2.8 also gives out that the two applications are made-out in light of similar facts, by same applicant against same opponent and for relief of similar nature and effect.

**[20]** It is also relevant to note that in paragraph 2.8 of the application No.43 of 2013 as well as application No.45 of 2013, the respondent No.1 applicant before the learned Tribunal mentioned that "... in his place the present Principal of Principal M.C.Shah College of Commerce will be transferred after office hours on 31.0.2013 as fullfledged Principal and Professor C.A. Shah of Principal M.C.Shah Commerce College would be appointed as Incharge Principal with effect from 31.10.2013 after office hours."

20.1 Thus, from the same paragraph No.2.8 of the two applications, which are identical in both applications, it emerges that the applicant before the learned Tribunal i.e. present respondent No.1 was well aware about the fact that Professor C.A.Shah would be appointed as in-charge Principal w.e.f. 31.10.2013 A.O.H.

20.2 It is pertinent that it was in the said background of fact that the relief in paragraph 6(c) and 6(d) of the application No.43 of 2013 were prayed for.

**[21]** At this stage and in this context, it is relevant to note that on 29.10.2013 after considering the said averments, the learned Tribunal did not grant the ex-parte interim relief as prayed for and instead issued notice making it returnable after about 9 days i.e. on 7.11.2013.



**[22]** When the second application i.e. Application No.45 of 2013 came to be passed, the applicant i.e. respondent No.1 made mention of the similar facts in paragraph No.2.8. The only difference which emerges from the examination of the two application is the paragraph No.2.14 in the second application i.e. application No.45 of 2013. The paragraph No.2.14 of application No.45 of 2013 reads thus:-

"2.14 Thus, as stated in the earlier para of this application the opponent No.5 Prof. C.A.Shah does not possess the requisite qualification and therefore he cannot be given charge of in charge Principal. Since the opponent No.5 Prof. C.A.shah is practicing C.A. he must obtain permission of C.A. Institute before taking up full time appointment of Lecturer or as Principal and therefore also he cannot be appointed as in-charge Principal of the College. The applicant has given an application and personally met the Managing Trustee on 29.10.2013, a copy of which is enclosed herewith collectively at ANNEXURE-D to this application wherein in one of the applications he has clearly stated while serving the copy of the order passed by the Hon'ble Tribunal in Application No.43/2013 that since the matter is kept on 7.11.2013, status quo may be maintained in another application of the same date he has requested the Managing Trustee to give charge of in-charge Principal to the applicant. Ignoring all these he has immediately ordered appointment of Prof. C.A.Shah as in-charge Principal. A copy of the said order is annexed hereto and marked as ANNEXURE-E to this application. From the language and copy sent it can be seen that this order is hurriedly drafted and I crave leave to point out the lacuna at the time of hearing of the application."

22.1 With reference to said para 2.14 Mr. Nanavati, learned Senior Counsel, submitted that the respondent No.1 filed another application because on 29.10.2013, the petitioner trust passed order appointing respondent No.4 as in-charge Principal w.e.f. 1.11.2013.

22.2 Mr. Joshi, learned Senior Counsel countered the said submission and submitted that the respondent No.1 was present in the meeting held on 28.10.2013 when it was clearly discussed and decided that respondent No.4 will be appointed as in-charge Principal w.e.f. 1.11.2013 i.e. 31.10.2013 A.O.H. The said fact was discussed and decided in the meeting dated 28.10.2013 and it was in pursuance of the said discussion and decision that on the next date, i.e. on 29.10.2013, order was passed.

22.3 In response to the submission by Mr. Nanavati, learned Senior Counsel for the respondent No.1, that the respondent No.1 had disclosed in the second application the fact about first application, Mr. Joshi, learned Senior Counsel for the petitioner, submitted that merely mentioning the factum about the pendency of first



application does not wipe out the fact that the petitioner despite being aware about all facts, preferred one application and when he was not granted any relief, in backdrop of the same facts, he preferred another application wherein the learned Tribunal granted ex-parte order and that too without issuing notice and without recording reasons.

**[23]** On consideration of the details and averments made in the two applications, it becomes clear that:-

- (a) the factual background in both the applications is similar;
- (b) the first application came to be heard by the learned Tribunal on 29.10.2013 while the second application came to be heard by the learned Tribunal on the next date i.e. on 30.10.2013; and
- (c) on 29.10.2013, learned Tribunal did not grant any ex-parte order/relief and/or any ad-interim relief and instead directed office to issue notice making it returnable on 7.11.2013, i.e. after 9 days; and
- (d) whereas on the very next date, i.e. on 30.10.2013, when another application came to be presented, learned Tribunal granted ex-parte adinterim relief and the returnable date is fixed on 7.1.2014 and the said ex-parte relief is to continue for the intervening two and half months i.e. until 7.1.2014.

