

(1993) 07 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 7100 of 1993

C. Arumugam

APPELLANT

Vs

The Registrar, The Controller of Examinations and M.
Ratnaswamy, Reader Management Studies, University of
Madras

RESPONDENT

Date of Decision : 05-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 07 MAD CK 0015

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : K.P. Krishna Shetty, for G. Alex Benziger, for the Appellant; P.
Jyothiraani, for Respondents 1 and 2 and S. Jagadesan, for the Respondent

Judgement

Bakthavatsalam, J.—The writ petition is for the issue of a writ of Mandamus directing the Respondents 1 and 2 not to give effect to the

endorsement made by the external examiner Dr. V. Baskaran, of the result of public viva held on 12.4.1993.

When the Writ Miscellaneous Petitions come up for hearing, by consent of parties, the Writ Petition itself is taken up for final disposal.

2. The Petitioner was working as the Head of the Department in-charge of the Department of Management Studies and is now under suspension

and charges have been framed against him relating to the out of turn admissions he has given to students in M.B.A. Course for the academic year

1992-93. The present writ petition has been filed questioning the 1st and 2nd Respondents' methods of conducting academic programme and

public viva for the 3rd Respondent in submitting his thesis for Ph.D. Degree in the field of Statistics, pertaining to stochastic models, as illegal and

surreptitious, alleging that in order to protect the interest of the "public", this has been filed as a "public interest litigation".

3. In the affidavit filed in support of this writ petition, it is alleged that the Petitioner is the Chairman, Faculty of Management, University of Madras

and is the senior most Reader in the Department of Management Studies, University of Madras, that the Respondents 1 and 2, in gross violation of

academic standard and rules, appointed a non-academic person and unreconised guide as an external examiner to conduct the public viva for the

third Respondent and conducted the public viva on 12.4.1993. contrary to the rules and regulations of the University of Madras. It is further

alleged that the appointment of Dr. V. Baskaran, as the Guide for conducting viva for the 3rd Respondent is totally against the academic standard

and the rules of the University and the said Dr. V. Baskaran, was an employee of Madras Port Trust and presently working as Deputy Director,

National Institute of Port Management, Uthandy, Madras and he has obtained his Ph.D. Degree just three years back and he never worked in any

University or College and never guided any research student and has not published any research article. The Petitioner even doubts whether the

3rd Respondent's name was mentioned in the list of 12 experts suggested by the Guide before sending the thesis for valuation. Therefore, in such

circumstances, the result of such public viva has no value and the same has to be held as void.

4. It is further alleged by the Petitioner that every Ph.D. candidate has to face public viva as per regulations 12(a) and 14(d) of the University of

Madras, according to which, that every candidate, along with his application for Ph.D. Degree, shall submit himself to a public viva by "one

external examiner" in India, the Supervisor and members of the Department in the subject concerned where he conducted research. In this case,

excepting the present Head-incharge, who remained at the public viva only for a short period, nobody else from the Department of Management

Studies was present. Further, the endorsement of an unqualified and unrecognised guide of the result of the public examination, is null and void and

is against the mandatory provision of Regulation 14(d). Aggrieved by the conduct of the Respondents 1 and 2, the present writ petition has been

filed with the abovesaid prayer.

5. In the counter filed by Respondents 1 and 2, it is stated that though the Petitioner was the Head of the Department in charge of the Department

of Management Studies, University of Madras, he is under suspension and charges have been framed against the Petitioner relating to his out of

turn admissions given to students in M.B.A. Course for the academic year 1992-93 and in his place one D.V. Suresh Kumar has been made as

the Head of the Department in charge of the Department of Management Studies and he has become the Member of the Academic Council.

Therefore, it is stated, that the Petitioner has no locus standi to question the appointment of Dr. V. Baskaran, and therefore, he cannot seek not to

give effect to the endorsement made by the external examiner Dr. V. Baskaran, in the public viva-voce held on 12.4.1993, for the 3rd

Respondent. It is also stated that as per the Regulations governing the Ph.D. Course, the guide of the 3rd Respondent, Dr. J. Ranganathan of the

Department of Statistics, had recommended 12 names of the examiners of Whom Dr. N.G. Sabapathi, was appointed as examiner from out side

India and Prof. Abrar Ahmed, Dean and Head, Faculty of Management, Banaras University was appointed as another examiner from the panel

from rest of India and Dr. V. Baskaran, Professor of Management and Deputy Director, National Institute of Port Management, Ministry of

