

(2014) 10 OHC CK 0032

In the Orissa High Court

Case No : Writ Petition (C) No. 13319 of 2013

Atmaram Sanskrit Mahavidyalaya

APPELLANT

Vs

Jagannath Sanskrit Vishwavidyalaya and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2015) 1 ILR 536

Hon'ble Judges : B.K. Nayak, J.

Bench : Single Bench

Advocate : B.S. Tripathy-1, for the Appellant; S. Nayak and S.M. Jena, for the Respondent

Final Decision : Disposed off

Judgement

B.K. Nayak, J.—This writ petition has been filed by Atmaram Sanskrit Mahavidyalaya, Jatadhari Ashram through his Secretary praying to declare notification No. 1242 dated 28.05.2013 (Annexure-3) cancelling the results of 4th paper, Vyakarana Upasastri (New & Old) Examination, 2013 in respect of the students of the petitioner's institution and the punishment imposed debarring the Centre Superintendent and the concerned Invigilator from the conduct of Examination related works for next one year from the valuation and other examination related works for next three years on the ground of reported mass malpractice in the said paper as bad and illegal in law and to quash the same, and with further prayer to direct the opposite party-University and its authorities to forthwith evaluate the answer papers of the said cancelled examination. The petitioner's institution established since 1993, is affiliated to Shri Jagannath Sanskrit Vishwavidyalaya-opposite party No. 1. It has been presenting its students in the annual examination of Sastri and Upasastri since 1995 at its own premises, which is an examination centre. During the examination 2013 on 04.03.2013 in respect of 4th paper- Vyakarana Upasastri (New & Old) the one-member squad (opposite party No. 3), who is a Professor of opposite party-University, visited the examination centre and allegedly detected irregularity and mass malpractice

during conduct of the examination and accordingly he submitted a report to the University indicating about such mass malpractice, on the basis of which the impugned notification dated 28.05.2013 under Annexure-3 has been issued by the University canceling the examination in respect of 4th paper- Vyakarana of the centre conducted at the petitioner's centre.

2. During the course of his argument, learned counsel for the petitioner does not challenge the report of the one-man squad with regard to alleged mass malpractice at the examination concerned. He only raises legal contention to the effect that under the Orissa Universities First Statutes, 1990, it is the syndicate of the University, who is only authorized to decide and pass order regarding penalties to be imposed on the recommendations of the examination committee for use of unauthorized or incriminating material during examination at a centre and the impugned notification under Annexure-3 imposing the punishments is not the outcome of any decision taken by the syndicate of opposite party-University and, therefore, it has no legal basis. It is also submitted that there is no recommendation of the examination committee for cancellation of such examination on the report of the squad, but it is only the decision of the Vice Chancellor of the University, who has no authority to take such decision under the statute.

3. A counter affidavit has been filed by opposite party Nos. 1 and 2 wherein it is stated inter alia in paragraphs-11 and 12 thereof that the flying squad detected mass malpractice and suggested for cancellation of the examination of the said paper and from the report of the flying squad the examination committee considered that there was mass malpractice and the Invigilator along with the Centre Superintendent were involved in such mal practice. It is also stated that the impugned notification is the outcome of the examination committee report which was ratified by the syndicate and, therefore, it cannot be said that the syndicate has not taken decision for cancellation of the examination concerned.

4. In reply the learned counsel for the petitioner submits that the syndicate being the sole authority under the Orissa Universities First Statutes , 1990 and there being no provision in the statutes prescribing for delegation of powers of syndicate to any other authority and for ratification of any decision of any other authority by the syndicate, the impugned notification which is not the outcome of the decision of the syndicate of the University, is unsustainable.

