

(1988) 06 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 5211, 5622 and 5810 of 1988

Dr. H.S. Appaji

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 23-06-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) ILR (Kar) 2385 : (1988) 3 KarLJ 200

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : Mohandas N. Hegde, for the Appellant; M.N. Seshadri, for R-1 and 2, N.K. Ramesh, for R-3, for the Respondent

Judgement

Bopanna, J.—These three Writ Petitions are disposed of by a common order since the subject matter of dispute between the parties is common in all the Writ Petitions and a common point arises for consideration in these petitions.

2. The facts in these Writ Petitions unfold a sequence of extraordinary events which resulted in cancellation of the examinations held and proposed to be held in the practicals and orals of the M.D. and D.C.P. examinations of February/March, 1988 in Bangalore Medical College. The facts are not in very serious controversy. But the controversy which was highlighted in the course of the arguments appears to revolve round the power of the Registrar (Evaluation) who is also the Controller of Examinations to cancel the examinations in question and the power of the Chairman of the Board of Examiners to conduct the aforesaid oral and practical examinations notwithstanding the order of cancellation served on him by the Registrar. But the more important question in these petitions is whether on the facts placed before this Court these are fit cases for the petitioners to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

3. W.P.5211/88 is filed on 26-3-1988 by the petitioners who are the students of the Diploma Course in Clinical Pathology. The second Writ Petition i.e.,

W.P.5622/88 is filed by the Chairman of Board of Examinations one Dr. K.H. Srinivasa Murthy, on 3-4-1988 and the third Writ Petition No. 5810/88 is filed by the students of M.D. degree course in Pathology on 5-4-1988. In all these petitions this Court having declined to make an interim order as prayed for and in view of the urgency of the matter these petitions are treated as having been posted for hearing and I have heard the learned Counsel for the parties.

4. It is common ground that Dr. Srinivasa Murthy, here in after referred to as the Chairman of Board of Examinations (in short the Chairmen) was appointed by the Bangalore University as Chairman by an order dated 2-2-1988 issued by the Registrar, Evaluation, hereinafter referred to as the Controller of Examinations (Controller for short). In the letter of appointment it was made clear to him that a list of names of other members of the Board was enclosed and appointment orders to the other members have been issued from the office of the Controller. Instructions were given by the Controller to the Chairman that he should make arrangements for the conduct of practical/ viva-voce examination in consultation with the Chief Superintendent, Bangalore Medical College, Bangalore. It was also made clear that the examiners should not have any confusion regarding the scheme of examination and warding of marks. The other contents of the letter are not material for the purpose of these petitions. This letter was accompanied by a list of examiners who had accepted their -assignment as examiners for the Practical and Theory papers in question. The persons who had accepted their assignment as external examiners are 1) Dr. U. Waghlikar, Professor and Head of the Department of Pathology, grant Medical College, Bombay and 2) Dr. A.J. Velliath, Professor of Pathology, Jipmer, Pondicherry. That these persons had accepted the assignment offered to them is clear from the annexed list to the aforesaid letter. The Chairman had no grievance when he was appointed as Chairman of the Board of Examinations that these two doctors had accepted their assignment as external examiners for the examinations in question. The annexure to the said letter also discloses a reserve list in case the external examiners declined the offer for any good reason. It is also not in dispute that there is a panel of examiners recommended by the Board of Studies in Medicine and that panel contained the names of a number of doctors from all over India whose services could be utilised by the Chairman in case/the examiners appointed by the University did not signify their acceptance of the assignment.

5. By a Circular letter dated 5-2-1988, the Chairman was informed that he could appoint examiners against the vacancy created on account of non-acceptance of the assignment by the examiners from out of the panel approved by the University. It was further made clear that in case of non-availability of examiners in the approved list, appointments could be made from out of the reserve lists and from the panel recommended by the Board of Studies if the reserve lists are exhausted. But in any case, persons should not be appointed as examiners whose names are not in the panel recommended by the Board of Studies.