Surface Transport, Madras-96, who was having specialisation in Marketing and Personnel and 25 years of experience, as stated by the guide in

the proforma, was appointed as an examiner for conducting viva-voce. As per the regulation, there is no specific qualification prescribed for

recommending or appointing the external examiners. In this case, the guide has stated the name of Dr. V. Baskaran, as a Professor of Management

and Deputy Director with 25 years of experience, and therefore, it cannot be said that he is not a person of academic standing. There is no illegality

or irregularity in the conduct of viva on 12.4.93 for the 3rd Respondent and in the appointment of Dr. V. Baskaran as an external examiner. It is

also further stated that a copy of the thesis was in fact placed in the Department library. It is further stated that the present writ petition has been

filed out of personal prejudice against the 3rd Respondent, who is also a Member of the Faculty of Department of Management Studies. The

public viva voce was conducted on 12.4.1993 and nearly 40 eminent persons had participated including four from the Department.

6. In the counter affidavit filed by the 3rd Respondent (since filed as W.M.P. No. 18657/93 to vacate the interim injunction granted in W.M.P.

No. 11268/93 in W.P. No. 7100/93), it is stated that there is no iota of evidence to show that either the public have been affected by the

declaration of the 3rd Respondent to qualify for the Ph.D. Degree in the field of Statistics, pertaining to the area of specialisation, namely,

stochastic models, or the writ Petitioner has suffered any special injury. The Petitioner has no locus standi to maintain this writ petition, as he is

under suspension. The Respondents 1 and 2 have followed the procedure and the guidelines with regard to the valuation of the 3rd Respondent's

thesis as well as the conduct of viva voce. There is no statutory rules prescribing any qualification for the appointment of guide as an external

examiner to conduct viva voce for the 3rd Respondent. It is further stated that to conduct viva voce, it is not a pre-requisite condition that a person

should have worked in the University or the College for his appointment as the conductor of viva voce. It is further stated by the 3rd Respondent

that the Regulations as prescribed in 12(3) and 14(d) have been followed by Respondents 1 and 2 in the matter of conducting viva voce for the

3rd Respondent and the conduct of the writ Petitioner in filing the writ petition on the basis of public interest is not bona fide.

7. Dr. Krishna Shetty, Learned Counsel for the Petitioner contended that the Proforma given by the 3rd Respondent contains names of various

experts to adjudicate upon the thesis and Dr. Baskaran, who has been selected as an external examiner, is not a man of academic standard, in the

sense, he had not attached to any college or University and he is not possessing sufficient experience and in such circumstance, viva held on

12.4.1993 for the 3rd Respondent is vitiated on the ground that Dr. Baskaran is not qualified to conduct viva for the 3rd Respondent. The

Learned Counsel for the Petitioner further contended, by referring to Proviso (3) to Regulation 4 of the Regulations, that it cannot be said that the

proforma is has no legal sanctity. It is further contended that the claim of the Petitioner specifically took up an objection that the said Dr. Baskaran

is not a qualified guide to be appointed as an external examiner to conduct to viva for the writ Petitioner, and it is not proper on the part of the

University to contend that there are no specific regulation with regard to the qualification, for appointing external examiner.

8. Per contra, the Learned Counsel for the University Mr. P. Jyothimani, contends that there is no infirmity in the conduct of viva voce for the 3rd

Respondent by the University and the appointment of Dr. Baskaran, as an external examiner for the viva voce for the 3rd Respondent, is in

accordance with the Regulations of the Madras University and no prescribed qualification has been specified in the University Regulations with

regard to the appointment of external examiners. It is further contended that Dr. V. Baskaran, who was appointed as an external examiner for

conducting viva for the 3rd Respondent, is a professor of Management and now, presently working as Deputy Director of National Institute of

Port Management, Ministry of Surface Transport, Madras-96 with 25 years of experience in the field of Management Studies and it cannot be said

that the said Dr. Baskaran has no academic standing. Further the thesis submitted by Dr. Baskaran was placed in the University library and

according to the learned, counsel for the University, it is not correct to state that the said Dr. Baskaran had not submitted any thesis. The

Petitioner, who is under suspension, facing certain charges of misconduct, has no locus standi to maintain this writ petition. The Petitioner, being a

member of the very same faculty, to which the 3rd Respondent is also a member, has filed this writ petition making false allegations with a view to

interdict the award of Ph.D. Degree to the 3rd Respondent.

9. I have considered the argument of Dr. Krishna Shetty, Learned Counsel for the Petitioner and Mr. P. Jyothimani, for Respondents 1 and 2 and

Mr. S. Jagadeesan, for the 3rd Respondent, and perused the records placed before this Court.