5. In order to resolve the issue raised it is necessary to look to certain relevant provisions of the Orissa Universities First Statutes, 1990 (in short "the Statutes". Section 209 of the First Statutes which provides for the Constitution of the Examination Committee and its powers is extracted herein below:

"209. Examination Committee - (1) There shall be an Examination Committee which shall perform the following functions namely:

(i) to recommend to the Syndicate, names of suitable persons for appointment as examiners;

- (ii) to consider the reports of the Center Superintendents of Examination Centers and Supervisors of Valuations Centers and Observers Deputed to Examination Centers and make recommendations thereon to the Syndicate;
- (iii) to consider the reports of Boards of Conducting Examiners on the work of Chief, Additional, Special and Assistant Examiners;
- (iv) to consider all cases of unfair practices in examinations and make suitable recommendations to the Syndicate;
- (v) to perform such other functions related to examinations as may be assigned to them by the Syndicate and the Vice-Chancellor.

(2) The following shall be the composition of the Examination Committee, namely;

- (a) the Vice-Chancellor;
- (b) two members of the Syndicate from among those specified in Clauses (c), (d), (e), (f), (g) and (h) of Sub-section (1) of Section 10 of the Act to be nominated by the Vice-Chancellor for a term of not more than one year or for a particular examination on examination basis;
- (c) the Controller of Examinations shall be the Secretary of the Committee.

Any two of the three members shall form the quorum of the Committee.

(3) The vice-Chancellor shall, when present, preside at all meetings of the Committee and in his absence of the two Syndicate members as agreed between them shall preside at such meeting.

(4) Ordinarily the Committee shall meet at least twice a year. The first meeting shall be convened in the first week of January each year at which the Committee will consider the list of Question Paper Setters, Examiners etc., prepared by the Boards of Studies and vetted by the Controller of Examinations.

(5) After due scrutiny of the list, the Committee may recommend the list to the Syndicate with or without modifications provided, however, that there shall be a choice of three names to be considered for the appointment of every Question paper setters and Examiner in respect of all the papers of the examinations."

6. Section 210 of the Statutes provides for the powers of the syndicate with regard to ratification and approval of list of examiners vetted by the examination committee and to frame from time to time such rules and issue such directions and instructions for the guidance of all Question Paper Setters, Examiners appointed under the provisions of these Statutes.

7. Section 214 of the Statutes which provides for the manner of dealing with all instances of unfair means adopted in examination and the procedure and powers of the authorities to deal with the same and the nature of penalties to be imposed runs as under:

214. Unfair means in examination - (1) All instances of unfair means in examinations whether reported by the Centre Superintendents/Invigilators/Supervisors/Observers/Examiners or otherwise shall be placed before the appropriate Board of Conducting Examiners by the Controller of Examinations as soon as practicable but preferably before the results of the relevant examination are passed for publication. The Board of Conducting Examiners shall consider the reports and other materials, if any, and make a report of the scope and extent of the unfair means resorted to and specifically whether use has been made of unauthorized or incriminating material referred to in the reports or produced before the Board.

(2) Conduct of examination Act - In case the Board is satisfied that there is prima facie evidence of resort to unfair means in the examination, the Controller of Examinations shall forthwith issue notices to the candidates concerned precisely specifying the nature of the charge and calling upon the candidate to furnish his written reply to the charges within a period of twenty-one clear days. The notice shall also inform the candidate that he shall have the right to a personal hearing on a specified date which shall be after the last date for receipt of the written reply from the candidate.

(3) The written reply of the candidate along with the report of the Board of Conducting Examiners and other reports and material pertaining to the matter shall be placed before the Examination Committee.

(4) The Committee shall give a personal hearing to the candidate as indicated in the notice issued to the candidate by the Controller of Examinations and shall also consider the report of Board of Conducting Examiners, and other reports and material relevant to the case, if any.

Provided however, that in case no reply has been received from the candidate within the stipulated time and/or in the event the candidate failing to appear before the Committee at the appointed time, the Committee shall be competent to consider the other reports and other relevant material placed before them by the Controller of Examinations.