6. In accordance with these instructions, the Chairman conducted the theory

examinations both for M.D. and D.C.P. course. The practical examinations were fixed some time in the month of March, 1988, i.e., from 3-3-1988 to 7-3-1988. The external examiners, namely Dr. Wagholikar of Bombay and Dr. Velliath of Pondicherry had been informed about the dates fixed for the practical examinations. But it transpired just before the commencement of these examinations, Dr. Wagholikar received a couple of telegrams from Bangalore intimating him that the examinations scheduled to be held from 3rd to 7th March stood postponed. So on receipt of these telegrams, Dr. Wagholikar was taken aback and hence he wanted confirmation from the Chairman whether the exams had been really postponed in the light of the telegrams received by him. The Chairman denied knowledge of those telegrams and he maintained that those telegrams were not sent either by the University or by any person known to him in the University. All the same, Dr. Wagholikar, on receipt of the telegrams was not sure whether examinations were not postponed and he declined to make himself available for the practical examinations which were scheduled to commence from 3rd March, 1988. The Chairman, therefore, exercised the power that was allegedly conferred on him by the Academic Council by requesting another external examiner who was readily available and who was prepared to co-operate with the Board of Examiners to hold the Practical examinations. What exactly transpired prior to the appointment of Dr. Sharadambal as the external examiner could be ascertained from the order of the University dated 14-3-1988, which is produced as Annexure-C in W.P.5622/88. According to the University, the practical and orals for Diploma and P.G. Examinations in Pathology could not be held from 3-3-1988 to 7-3-1988 as the external examiners did not turn up. According to them, one examiner expressed his inability to attend the examinations. Another external examiner informed that he received two telegrams one from the Chairman, Board of Examiners in Pathology (PG) and the other from the Controller stating that the examinations were postponed, The Chairman met the Registrar on 3-3-1988 and narrated the position. It was clear that some mischievous elements had attempted to disturb the schedule of examinations and avoid the external examiners. Therefore, the Controller requested the Chairman to refix the examinations in consultation with the approved examiners and conduct the examinations only with the examiners appointed by the University without appointing separate examiners at his end. Later on 4-3-1988 the Chairman sent a notice fixing the date of D.C.P. examination without indicating the names of the examiners. Further on 7-3-1988, he sent another notice fixing the date of examinations in D.C.P. and M.D. from 7-3-1988 to 11-3-1988 with the external examiners other than those appointed by the University. Immediately a message was given to stop the examinations as conduct of the examinations with the examiners other than those appointed by the University was not desirable. On 8-3-1988 the Chairman was informed that his action in conducting the examinations in contravention of the clear direction of the University was not correct. In these circumstances, the Vice-Chancellor was pleased to direct that the Diploma in Clinical Pathology examinations conducted on 7th and 8th March, 1988 be treated as cancelled and

the dates for conducting the examinations be fixed afresh.

7. It is this order of the Vice-Chancellor that is challenged by the students of MD and DCP courses.

8. One could understand the anxiety of the students in taking the examinations scheduled to be held from 4-3-1988 to 7-3-1988. When they were taking the examination in Post Graduate studies they would have in the ordinary course studied Very hard and their only anxiety was to finish the examinations as early as possible. When the examinations were postponed they should have been concerned about their own future. But I fail to understand how the Chairman of the Board of Examinations should be interested in these examinations which are meant for the benefit of the students and not for his personal benefit. A point that arises for consideration in these petitions is what are the powers and duties of the examiners who are appointed by the University.

9. It is contended by the learned Counsel appearing for the Chairman that the Chairman's powers are controlled by certain provisions of the Karnataka State Universities Act and once he is appointed as Chairman of Board of Examiners his right can be curtailed only in accordance with the relevant provisions of the Karnataka Universities Act. That point may require some serious consideration in an appropriate case but this Court is inclined to take the view that these are not fit cases for invoking the extra ordinary jurisdiction under Article 226 of the Constitution.

10. I will take the case of the Chairman first since he was the person who was entrusted with the responsibility of conducting the examinations and he appears to have been aggrieved by the order of cancellation made by the Controller. According to him, his appointment is controlled by the provisions of Section 31 of the Act. Once he is appointed by the Board, the Vice-Chancellor is not empowered to make any fresh appointment of examiners unless the contingency referred to in Sub-section (3) of Section 31 arises. Section 31(3) reads as under:

"If for any reasons any examiner is unable to accept the examiner ship and a fresh appointment cannot be made in time by the Syndicate, the Vice-Chancellor shall appoint another examiner and report such appointment to the Syndicate."

