

(1987) 04 AHC CK 0011

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 951 of 1987

Dr. N.D. Tahiliani

APPELLANT

Vs

Dr. R.P. Misra, Vice-Chancellor, Allahabad University and
Others

RESPONDENT

Date of Decision : 23-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 13, 13(6), 19, 21, 21(U)

Citation : (1987) 04 AHC CK 0011

Hon'ble Judges : S.D. Agarwala, J;B.N. Misra, J

Bench : Division Bench

Advocate : Dinesh Kakkar, for the Appellant;

Judgement

S.D. Agarwala, J.—Dr. N.D. Tahiliani is the Professor and Head of the Department of Surgery in the Moti Lai Nehru Medical College, Allahabad. He is the Petitioner in the present petition. Undisputably he is a very eminent surgeon. He has filed the present petition in connection with the appointment of examiners for M.S. and M.B.B.S. examinations held by the University of Allahabad. The dispute is in regard to the appointment of examiners for the years 1986 and 1987. On 9th March, 1985, a meeting was held of the Board of Studies of the Department of Surgery. In this meeting examiners were appointed for 1986 examinations. Similarly on 26th April, 1986, the meeting of the Board of Studies took place for appointment of examiners for the year 1987. The Board of Studies in both the above meetings appointed examiners for the years 1986 and 1987. In the petition it has been stated that the Medical Council of India, which is a body constituted under the Medical Council of India Act, had made recommendations wherein it was stated that the Head of the Department should ordinarily be one of the examiners for the post graduate examinations. In accordance with the recommendations of the Medical Council of India a meeting of the joint board of studies under the Faculty of Medicines was held on 09.11.1978 and the following resolution was passed:

There should be a Chairman of the Board of examiners, who shall be of the rank of Professor and Head of the Department or Professor and who shall supervise and co-ordinate the examination.

On 4th November, 1986, the Petitioner received a communication from the Registrar asking the Petitioner to contact the Dean, Faculty of Medicine, on whose recommendation the Vice-Chancellor was pleased to pass an order that he may not be associated with the examinations of his department of Surgery.

2. The Petitioner challenged this communication dated 4th November, 1986, before this Hon'ble Court in a petition Under Article 226 of the Constitution of India. In that petition serious allegations of malafides were made against Dr. S.R. Singh, Respondent No. 4, who is the Principal of the Medical College, Allahabad. A Division Bench of this Court by order dated 12.11.1986 quashed, - the communication dated 4th of November, 1986, issued by the Registrar on the ground that the order was of a penal nature and since it had been made without affording any opportunity to the Petitioner it was void in law. This Court, however, did not think it necessary to examine the allegations of malafides made against Dr. S. R. Singh.

3. On that very day after the order was quashed by this Court the Registrar issued another order, contents of which are quoted below:

I have been advised by the University counsel to inform you that the order of Vice-Chancellor dissociating Dr. N.D. Tahiliani has been quashed. It is, however, open to the University to make fresh appointment of Examiners for the ensuing examinations. The Board of studies in Surgery should, therefore, meet soon to recommend names of examiners. You may please inform Dr. N.D. Tahiliani, Head of Department of Surgery to convene the meeting of Board of Studies latgst by 15-11-1986 so that necessary action is taken in respect to paper setting etc.

It is surprising that the University should have scant respect for the orders of this Court that inspite of the fact that this Court quashed the order dated 4th November, 1986, on the ground that no opportunity was afforded another order was passed by the University directing appointment of fresh examiners without i completing the process of giving an opportunity to Dr. Tahiliani as to why he should be dissociated with the examination. On receipt of this letter the Petitioner objected to the holding of this meeting and specifically pointed out that this amounts to contempt of the High Court.

4. Immediately thereafter it appears that a complaint by Professor A.K. Gupta and Professor D.K. Mittal dated 12th November, 1986, was forwarded by Dr. S.R. Singh, the Principal of the college, to the Vice-Chancellor complaining against Dr. Tahiliani. This complaint has been attached as AnnexureVI to the petition. On the basis of this complaint, however the University issued a notice to the Petitioner on 18th of November, 1986, asking him as to why he should not be dissociated from the examination of the University in view of the irregularities pointed out in the complaint, referred to above. This show cause notice has been attached as

Annexure v. to the petition.