(5) If the Committee comes to the conclusion that there has been resort to unfair means, the Committee may recommend to the Syndicate that any of the following penalties may be imposed on the candidate commensurating with the gravity of the unfair means resorted to by him namely:

(i) for writing the roll number or leaving any identification mark anywhere in the answer script except in the place provided for the purpose-cancellation of the result of the examination;

(ii) for possession (but not used) of unauthorized or incriminating material cancellation of the result of that examination;

(iii) for misbehaviour with the Centre Superintendent/Invigilators/Supervisors/others connected with the conduct of the examination-Cancellation of the result

of that examination;

(iv) for use of unauthorized or incriminating material-Cancellation of the result of that examination and debarring the candidate from appearing at the next examination;

(v) for use of unauthorized or incriminating material combined with misbehaviour with the Centre Superintendent/Invigilators/Observers/Supervisors or others connected with the conduct of the examination-Cancellation of the result of that examination and debarring the candidate from appearing at the next two examinations.

(6) The Syndicate may consider the recommendations of the Examination Committee and decide on the penalties to be imposed. All such orders imposing penalties shall be published in the University Notice Board and the Gazette."

8. It transpires from the materials and the records produced by the University that the examination committee consisting of the Vice-Chancellor, Chairman, P.G. Council and Member of the Syndicate, one Prof. of Dharmasastra and Member of the Syndicate and the Controller of Examinations in their meeting dated 21.05.2013 took decision inter alia recommending cancellation of results of the examination concerned of the petitioner-institution and for debarring the concerned Centre Superintendent and the Invigilators from conducting examination related works for next one year. It is quite apparent that on the basis of such recommendation, the impugned notification (Annexure-3) was published on 28.05.2013, by which time, the Syndicate had not even approved or ratified the recommendation of the examination committee. It was only in the meeting of the Syndicate on 18.06.2013 vide Agenda Item No. 6, the Syndicate ratified post facto the action taken by the Vice Chancellor with regard to the cancellation of the result of the examination.

9. Now the question arises as to whether the recommendation about the penalty of cancellation of examination made by the examination committee could have been ratified by the Syndicate of the University after publication of the impugned notification, which is evidently based on the recommendation of the examination committee?

Resorting to malpractice or mass malpractice at the examination comes within the ambit of adoption of unfair means and can be visited upon with penalties. Section 214 of the Statutes provides for the manner of dealing with all incidents of unfair means adopted in examination and the procedure and powers of the authorities to deal with the same. Sub-section (2) of Section 214 provides for issuance of notices to the persons to be affected by the proposed action for adoption of unfair means and giving opportunity of hearing to them. Feeble allegations with regard to violation of such principle of natural justice made in the writ application were not pressed by the learned counsel for the petitioner at the time of hearing. Sub-sections (3), (4) and (5) of Section 214 of the Statutes provides that all materials including the reply of the candidates and the report of

the Board of conducting examiners and other reports and materials pertaining to the matter shall be placed before the examination committee and on consideration of all such materials if the committee comes to the conclusion that there has been resort to unfair means, it may recommend to the syndicate for imposition of any of the penalties prescribed in sub-section (5) of Section 214. Clause (iv) of sub-section (5) of Section 214 provides for the penalty of cancellation of result of the examination and debarring the candidates from appearing at the next examination for use of unauthorized or incriminating material at the examination. Sub-section (6) of Section 214 specifically envisages that the syndicate on consideration of the recommendations of the examination committee shall decide on the penalties to be imposed for the alleged misconduct and that all such orders imposing penalties shall be published in the University Notice Board and the Gazette.

10. It is clear from the aforesaid provisions of the Statutes that the examination committee is empowered only to recommend the penalties to be imposed for the misconduct and the syndicate has to take the final decision about such penalties whereafter the order of the syndicate imposing the penalty shall be published. No provision of the Statutes or any other law has been brought to the notice of the Court to indicate that the final decision about imposition of penalties shall be taken by the examination committee or that any recommendation by the examination committee of any penalty can be ratified by the syndicate.

11. It is trite law that if a Statute provides for performance of any act in a particular manner, the act must be performed in the manner prescribed or not at all.