In this case, both the external examiners from Bombay and Pondicherry did not decline to accept the assignment offered to them. They only told that they were not available on the dates fixed. The doctor from Bombay perhaps, on receipt of the telegrams purported to have been sent by the University authorities and rightly in my view, felt that there was no point of making a trip to Bangalore when he was informed that the examinations were postponed. That does not amount to refusal of assignment. Likewise, the doctor from Pondicherry did not decline to accept the assignment but he pleaded his inability to accept the same on the dates fixed by the Controller. Therefore, the Chairman was not empowered to choose his own examiners other than those who had accepted the assignment offered by the University on the plea that these persons were not

available on the dates fixed for the practical examinations,. What the Chairman could have done, on these facts, is to re-notify the fresh dates for examinations and seek the acceptance from the same examiners who had accepted the assignment after ascertaining their convenience. But the Chairman having decided to take another examiner whose name was not in the list of acceptance furnished by the University was clearly acting in excess of the powers conferred on him by the order of appointment issued to him under the relevant provisions of Section 31 of the Act. The larger question is whether his appointment conferred on him any right in the matter of holding examinations for the University. He becomes the Chairman of Board of Examiners by virtue of his professional attainment and academic qualifications in the subjects in question. That does not confer on him a right to conduct the examination. At the best it can be said, that he is conferred with the privilege, a privilege in recognition of his professional expertise and academic qualifications and he cannot enforce that privilege by invoking the extraordinary jurisdiction of this Court for interference with the orders of the University. The relevant noting on this controversy between the parties is found in the original records of the University. The letter of 3-3-1988 by the Chairman marked as "Urgent" and personally handed over to the Registrar through one of the students who was supposed to take the examination in M.D. course reads thus.

"Sub :- Postponement of P.G. Exams in pathology.

With reference to above, I like to mention that the P.G. Exams in Pathology (Practical & Orals) were fixed from 3rd to 7th March, 1988. Unfortunately, one examiner intimated by telegram that he is unable to come over due to personal problems (telegram received on 29th Feb.). Immediately, I sent telegram to another Professor of different place appointing him as an examiner for P.G. with dates. No reply so far. Another examiner from Bombay who was supposed to come on 2nd night did not come for the exam. Instead I received a letter on 3rd morning that stating that he has cancelled his proposal to Bangalore as he had received two telegrams stating that P.G. exams - Pathology have been postponed. Sender's address given as Controller of Examination and Chairman B.E. - Pathology in separate telegrams. The external examiner also suspected a mischief or sabotage and he has asked me to intimate whether the telegram was genuine or spurious.

All the arrangements were made at BMC Pathology and both the home examiner and the students have disappointed and has created lot of problem for home examiners, external examiners and students. I had to re-fix the dates in consultation with external examiner.

Some vested interest tried to eliminate my name from the appointment of Chairman of P.G. exams. - Pathology Board on one or other plea. Hence, I request you to investigate and apprehend the culprits."

On this letter the proceedings of University are found at SI. Nos.61 to 69 of the

University file. The Controller has put up the following note to the Vice Chancellor.

"The Diploma and PG Exams were fixed from 3rd to 7th March, 1988. The examinations were not conducted on these days as an examiner perhaps Dr. A.J. Velliath from Pondicherry sent telegram on 29-2-1988 indicating his inability to come for the examination. The Chairman sent telegram to another examiner (name not indicated) appointing him as an examiner. That examiner did not reply till 3-3-1988. Another external examiner from Bombay sent a letter stating that he received two telegrams from the Chairman and the Registrar (Evaluation) informed the postponement of examination, He is stated to have also suspected the genuineness of the telegrams and asked the Chairman to intimate fact.

The Chairman narrated the story in his letter dated 3-3-1988 personally given to the Registrar (Evaluation) on 3-3-1988. The Registrar (Evaluation) on 3-3-1988 itself afternoon informed the Section over microcosm of the Chairman's letter and asked to get copies of the telegrams from the external examiner. The Chairman was required to re-fix the examination dates and conduct the examination with the examiners appointed by the University.

This being background, the Chairman issued a notice dated 4-3-1988 fixing the Diploma exam on 7-3-1988 and sent a copy to this office without intimating the names of the examiners. He sent time table on 7-3-1988 for both PG and Diploma exams. Copy of the same was sent through a person who introduced himself as a PG student. The position was informed to the Registrar (Evaluation) over microcosm. The Chairman was informed to stop the conduct of exam, as per instruction of the Registrar (Evaluation).

The Chairman who was clearly informed by the Registrar (Evaluation) to re-fix the dates of examinations and conduct the examinations with the examiners appointed by the University should not have fixed the programme that too with separate examiners. Informing the position to the external examiner from Bombay was quite necessary. It appears to have not been complied with.