5. However, in respect of the examiners for the year 1986 the then Vice Chancellor of the Allahabad University, Dr. R.P. Misra, called the Petitioner along with almost all the Doctors of the Department of Surgery at an informal meeting at his residence on 27.11.1986. On the insistence of Dr. R.P. Misra the Petitioner keeping in mind the interest of the students and also the fact that the examinations of M.B.B.S. and M.S. were bound to be postponed in view of the dispute in regard to the appointment of the examiners agreed not to act as examiner. In view of the fact that the Petitioner agreed not to act as the examiner, the examinations were held as per the schedule and were not delayed. -The result was that the dispute in regard to the appointment of examiners for, the year 1986, came to an end.

6. On 26th December, 1986, the University issued letters to Dr. R.K. Mathur and Dr. D.K. Mittal appointing them as examiners for the year 1987 examination. Since these appointments were absolutely contrary to the resolution passed by the Board of Studies as far back as 26th April, 1986, the Petitioner filed the present petition in this Court seeking a writ of mandamus restraining the Respondents from interfering with the Petitioners" acting as an examiner for M.S. and M.B.B.S. examination, 1987, and further seeking enforcement of the decision of the Board of Studies in the meeting held on 26th April, 1986, appointing examiners for the year 1987. It is pertinent to mention here that the University subsequently on 8th January, 1987, withdrew the letters dated 26th December, 1986, appointing examiners. The case as set up by the University in the counter affidavit is that the letters dated 26th of December, 1986, were issued to Dr. R.K. Mathur and Dr. D.K. Mittal due to inadvertance and consequently they were withdrawn. Though the University withdrew the letters issued to Dr. R.K. Mathur and Dr. D.K. Mittal still the case taken up by the University in the counter affidavit is that since the decision taken by the Board of Studies on 26th April, 1986, was not accepted by the Board of Faculty of Medicine in its meeting held on 8th August, 1986, the Petitioner was not entitled to enforcement of the decision taken by the Board of Studies on 26th of April, 1986.

7. In regard to the meeting of the Board of Faculty held on 8th August, 1986, wherein the Faculty of Board of Medicine considered the recommendations of the various Boards of Studies, there is dispute as to what was the actual resolution passed by the Board of Studies. According to the Respondent the following resolution was passed:

It was resolved that the recommendation of the Board of Studies of Paediatrics has been put before the Faculty meeting be approved and recommended to the Academic Council.

It was further resolved, that the Dean, Faculty of Medicine, be authorised to accept the recommendation of such Board of Studies which were not available at

the time of meeting and recommend to the Academic Council.

While the case of the Petitioner is that there has been an interpolation made in the resolution passed in the meeting of 8th August, 1986, by the Principal of the College Dr. S.R. Singh and that in fact the following resolution was passed:

It was resolved that the recommendation of those Boards of Studies which had appointed examiners for and sent the list to the University be approved and recommended to the Academic Council.

It was further resolved that the Dean, Faculty of Medicine be authorised to accept the recommendation of such Board of Studies which were not available at the time of meeting and recommend to the Academic Council.

8. In the petition serious allegations of malafides have been made by the Petitioner against the Respondent Dr. S.R. Singh and the Petitioner's case is that because of the malafides on the part of Dr. S.R. Singh the Petitioner is being victimised and harassed. We are of opinion that in the interest of justice we do not think it proper to go into the allegations of malafides as otherwise on the interpretation of the Acts, Statutes and Ordinances of the University we are of the opinion that the petition is liable to succeed in law.

9. The main question to be considered in the present petition is as to the manner in which the examiners have to be appointed under the provisions of the Uttar Pradesh State Universities Act, 1973 (Uttar Pradesh Act 10 of 1973) hereinafter referred to as the new Act. Prior to the coming into force of the new Act the Allahabad University Act 1921, (Uttar Pradesh Act III of 1921) was applicable to the University of Allahabad. This Act shall be hereinafter referred to as the old Act. It has to be further considered as to what material changes have been brought about by the new Act in the procedure to be adopted for the appointment of examiners.