23.1 In this context, it is relevant to recall that the respondent No.1 was very well aware about the fact that the respondent No.4 will be appointed as in-charge Professor w.e.f. 31.10.2013 A.O.H. Even the order which has been passed by the petitioner trust and the petitioner college clearly spells out that the respondent No.4 is appointed as in-charge Professor w.e.f. 1.11.2013.

**[24]** Under the circumstances, on 30.10.2013, even if the learned Tribunal considered it appropriate to entertain second application by the same applicant for similar relief, then also, the learned Tribunal could have issued urgent notice making it returnable on the next date i.e. on 31.10.2013 instead of granting ad-interim relief and adjourning the proceedings for two and half months.

24.1 The order passed by the petitioners appointing the respondent No.4 as in-charge Principal was to take effect on and from 1.11.2013 and that therefore, on 30.10.2013 when the application No.45 of 2013 was presented, learned Tribunal had sufficient time to issue urgent notice of atleast 48 hours, and if not 48 hours then atleast of 24 hours , to the opponent i.e. present petitioners before granting ex-parte relief.

24.2 Interestingly, after granting ex-parte interim relief, the learned Tribunal adjourned the proceedings for almost two and half months.

24.3 At this stage, this Court does not want to offer any comments or express any views on merits of the contentions raised by the petitioner and/or about the defence of the respondent No.1 because since the proceedings are pending before the learned Tribunal, it would be for the learned Tribunal to decide all relevant aspects and the contentions.

**[25]** However, the above mentioned, glaring facts stare in the face and there is no explanation from the side of respondent No.1 as to why urgent notice even for short period of 24 hours could not have been issued and was not issued before granting any ex-parte order and why ex-parte interim relief came to be granted without recoding reasons.

**[26]** In present case, on perusal of the order dated 30.10.2013 passed in Application No.45 of 2013 it comes out that the learned Tribunal has failed to record any reason whatsoever in support of the ex-parte order and any justification for granting ex-parte order is not recorded.

**[27]** Any reason for not issuing urgent notice even for short period of 24 hours before granting the ex-parte relief is also not recorded. When the same learned Tribunal, in earlier/previous and similar application preferred by the same applicant with reference to the same subject matter did not grant ex-parte relief and issued notice granting time of about 9 days to the opponents to file reply, there was hardly any justification for the learned Tribunal to pass ex-parte order and yet any reason for passing ex-parte order on very next day, i.e. 30.10.2013, are not recorded.

27.1 So as to justify second application, the learned Senior Counsel for the respondent No.1 submitted that, it was after the first application was filed and after the learned Tribunal passed order dated 29.10.2013 in application No.43 of 2013 that the petitioner No.1 passed the order dated 29.10.2013 and when the respondent No.1 preferring application No.43 of 2013, the order passed by petitioner trust was not available with the applicant i.e. respondent No.1 and therefore, he preferred second application after the order of the trust became available and while passing the impugned order dated 30.12.2013 the learned tribunal took into account the said aspect. So far as the said submission is concerned, it is pertinent that on 29.10.2013 when first application was presented before the learned Tribunal, the fact that the respondent No.4 was going to be appointed as In-charge Principal w.e.f. 31.10.2013 A.O.H. was available before the learned Tribunal in light of the details mentioned in said first application i.e.

application No.43 of 2013 and even after considering the said aspect, learned Tribunal did not, and rightly so, grant ex-parte relief and instead issued notice to the opponents. However, on the very next date, without recording any reasons and on the same fact viz. that the respondent No.4 is going to be appointed as In-charge Principal w.e.f. 1.11.2013, the learned Tribunal passed the impugned order.

**[28]** At this stage, it would be appropriate to put together and summarize the above discussed aspects.

(I) So far as the issue related to entertaining second / successive application on very next day is concerned, it is relevant to note that:-

(a) first application came to be considered and heard by learned Tribunal on 29.10.2013;

(b) on the very next day second application came to be filed by,

- same applicant;

- against same respondent;

- for same subject matter;

- seeking relief of similar nature and effect;

(c) upon considering similar averments in first application on 29.10.2013, the learned Tribunal issued notice which was made returnable after about 9 days;

(d) despite such facts, on the very next day the learned Tribunal entertained another application by same applicant for same subject matter and similar relief.

(II) Now, so far as ex-parte interim relief is concerned, it is relevant to note that:-

(a) the learned Tribunal heard and considered first application No.43 of 2013 as well as request for interim relief in said application, on 29.10.2013;

(b) learned Tribunal considered the facts, averments in the application and relief prayed for;

(c) after considering all relevant facts in said application No.43 of 2013 on 29.10.2013, learned Tribunal did not grant ex-parte relief instead the learned Tribunal had issued notice vide order dated 29.10.2013 which was made returnable after about 9 days i.e. on 7.11.2013;

(d) On next day, i.e. on 30.10.2013, the same applicant filed second application i.e. application No.45 of 2013 seeking relief of similar nature and effect against same respondent.