The Chairman was available over phone only on 8-3-1988. He informed the message given by the Section was received by him on 7-3-1988 evening. The examinations could not be stopped since started. The Registrar (Evaluation) did not inform to conduct the examination only with the examiners appointed by the University. The examiners were appointed out of reserve list and the BOS panel, as per general circular instructions. He should not have followed these general instructions when the Registrar (Evaluation) specifically told to conduct the examination only with the examiners appointed by the University, in the circumstances, where efforts were made to disturb the programme and avoid regular examiners appointed by the University. Apparently he was not happy for the message to stop the examination.

The position was explained to the Registrar (Evaluation) over telephone yesterday evening. He informed that the Vice-Chancellor is informed of the developments. His orders may be obtained as to cancel the DCP examination

conducted on 7th & 8th March 1988 and remove Dr. K.H. Srinivasa Murthy from the Chairmanship as he conducted the examination by appointing separate examiners inspite of the instruction's of the University to conduct the examination with the examiners appointed by the University."

11. On this note the Vice-Chancellor made the following order :-

"Cancel as proposed. Action indicated is confirmed. Dr. S. Murthy may be removed from the examination work and another next senior person may be appointed. Further, action as per rules should be initiated against him. Refer this to the syndicate."

12. As noticed earlier, in the circumstances in which the Chairman was placed due to non availability of the two external examiners from Bombay and Pondicherry, he had no other option but to postpone the examinations and obtain confirmation from these examiners whether they were prepared to assist the Board for holding examinations on the revised dates. The Chairman having acted beyond his powers by appointing external examiners of his choice who had not been offered assignments by the University and having conducted the examinations to DCP course despite the instructions to the contrary given by the Controller in this regard, his actions cast a serious reflection not only on his integrity but also on the purity of the examinations held by him as Chairman of the Board of Examiners. He having created a situation for suspecting his Integrity, I am of the view that the University was well within its rights to cancel the examinations and in issuing further directions to hold fresh examinations with a different Chairman of the Board of Examiners. On these facts, therefore, it cannot be contended, as maintained by the learned Counselor the petitioner, that the Chairman had a right to conduct the examination once he is appointed as Chairman of Board of Examiners by virtue of the powers conferred on him under the Act. Section 31 of the Act does not deal with the conduct of examinations. It is submitted across the Bar that no regulations are framed under the Act for conducting the examinations prescribed by the University. However, there is a compilation known as "Rules and Regulations of Bangalore University for Conduct of Examinations. "The relevant rules confer ample power on the Controller and he is put in overall charge on behalf of the Syndicate on matters relating to the conduct of examinations, announcement of results and conferment of degree at the convocation. In this connection, Regulations 1, 3 and 6 of the Rules and Regulations may be noted :

Rule-1 :- The Controller of Examinations shall be in overall charge on behalf of the Syndicate, of all matters relating to the conduct of examinations, announcement of results and conferment of degrees at the convocation.

Rule-3 :- The Controller of Examinations shall be responsible for the maintenance of all the Regulations prescribing the courses of study and the scheme of Examinations relating to various University examinations and shall ensure that they are properly observed in the colleges. Rule-6 :- The Controller of

Examinations shall issue orders of appointment to the Chairman, Board of Examiners paper setters and other examiners as approved by the Syndicate. He shall whenever required attend to printing of question papers himself or depute any person of his choice with or without the Chairman of the Board of Examiners."

These rules should be read with the power conferred on the Controller u/s 15(2) of the Act. The Controller shall be in charge of the conduct of examinations of the University and matters relating thereto and shall perform such other duties as may be prescribed by Statutes or Ordinances or as may be required by the Vice Chancellor. So if the Rules framed by the University which are found in the Manual are read with Section 15(2) of the Act, there could be no doubt that it is the Controller who has got the overall powers of conducting the examinations and that the power to conduct examinations implies a power to cancel the examination if they are not held in compliance with the relevant Rules and Regulations. In this case, the Controller having felt, for obvious reasons, that some mischief was committed by some interested persons wish a view to avoid the external examiners who had accepted their assignment but had only expressed their inability to visit Bangalore on the appointed date, the Controller had acted within his jurisdiction in ordering the cancellation of examinations and thereafter bringing the same to the notice of the Vice-Chancellor seeking further orders as regards the future course of action to be taken by him. The contention of the learned Counsel for the petitioner that it is only the Vice-Chancellor u/s 12(5) of the Act who has got the power to cancel the examinations and not the Controller does not require serious consideration since that is a power conferred on the Vice-Chancellor in case of emergency which requires immediate action. The emergency that is contemplated u/s 12(5) of the Act cannot be equated to a mischief committed by some persons known or unknown to the University who had managed to send fake telegrams to the external examiner in Bombay obviously intending to eliminate him from lending his impartiality and integrity to maintain the purity of the examinations. The very fact that these fake telegrams were also within the knowledge of the Chairman, should have put the Chairman on guard and he should have conducted himself with reasonable circumspection by bringing all the facts to the notice of the Vice-Chancellor. In the circumstances, in my view, the Chairman who had acted in a suspicious manner should not be permitted to urge the various contentions that have been raised in the petition. Hence, this is not a fit matter for interference under Article 226 of the Constitution and that takes me to the case of the students.