10. I will first consider the provisions of the new Act. By Section 29 the Examinations Committee has been constituted. Sub-section (2) of Section 29, which is relevant for the purposes of this case, is quoted below:

(2) Except as provided in Sub-section (2) of Section 42, the committee shall supervise generally all examinations of the University including moderation and tabulation, and perform the following other functions, namely

(a) to appoint examiners and moderator and, if necessary, to remove them;

(b) to review from time to time the results of University examinations and submission of reports, thereon to the Academic Council.

(c) to make recommendations to the Academic Council for the improvement of the examination system;

(d) to scrutinise the list of examiners proposed by the Board of Studies, finalise the same and declare the results of the University.

Clause (a) quoted above gives a power to the Examinations Committee to appoint examiners and moderators and, if necessary, to remove them. Clause (d) empowers the Examinations Committee to scrutinise the list of examiners proposed by the Board of Studies, finalise the same and declare the result of the University.

11. Section 21 lays down the powers and duties of Executive Council. Specific powers have been mentioned in Clauses (i) to (xvii). On a perusal of these powers we find that there is no power to appoint examiners.

12. Section 25 lays down the constitution and powers of the Academic Council. Sub Clause (1) of Section 25 which enumerates the powers of the Academic Council is quoted below:

(1) The Academic Council shall be the principal academic body of the University and subject to the provisions of this Act, the statutes and the Ordinances.

(a) shall have the control and general regulation of and be responsible for the maintenance of standard of instruction, education and research carried on crimparted in the University.

(b) may advise the Executive Council on all academic matters including matters relating to examinations conducted by the University, and

(c) shall have such powers and duties as may be conferred or imposed upon it by the Statutes.

From a perusal of Section 25 it is apparent that the Academic Council does not have any power in regard to the appointment of examiners. In the first Statutes of the Allahabad University framed by the State Government in exercise of the powers conferred u/s 50(1) of the new Act Statute 5.06 further elaborates the powers of the Academic Council. Statute 5.06 is quoted below:

5.06. Subject to the provisions of the Act, these Statutes and the Ordinances, the Academic Council shall have the following powers, namely

(i) to scrutinize and make its recommendations on proposals submitted by the Boards of Studies through the Faculties in regard to the courses of Study and to recommend principles and criteria on which examiners and the inspectors may be appointed, for the consideration of the Executive Council;

(ii) to report on any matter referred or entrusted to it by the court or the Executive Council ;

(iii) to advise the Executive Council in regard to the recognition of the diplomas and degrees of other Universities and institutions and in regard to their equivalence with the diplomas and degrees of the University or the Intermediate Examination conducted by the Board of High School and Intermediate Education, Uttar Pradesh,

(iv) to advise the Executive Council in regard to the qualifications required to be

possessed by persons imparting instruction in particular subjects for the various degrees and diplomas of the University; and

(v) to perform in relation to academic matters all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of the Act, the statutes and the Ordinances.

From statute 5.06 also it is clear that the Academic Council has not been authorised to exercise any power in regard to the appointment of examiners. Section 27 prescribes for the creation of Faculties. Sub-section (4) of Section 27 states that there shall be a Dean of each Faculty who shall be chosen from amongst the Professors by rotation in order of seniority and shall hold office for three years, but, so far as the medical colleges are concerned, it has been clearly laid down that the Principal of the Medical College shall be the ex-officio Dean of the Medical faculty. By Sub-clause (8) of Section 27 the Board of Studies in respect of different subjects of studies have been constituted. Sub-clause (8) which is relevant reads as follows:

(8) There shall be constituted in accordance with the provisions of the Ordinances, Boards of Studies in respect of different subjects of study and more than one subject may be assigned to one Board of Studies.

Statute 7.10 of the First Statute lays down the constitution of the Board of the Faculty of Medicine and statute 7.11 enumerates 19 Departments which come under the Faculty of Medicine. The Department of Surgery is mentioned at serial No. 8. The powers of Faculties have not been prescribed by t\$& Act. Subclause (3) of Section 27 lays down as follows:

There shall be a Board of each Faculty, the constitution (including the term of office of its members) and powers and duties of which shall be prescribed.