12. In the case of Marathwada University Vs. Seshrao Balwant Rao Chavan, interpreting Section 84 of the Marthwada University Act, which provides for delegation of powers of the authorities of the University, it was held as follows:

"22. The other infirmity in the said resolution goes deeper than what it appears. The resolution was not in harmony with the statutory requirement. Section 84 of the Act provides for delegation of powers and it states that any officer or authority of the University may by order, delegate his or its power (except power to make Ordinance and Regulations) to any other officer or authority subject to provisions of the Act and Statutes. Section 24(1)(xli) provides for delegation of power by the Executive Council. It states that the Executive Council may delegate any of its power (except power to make Ordinances) to the Vice-Chancellor or to any other officer subject to the approval of the Chancellor (underlining is ours). The approval of the Chancellor is mandatory, without such approval the power cannot be delegated to the Vice-Chancellor. The record does not reveal that the approval of the Chancellor was ever obtained. Therefore, the resolution which was not in conformity with the statutory requirement could not confer power on the Vice-Chancellor to take action against the respondent."

Dealing with the contention that the Executive Council of the University ratified

the action taken by the Vice-Chancellor, the Hon"ble Court further held in paragraph-24 as follows:

"24. By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's Law of Agency (Fifth Edition) Chapter 5 at p.73, the principle of ratification has been explained:

"What the "agent" does on behalf of the "principal" is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorization by the principal to do exactly what the agent has done. The interesting point, which has given rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorized act as from the date of the ratification: it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorized from the outset to act as he did. Ratification is "equivalent to an antecedent authority"."

Finally the Hon"ble apex Court in paragraph-26 held that the principles of ratification do not have any application with regard to exercise of powers conferred under statutory provisions, and that the statutory authority cannot travel beyond the power conferred and any action without power has no legal validity and it is ab initio void and cannot be ratified.

13. In the case in hand, it is apparent that the examination committee of the University recommended the penalties of cancellation of the examination concerned and debarring the Centre Superintendent and Invigilators from conducting any examination related works for one year. Statutorily the examination committee does not possess the power to take a final decision about imposition of penalties, which power has been conferred only on the syndicate as per sub-section (6) of Section 214 of the Statutes. It is only after the Syndicate passes order imposing the penalties that such order can be published. No provision in the Statutes authorizing the Syndicate to delegate its power to impose penalties on the examination committee has been brought to the notice of the Court. The instant impugned notification imposing penalties was published only on the basis of recommendation made by the examination committee of the University and the penalty order (notification) so published on 28.05.2013 was subsequently ratified by the Syndicate in its meeting dated 18.06.2013, which is a post facto ratification.

In the circumstances, it must be held that the impugned notification under Annexure-3 imposing the penalty on the petitioner-institution has no legal basis.

14. Learned counsel for the opposite parties placed reliance on a decision of this Court reported in 2013 (Supp.-I) OLR-1045: Sri Biswaranjan Sethi and others v. Sri Jagannath Sanskrit Biswavidyalaya and another. This decision was rendered only on factual contentions with regard to allegation of adoption of malpractice at the examination and the questions of power of the authorities to impose the penalty and ratification of decision of one authority by any other or superior authority was not raised or considered. Therefore, the decision cited by the learned counsel for the opposite parties has no application to the present case. On the aforesaid analysis, this writ petition is allowed and the impugned notification under Annexure-3 in so far as it relates to punishment of cancellation of the results of 4th Paper, Vyakarana Upasastri (New & Old) Examination, 2013 of the students of the petitioner's Institution and the punishment of debarring the Centre Superintendent and the Invigilator from examination related works is quashed. It is directed that the Syndicate of the opposite party-University shall consider the recommendation of the examination committee with regard to the proposed penalties in respect of the petitioner's Institution and shall take an independent decision within a period of two months from the date of communication of this order. The writ petition is accordingly disposed of. Requisites for communication of this order shall be filed within one week.