(e) despite the above mentioned, the learned Tribunal, on next day, not only entertained similar second application, but on the learned Tribunal also granted ex-parte interim relief in said second application No.45 of 2013.

On this count, i.e. entertaining second application and granting interim relief, the below mentioned aspects also need to be taken into account.

The learned Tribunal failed to consider or ignored that:-

(1) though the notice, issued in first application vide order dated 29.10.2013 was returnable on 7.11.2013 on very next day the same applicant had appeared before it with similar application against same opponent and was seeking ex-parte order and the learned Tribunal, without recording reasons, granted ex-parte interim relief on 30.11.2013;

(2) learned Tribunal also did not consider that short notice atleast of 24 hours can be and should be issued instead of granting ex-parte interim relief, and that too when the alleged event was to take place on 1.11.2013 and there was one intervening day.

(3) in that view of the matter and despite the fact that in first application notice for 9 days was given in the second application (if at all it would be maintainable) an urgent notice for short period (notice of just 24 hours) should be issued before granting interim relief and such notice could have been made returnable on 1.11.2013 or even on 31.10.2013;

(4) however, learned Tribunal did not take the said option and instead granted ex-parte order in a second/successive application by the same applicant against same opponent and also by disregarding the fact that the second application is filed for similar relief in light of same fact (for which first application was filed and was pending);

(5) the learned Tribunal did not consider / did not address the issue about maintainability and/or propriety and/or justiciability of such second and successive application on very next day;

(6) the learned Tribunal also did not consider the fact that the applicant, by preferring second substantive application instead of preferring a civil application or a miscellaneous application in pending substantive application, conveniently,

strategically and consciously avoided presence of the opponent at the time of hearing and availed second opportunity of seeking ex-parte order (inasmuch as if a civil application or miscellaneous application had been taken out then the applicant would have been obliged to serve a copy of the civil / miscellaneous application to the opponent, in advance but by preferring substantive application, that obligation was conveniently and successfully avoided);

(7) moreover, having regard to the nature and scope of relief prayed for in para 6(E) the Court, upon being satisfied that the ingredients to grant interim relief exist in the case, interim relief in terms of para 6(E) can be granted even on 1.11.2013 or even thereafter.

(III) Now, so far as the fundamental error viz. not recording any reason and granting ex-parte interim relief and that too without issuing even short period notice, is concerned, it is relevant, in addition to the above mentioned aspects, to take into account that:-

(a) the learned Tribunal has not recorded any reason and/or justification for granting interim relief;

(b) any reason or justification for granting ex-parte order in face of such factual background are also not recorded;

(c) any reason for not issuing even short period notice (at least 24 hours) are also not recorded i.e. any reason for dispensing with requirement to issue notice before granting interim relief are not recorded;

(d) the reasons and justification reflecting satisfaction that the facts and circumstances of the case require, mandate, and justify that (i) notice should be dispensed with; (ii) otherwise, grave injustice will be caused and/or application will be rendered infructuous; (iii) the well recognized ingredients to grant interim relief exist; (iv) there is sufficient reason and compelling circumstances to grant ex-parte relief;

(e) therefore, it would also follow that there is non-application of mind to the said and such other aspects.

(f) the learned Tribunal has also not recorded reasons for adjourning the proceedings to 7.1.2014 after granting ex-parte relief on 30.10.2013, and that too when first matter was going to come-up for hearing on 7.11.2013.

(g) the learned Tribunal has also not recorded reasons as to why it considered the application No.45 of 2013 as matter of urgency or exigency, after having adjourned

similar application (i.e. application No.43 of 2013) to 7.11.2013 (after issuing notice).

On this count, even if the submissions of learned Senior Counsel for the respondent No.1 (i.e. in application No.45 of 2013, the applicant presented before the learned Tribunal, the order passed by the respondent No.1 appointing respondent No.4 as Incharge Principal) is taken into account then also, there is no justification on record to explain as to why the learned Tribunal did not record even that reason or any other reason for granting ex-parte interim relief on 30.10.2013.

(h) learned Tribunal has also not recorded any reason as to why it deviated from its own order dated 29.10.2013 passed in application No.43 of 2013 and as to why it entertained second application by same applicant for same subject matter and similar relief.

**[29]** In this context, the above mentioned aspects clearly demonstrate and establish that the impugned order is vitiated in view of the procedural irregularity and because rather more particularly because - any reasons to support and justify the impugned order and/or for the course of action taken by the learned Tribunal are not recorded.