Statute 7.15 prescribes the powers of the Board of Faculties. Statute 7.15 is quoted below I-

7.15. Subject to the provisions of the Act, the Board of each Faculty, shall have the following powers namely:-

- (i) to make recommendations to the Academic Council regarding the courses of study after consulting the Boards of Studies concerned ;
- (ii) to make recommendations to the Academic Council regarding the teaching and research work of the University in the subjects assigned to the Faculty ;
- (iii) to consider and make recommendations to the Academic Council on any question, pertaining to its sphere of work which may appear to it necessary and on any matter referred to it by the Academic Council.

On a reading of Statute 7 15 it is clear that the Board of Faculty does not have the power to consider the recommendations of the Board of Studies in regard to the appointment of the examiners or to take further action to recommend the

names of the examiners to the Academic Council.

13. Chapter IX of the First Statutes deals with the "Boards". This includes the Board of studies also. Statute 9.02 provides that the powers, functions and the constitution of the Boards shall be such as may be laid down in the Ordinances. Statute 9.03 specifically provides that so long as the new Boards are not constituted in accordance with statute 9.02, the Boards mentioned in statute 9.01 and existing on the date immediately before the commencement of these statutes shall continue to function.

14. In effect the provisions laid down in chapter IX of the First Statutes make it clear that the Board of Studies constituted under the old Act shall continue to function till the new Board of studies are constituted.

15. It is not disputed that after the coming into force of the new Act new Ordinances are not being framed to constitute Boards of Studies. The old Ordinances, therefore, continue to apply by virtue of Section 52(1) of the Act which provides as follows:

52(1). The first Ordinances of each existing University shall be the Ordinance as in force immediately before the commencement of this Act in so far as they are not inconsistent with the provisions of this Act.

In view of Section 52(1) the Ordinances framed earlier under the old Act. shall t-continue to be in force except in so far they are inconsistent with the provisions " of the Act.

16. The Ordinances relating to Board of Studies are contained in Chapter VI of the Calendar of the University of Allahabad for the year 1968. Under . these Ordinances a duty has been cast on the Board to make recommendations to the Faculty concerned regarding:

- (1) Syllabuses for subjects of instruction,
- (2) combinations of subjects permitted in the various courses,
- (3) new courses of study, and
- (4) the names of examiners.

It is, therefore, the duty of the Board of Studies to make recommendations in regard 7 to the names of the examiners. From a reading of the entire set of provisions referred to above, it is absolutely clear that it is the Board of studies which has the power to make recommendations in regard to the names of examiners and thereafter u/s 29(2)(d) the Examinations committee has to scrutinize the same and finalise the same. The Executive Council, the Academic Council and the Board of Faculties have no power at all to either scrutinise the proposal of the Board of Studies recommending the examiners or to finalise the same. When we analyse the provisions of the old Act it would be apparent that Under the new Act there is a material departure in this respect from the old Act.

Under the Old Act Section 21 (U) gave the power to the Executive Council to appoint examiners. Statute 70 (6) of the old statutes gave the Academic council powers to recommend the names of the examiners and moderators to the Executive Council after considering the recommendations of the Board of Faculties. Under old Statutes 82 the Boards of Faculties were given power -to recommend to the Academic Council after consultation with the Board of Studies the names of examiners in subjects assigned to the Faculty. The powers , in relation to appointment of examiners which existed under the old Act and statutes with the Executive Council, Academic Council and the Boards of Faculties have now been taken away under the new Act and the First Statutes. We are, consequently, of the opinion that after the coming into force of the new Act the Board of Faculties,, the Academic Council and the Executive Council have no jurisdiction to either consider, recommend or appoint examiners. The entire jurisdiction to recommend and appoint examiners has been left to the Board of studies and the Examinations committee of the University constituted u/s 29 of the Act. The Ordinances relating to the Board of studies wherein the Board of studies have to make recommendations to the Faculty concerned in regard to the names of examiners is consequently inconsistent with the provisions of the Act and as such the provision directing the Board of studies to make recommendations to the Board of Faculty has not to be given effect to and the only duty of the Board of studies is to make recommendations in regard to the names of examiners directly to the Examinations committee of the University.

