

(1960) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Petition No. 51 of 1960

Ashalata

APPELLANT

Vs

M.B. Vikram University and Others

RESPONDENT

Date of Decision : 21-09-1960

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Madhya Bharat Vikram University Act, 1955 — Section 23

Citation : AIR 1961 MP 299

Hon'ble Judges : M.A. Razzaque, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : G.L. Oza, for the Appellant;

Final Decision : Dismissed

Judgement

Krishnan, J.—This is an application of an unusual nature even by the standards of those under Article 226 of the Constitution. This year, the two text books prescribed for general English for the B.Sc. Part I Examination of the Vikram University have been changed; in other words, those for the examination of 1961 are different from those in 1960. The petitioner is a student who had failed in the B.Sc. Part I Examination of 1960 and is preparing to appear for the examination in 1961. She has already studied these two old books and feels that the change has put her "to financial loss and exposed her to extra strain".

Accordingly, she challenges this change, which under the law is made on the recommendation of the Board of Studies constituted by the University; according to her, this change is legally invalid, because the Board at the meeting of the 4th February, 1960, did not have a chairman nominated by the Vice Chancellor, but elected ad hoc, one of its own members for that office.

It is further alleged that the practice of not changing the textbooks, except after a number of years, has been given up on this occasion and the direction of the University Grants Commission, that textbooks should not be frequently changed,

has also been ignored. Accordingly the petitioner prays that the decision of the Board of Studies (of 4th February 1960) be declared illegal, and the University directed to continue the use of the same textbooks for the examination of 1961 as had been, prescribed for the examination of 1960.

2. The principles on which the High Court might issue directions and writs under Article 226 of the Constitution are by now well established so that it is unnecessary to cite case law on this subject. The Vikram University, like most of the Universities in our country, is an autonomous corporation, constituted by a statute (Madhya Bharat Act 18 of 1955), and maintained by the State of Madhya Pradesh. As such, it comes within the definition of "State" in Article 12, the phrase "all local or other authorities" being wide enough to include a University maintained by State funds.

So a University is amenable to a direction or writ issued by the High Court in appropriate cases. At the same time, as it has been constituted to exercise some highly specialized functions, acting through officers and subordinate authorities appointed or constituted by itself in exercise of powers given by statute, there should be very good reason for the High Court interfering in this manner. The basic requirements for this are that, firstly, there should be a patent and undoubted violation of a provision in the Statute or regulation or ordinance governing the particular subject; secondly, this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University, that is, the breach should be such that, but for it, the petitioner would not have suffered this inconvenience or denial; thirdly, the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large disproportionate to the injustice or inconvenience that is sought to be remedied.

3. In the instant case, the petitioner's allegation is that the change of textbooks within a particular number of years is against the recognized practice and the direction given by the University Grants Commission. Changing of the textbooks is left to the discretion of the University which it will exercise on the recommendation of a specialised body called the Board of Studies on the respective subjects. The recommendation of the Board is usually accepted. The Board itself, like all academic bodies, would normally be unwilling to make many changes, but there is no rule or law shown to me that for so many years there should be no change.

In practice, there will be the minimum number of changes consistent with the maintenance of the standards and the facility of the teaching institutions on the one hand, and the convenience of the examinees on the other. In the instant case also the changes are not of a radical nature. In 1960, there were two rather elementary books containing selections, one called "Prose Selections" collected and edited by Shukla and other called "Poet Speaks" presumably, a poetry selection.

The Board has recommended two new books, also selections, but by different editors. It is not suggested that the standard has varied or that from the view point of the examinees the new selection is far too difficult or far too easy. The point is that there is no law against such a change that this court should enforce by a writ or direction.

4. Similarly, what the University Grants Commission has said is only a suggestion or advice to be followed generally and not necessarily in every detail. Any way, it is not binding. So, these two grounds give no support to the petitioner's case.

5. What the petitioner particularly relies upon is that when the English Board of Studies met on 4-2-1960 the Vice-Chancellor had not yet nominated the chairman. There is a section in the Vikram University Act (Section 23) that when the ordinance or regulation does not provide for the appointment of the chairman of anybody, he should be nominated by the Vice Chancellor. The argument is that in these circumstances, the Board should either have adjourned awaiting the nomination, or presumably should have gone on without a chairman to assist and guide the proceedings. What the Board did was, it elected one of its members -- Shri P. C. Joshi as the ad: hoc chairman, conducted its business, made certain decisions and adjourned. This particular decision or as for that matter, all the decisions, were obviously unanimous.

The minutes of the meeting are before us and it is not shown or even indicated that there, was any occasion for the chairman to, intervene and cast his vote." The three members who were on the Board, were no doubt competent under the law, and the Board itself as a body, had been properly constituted. The absence of a nominated chairman is a breach in a strictly technical sense; but it has led to no material difference in the decision. Whether Shri Joshi was the chairman or somebody else, or whether the Board proceeded informally even without a chairman, the result would have been just the same as there was no occasion for the chairman to interfere by casting his vote.

6. A chairman unlike a member of a Board, is not an invariably necessary functionary. At any rate the functions for which a chairman is primarily designated are very often in the background. There is, of course a general power to direct proceedings; but when the Board itself proceeds without any mutual difference, this is of no importance. If there is no difference, or if there is a clear majority otherwise, the chairman does not exercise his vote.

But he comes in with very considerable effect when there is an equality of votes. A decision which the Board arrives at unanimously, without the chairman casting his vote, is one to which the identity or even the existence of the chairman has made no difference. In other words this irregularity has had no effect whatsoever on the decision or recommendations of the Board.

7. The powers exercised under Article 226 are discretionary and essentially equitable so that the Court is not bound to exercise it whenever it finds some breach of some provision. At that rate, there would be no end to the occasions

on which this Court might interfere. If the breach or irregularity has really made no difference to the results, then the High Court would be committing a serious misuse of its extraordinary powers if it still interferes.

In matters like the prescription of textbooks or other academic functions, it is not the compliance with the letter of the law that is important. What is important is a general substantial compliance as long as the results are not affected. Thus, In this case, the absence of the nominated chairman notwithstanding, there is no occasion for the exercise of powers under Article 226 of the constitution.

8. Even if there was an occasion for its exercise at this stage, it would be causing disproportionate amount of upset in the department concerned as well as to the thousands of examinees in general if a direction is issued that the Board's recommendations should be ignored and now the textbooks of 1960 should be reintroduced for 1961 as well. The Board's meeting itself was in February and the University has already acted on the decision before the beginning of the academic year. Thus, thousands of students have already purchased the new books (which cost only a few rupees) which is not "a financial loss" to an examinee who has got money and means to bring an action like this.

More than that, the examinees as well as the teaching staff in the various colleges have begun to work on the new books and must by now have made some progress. If at this stage this court on account of some irregularity committed in February, directs the University to ignore the changes suggested and revert to the older books, thousands of students would be seriously inconvenienced. That way also, there is no ground justifying the issue of any direction as, prayed by the petitioner.

9. In the result, the petition is found to be without substance and is summarily dismissed.

10. M. A. RAZZAQUE, J.: I agree.