13. As mentioned earlier the extraordinary situation was caused by the non-appearance of the external examiners and the University had fixed fresh dates for the examinations of DCP and MD course. If the students were desirous of taking their degrees, they should have taken the examinations fixed on the revised dates but for reasons best known to them, they have chosen to boycott the examination fixed on the revised dates. The inference is obvious. Having not been able to take the examinations with the examiners appointed by the

Chairman, they did not want to face another examination with the external examiner appointed by the University. If the option is given to the students to take the examinations of their choice, there will be very little left in the academic standards to be maintained by the University in higher professional courses. In my view, the students have fully demonstrated the lack of bonafides in this petition by having not chosen to take the revised examinations. In the circumstances, they should not be permitted to raise any legal contention based on the provisions of the Universities Act. Even otherwise no provision of the Universities Act is brought to my notice wherein the students have got a vested right to take a particular examination notwithstanding the same was cancelled by the authorities who had the power to do so. For these reasons there is no merit in their Writ Petitions.

14. It is however contended by the learned Counsel for the students that they should not be penalised in the theory papers which they have already answered as those papers were answered before the controversy arose about the appointment of external examiners in practicals and if at all there should be a re-examination that should be conducted only in the practicals. It was submitted by the learned Counsel for the University that these examinations for the post Graduate qualifications are treated as one unit and they cannot be bifurcated under the heads theory and practicals : He invited my attention to the notification dated 12-11-1984 which contains an amendment to the Regulations for Post Graduate and Post Graduate Diploma Courses under the Faculty of Medicine. The revised regulation for assessment of candidates in the Post Graduate Course reads as follows :-

"A candidate shall be declared to have passed the examination if he/she satisfies all the examiners individually and jointly that he/she has an adequate knowledge in all the subjects and Clinical/Practical and Viva voce examinations. The successful candidates shall be awarded distinction if he/she secured 70% and above of the aggregate and II Class if he/she secures 50% and above and declared pass if he/she is appearing for the second and subsequent attempts."

This revised Regulation shows that the examination is treated as a composite whole and since the examination in question stands cancelled the examination held in part also stands cancelled. It must be so, because of the extraordinary situation created by some mischievous elements who were bent upon eliminating -the external examiners and if such a course is permitted, the sanctity attached to the University examination in the Post Graduate course would be seriously eroded. The students having not taken the examinations, which were fixed by the University on the revised dates have to take the blame on themselves and this Court should not aid the students who took advantage of the situation created by some mischievous elements and boycotted the examinations which were duly fixed by the authorities taking into consideration the unedifying facts which I have noticed above.

15. One more reason which disentitles the petitioners including the Chairman to

claim any relief is that notwithstanding the letter dated 22-6-1988 from the University directing the Chairman to hand over the answers scripts in the examinations Conducted by mm, he by his letter dated 7-4-1988 had refused to hand over the same on the ground that there was no order or the Resolution of the Syndicate directing him to hand over the answer scripts. As noticed earlier, the Chairman u/s 31 prima facie has no power at all to interfere with the course of action of the authorities concerned regarding the conduct of the examinations. They had cancelled the examination and therefore the Chairman ought to have immediately returned all the answer scripts which were in his custody to the University authorities. By holding on to the answer scripts, he had made his intention clear i.e., that he had some vested interest in the answers given by the candidates. This conduct of the Chairman deserves the severest censure. Hence, these are not fit matters for interference under Article 226 of the Constitution.

16. Accordingly, these petitions are dismissed. In the circumstances of the case, parties shall bear their own costs. However, it is desirable that the students who are ready to take the MD examinations in the near future should be given one more chance so that their academic career should not be jeopardised by the University taking a tough stand in the matter.