17. Since we have come to the conclusion that now the Board of Faculty has no concern whatsoever in regard to the appointment of examiners it was not necessary at all that the decision taken in the meeting of the Board of studies on 26th of April 1986, in the department of Surgery should have been sent to the Board of Faculty of Medicine at all and neither the Board of Faculty of Medicines had any jurisdiction to consider such recommendations. Consequent to the view which we have taken it is not necessary for us to examine as to whether the minutes of the meeting of the Board of Faculties held on 8th of August, 1986, were properly recorded or not or as to whether there was any interpolation done by Dr. S.R. Singh, the Dean of Faculty of Medicine.

18. Learned Counsel for the University has stated and it is also admitted by all the parties to this petition that the University has not yet constituted Examinations committee as required by Section 29 of the New Act. The Examinations committee is an authority of the University u/s 19 of the new Act. The question to be considered now by us is as to the absence of the Examinations committee which is an Authority of the University who is empowered to appoint examiners.

19. Section 13 lays down the powers and duties of the Vice-Chancellor. Sub-clause (6) of Section 13 empowers the Vice-Chancellor, where any matter is of urgent nature requiring immediate action and the same could not be immediately dealt with by any officer or the authority of the University, to deal with it and

take such action as he may deem fit and shall forthwith report the action taken by him to the Chancellor. In view of Sub-clause (6) of Section 13 in our opinion it is the Vice-Chancellor alone who in the absence of the Examinations committee has to appoint examiners as the matter of appointment of examiners is a matter of urgent nature otherwise the entire schedule of examinations is likely to be disturbed and the students are likely to suffer irreparable injury. If no examiner is appointed, no examination can be held and as such the matter of appointment of examiners is, *ex facie*, a matter of urgent nature. In the instant case also, therefore the only course open is that the recommendations of the Board of studies, made in the meeting of 26th April, 1986 for the examiners of the year 1987 be considered by the Vice-Chancellor and the Vice-Chancellor shall thereafter make the appointment of the examiners forthwith.

20. Learned Counsel for the University has, for the first time in this Court, taken an objection that since in the meeting of the Board of studies dated 26th April, 1986, the quorum was not complete and therefore the recommendations made in the said meeting cannot be considered at all. This objection was not taken by either the Board of Faculty in its meeting dated 8th August, 1986, or even by the Vice-Chancellor earlier but since this objection has been taken now we shall consider the same. It is not disputed that the Board of Faculties of the Department of Surgery consists of twelve members. It is also not disputed that six members attended the same. Under Regulation 3 on page 146 of the Calendar of the University the quorum has to be two-thirds of the members of the Board. The argument, therefore, is that since six members are not enough to make the quorum the decision taken in the said meeting on 26th April, 1986, is wholly illegal.

21. Learned Counsel for the Petitioner in this connection has relied upon Section 66 of the Act which is quoted below:

66. Proceeding not to be invalidated by the vacancies, etc. No act or proceeding, of any authority or body or committee of the University shall be invalid merely by reason of....

- (a) any vacancy or defect in the constitution thereof, or
- (b) some person having taken part in the proceedings who was not entitled to do so, or
- (c) any defect in the election, nomination or appointment of a person acting as a member thereof, or
- (d) any irregularity in its procedure not affecting the merits of the case.

Section 66 has been enacted by the Legislature to protect the acts or proceedings of any authority or body or committee of the University. Sub-clause (d) provides that if there is any irregularity in the procedure, not affecting the merits of the case, then the act of the body would not be invalidated. The Rule regarding quorum is a matter of procedure laid down in the Regulations of the

Board of Studies. Under the old Act Regulations were made u/s 34. Section 34(1) which is relevant is quoted below:

34. (1) The authorities and the Boards of the University may make Regulations consistent with this Act, the Statutes and the Ordinances-

(a) laying down the procedure to be observed at their meetings and the number of member required to form a quorum.