In this context, it would be appropriate to take into account the observations by the Hon'ble Apex Court in the case between [Shiv Kumar Chadha v. Municipal Corporation of Delhi & Ors.](#), 1993 3 SCC 161, wherein Hon'ble Apex Court observed that:-

"32. Power to grant injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order XXXIX of the Code requires that in all cases the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act,1976, a proviso has been added to the said rule saying that Swhere it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay..."

In the case between [Macleods Pharmaceuticals Ltd. v. Alembic Ltd.](#), 2008 5 GLR 4528 this Court while relying on the observations by Hon'ble Apex Court in case of Shiv Kumar Chadha observed that:-



"20. When the learned court grants an order of injunction without prior notice, then the other side not only has a reasonable expectation but also has a right to know which are the facts and aspects or factors of the subject matter which appealed to or weighed with the learned court. The other side expects to know the reasons which convinced the learned court to grant *ex parte* injunction so that it can while responding to and opposing the notice of motion, effectively address and deal with the same. Further, when appeal against the order is provided under the Code, then the appellate court also expects to know the reasoning of the Court which convinced it to pass the order of injunction without prior notice. Not only this, it is also necessary that the reasons recorded in the order be so recorded that it would amply clarify as to on what basis or for which reasons the learned court believed that a prior notice of at least one week or three days would defeat the object of granting injunction. The said provision under Rule 3 Order 39 postulates an additional requirement which the learned court is required to consider before an order of injunction.

Normally, while granting or refusing interim order, the court would take into account the well-recognised principles of strong *prima facie* case, balance of convenience and irreparable injury which cannot be compensated in terms of money, however, when an injunction order is being passed without prior notice then there is an additional requirement which is required to be observed, namely, recording the reasons which convince the court to grant injunction order without prior notice and which leads the learned court to the belief that the time which would be consumed in issuing prior notice would frustrate the object of granting injunction.

Though the provision under Order 39 Rule 3 of Civil Procedure Code is not expressly made applicable to the proceedings before the learned Tribunal, however, the said provision would serve as guide for all judicial / quasi judicial proceedings, more particularly in cases with peculiar factual background such as present case and the said provision would provide persuasive guideline to examine and test propriety of any order and/or any proceedings.

So far as the decision on which learned Senior Counsel for the respondent No.1 relied is concerned, the said decision relates to the merits of the case and therefore, the said decision does not assist the case of the respondent, at this stage, particularly so far as the contentions regarding procedural irregularity and granting *ex-parte* order without recording reasons is concerned.

**[30]** In the facts and circumstances of the case, in view of this Court, the impugned order dated 30.10.2013 passed in application No.45 of 2013 stands vitiated also for the

reason that despite the above discussed facts and circumstances, learned Tribunal passed ex-parte order and failed to record any reason whatsoever to justify the ex-parte interim order and for adjourning the further hearing/proceedings to 7.1.2014 (i.e. about 21/2 months). While considering the first application, the learned Tribunal made the notice returnable on 7.11.2013 whereas on the next date, when the second application came to be filed, learned Tribunal did not consider it proper to make the notice returnable on 7.11.2013 and instead the learned Tribunal granted ex-parte relief and then adjourned the proceedings for about two and half months. On the top of this, any reasons are not recorded and therefore stands vitiated and in view of this Court, the said order does not deserve to be sustained.

**[31]** In view of the foregoing discussion, this Court is of the view that the impugned order is unsustainable and deserves to be set aside. The learned Tribunal is required to consider as to whether the application No.45 of 2013 deserves to be maintained inspite of pendency of application No.43 of 2013 or not. The learned Tribunal is also required to consider as to whether the ingredients required for granting interim relief exist or not. Since any relevant aspects are not considered by the learned Tribunal, it appears that the case should be reconsidered by the learned Tribunal afresh and therefore, below mentioned order is passed:-

31.1 The order dated 30.10.2013 passed in application No.45 of 2013 is set aside.

31.2 It would be open to the petitioner and/or the respondent No.1 to submit application to the learned Tribunal to prepone the hearing of application No.45 of 2013 and/or hearing of application No.43 of 2013 and /or to request the learned Tribunal to prepone hearing of both applications.

31.3 It would be open to the learned Tribunal to pass appropriate orders in accordance with law in the pending applications No.43 of 2013 and 45 of 2013 and after considering the facts and circumstances of the case and after hearing the concerned and interested parties. With the aforesaid observations, clarifications and direction, present petition stands disposed of. Orders accordingly.

**[32]** At this stage, learned advocate for the respondent No.1 requested that the effect of present order may be suspended for period of 1 week so as to enable the petitioner to prefer appeal against this order.

In view of the reasons for which the impugned order passed by the learned Tribunal is set aside, this Court does not consider it appropriate to suspend present order and therefore, such request is not granted.