10. First of all, in my view, it is necessary to decide the issue of locus standi of the Petitioner to maintain this writ petition with regard to the award

of Ph.D. Degree to the 3rd Respondent. This is because the Petitioner, who is now under suspension on account of certain charges of misconduct,

has filed this writ petition, seeking for the issue of a writ of mandamus directing the Respondents 1 and 2 not to give effect to the endorsement

made by the external examiner Dr. V. Baskaran, of the result of public viva held on 12.4.1993, as a "public interest litigation", On a perusal of the

facts and circumstances of this case, it is clear that the "private interest" of the Petitioner is projected in this writ petition as a "public interest

litigation". In this connection, it is relevant to quote the following observation of Khalid, J. in Shri Sachidanand Pandey and Another Vs. The State

of West Bengal and Others, :

Today, public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and

among the public. They must be above suspicion. Public interest litigation has now come to stay. But one is led to think that it poses a threat to

Courts and public alike. Such cases are now filed without any rhyme or reason. It is therefore necessary to lay down clear guidelines and to outline

the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest

Litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative

and executive functions. This does not mean that traditional litigation should stay put. They have to be tackled by other effective methods, like

discentralising the judicial system and entrusting majority of traditional litigation to village Courts and Lok Adalats without the usual populist stance

and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class section or when basic human rights are invaded or

when there are complaints of such acts as shock the judicial conscience that the courts, especially the Supreme Court should leave aside

procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the

needy, the under dog and neglected. It is necessary to have some self-imposed restraint on public interest litigants.

If the principles laid down by Khalid, J. are applied to the case on hand, I am of the view that the Petitioner has no locus standi to maintain the writ

petition. Further, it appears that the Petitioner has been a Member of the faculty of which the 3rd Respondent belongs. The Petitioner has not

obtained Ph.D. Degree, though he is senior to 3rd Respondent. Naturally when the 3rd Respondent wants to obtain Ph.D. Degree, the Petitioner,

being senior to him, tries to place some hurdles out of frustration.

10. From the regulations placed by the Learned Counsel for the Respondents 1

and 2,1 do not see any particular regulation, which prescribes specific qualification for the appointment of an examiner to conduct viva voce, in the instant case for the 3rd Respondent. So in the absence of any specific regulation pertaining to the qualification for external examiners, I do not think that any Writ of Mandamus as prayed for can be issued. It is well settled that before seeking for the issue of a writ of Mandamus, a duty should have been cast upon the Respondents in this case the Respondents 1 and 2, by any status and that is absent in this case. I am able to agree with Dr. Krishna Shetty Learned Counsel for the Petitioner that the Proforma contains the qualifications cannot be said that Dr. V. Baskaran, is not a man of academic Dr. V. Baskaran, who was appointed as an external examiner. Therefore, it standard nor is without any experience in the management studies. Dr. V. Baskaran who was appointed as an external examiner to conduct viva for the 3rd Respondent pertaining to Ph.D. Degree Course is a Professor of Management and Deputy Director, National Institute of Port Management Ministry of Surface Transport Madras 96 having specialised knowledge in marketing and personnel. Therefore, in my view, the said Dr. V. Baskaran has been rightly appointed as an external examiner to conduct viva voce for the 3rd Respondent. The other allegations made by the Petitioner that the said Dr. V. Baskaran, has not submitted any thesis and no thesis of Dr. V. Baskaran, has been placed in the Department Library, and has not taken part in any research study and has not been recognised by any University as research guide are all vague and without any basis in view of the counter affidavit filed by the Respondents 1 and 2 as well as the 3rd Respondent. Further this Court sitting under Article 226 of the Constitution of India cannot sit on appeal over the decision of the University, with regard to the conduct of viva voce for the 3rd Respondent, pertaining to the award of Ph.D. Degree. In matters of this kind particularly in the filed of research. I do not think that this Court can interfere or suggest the University as to the most of selection of external examiners for conducting viva voce.

11. Dr. Krishna Shetty Learned Counsel for the Petitioner relies upon the decision of a Division Bench of this Court, to which I am a party in W.P. No. 10337/92 (dated 30.10.92) and contends that in that decision the

Division Bench has held that the Proforma conditions have to be complied with and followed. The said case was with regard to the admissions for M.B.B.S. Course in the State of Tamil Nadu. The Learned Counsel further relies upon Miss Prabha Kalyandeo Verma Vs. The Nagpur University and Others, . But both the decisions are not applicable to the case on hand. This is a case with regard to the conduct of viva voce by an external examiner for the award of Ph.D. Degree whereas the abovesaid two decisions are concerned with certain conditions in the prosepctus, for admission.

12. In view of the above reasoning, there are 10 merits in the writ petition and is accordingly.