From the above it is clear that the number of members required to form the quorum was laid down by the Board of Studies itself. It is a Regulation framed by itself regulating the procedure at its meeting. The word " quorum " has been defined in the Shorter Oxford English Dictionary, Third Edition, as follows:

Quorum - A fixed number of members of any body, society, etc., whose presence is necessary for the valid transaction of business.

Shackleton in his book " The Law and Practice of Meetings " Fifth Edition, at page 38 has observed as follows:

No general rule can be laid down as to the number of persons requisite for a quorum ; it is entirely a matter for self-constituted bodies as to what their quorum shall be, and it usually depends on the size of the body.

At page 41 of the above book it has been further observed by Shackleton-

It is a generally accepted principle that business transacted at meeting at which a quorum is not present is invalid. This principle, however, will not apply to a contract entered into with third parties who are not acquainted with any defect in the constitution of the authority creating the instrument.

22. From the definition of word "quorum" and the opinion expressed by Shackleton it is clear that " quorum " is a rule made by the body itself regulating its own procedure. Since the question of quorum is a matter of procedure and does not affect the merits of the case, the decision of the body is clearly protected by Section 66 of the Act. It cannot, therefore, be said that the decision taken in the meeting held on 26th of April, 1986, by the Board of Studies was not valid in law.

23. It is admitted on behalf of the University that in all the eighteen departments coming under the Faculty of Medicine except the Department of Surgery the recommendations of the Board of Studies for appointment of examiners were accepted and the University appointed the examiners accordingly. The dispute arose only in regard to the Department of Surgery and that too the only ground for not accepting was that the Petitioner was sought to be dissociated from the examinations of 1987. This action was taken on the basis of two allegations made against the Petitioner. The first allegation was that the Petitioner's son Dr. Ashok Tahiliani was student of Post-Graduate classes in the Department of Surgery and the second was that the Petitioner had earned censure entry in relation to examination held by the Kanpur University some times in the year

1983. We think it proper to consider on merits both the allegations in order that there may not be further delay in the appointment of examiners in the Department of Surgery so that the students may not suffer and the examinations be not postponed. In so far as the first allegation is concerned in para 49 (b) of the petition it has been categorically stated by the Petitioner that the Petitioner's son Dr. Ashok Tahiliani is not a Post-Graduate candidate of the Medical College, Allahabad. This averment has not been denied in the counter affidavit of Vijai Kumar Bist filed on behalf of the University. In the circumstances, this allegation has no basis at all and the Petitioner cannot be dissociated from the examinations of 1987 on this ground. In regard to examinations relating to Kanpur University the Petitioner in paragraphs 49(d), 49(e) and 49(f) of the petition has stated in detail as to what actually happened during the said examinations. It has been stated that the Petitioner was telephonically contacted by the Kanpur University to act as the External Examiner for conducting examinations of M.B.B.S. final for the year 1983-84 in G.S.V.M. Medical College, Kanpur. The Petitioner was requested to act as an Examiner for the examinations which were to take place on the very next date. The Petitioner expressed his inability to conduct the examinations in such a short notice; but, since the University of Kanpur repeatedly requested the Petitioner to accept the examinership the Petitioner in the interest of the students as well as the University accepted the request and consequently he was appointed as External Examiner. On the next day the Petitioner reached Kanpur and acted as an External Examiner alongwith Dr. N.C. Misra. The two other internal examiners were Dr. R.S. Grewal and Dr. Satyanand and fifty-five candidates were examined and marks were duly awarded to them and were mutually entered in the prescribed tabulation sheet.

24. It is the further case of the Petitioner that after the practical examination was over he was given fifty-five answer books to be examined in one of the theory papers. Since the Petitioner had no time it was agreed that the Petitioner shall take the answer books at Allahabad and return the answer books after examining them at Kanpur Railway Station on the appointed date as he had to go to Delhi on that date. This was accepted by all the examiners.

25. The Petitioner carried the answer books after examining them to Kanpur and the marks which he has awarded to each candidate were thereafter entered into a single sheet in the presence of Dr. Satyanand who was to collect the answer books. The marks were transferred from the separate Tabulation sheets to the common-sheet in the privacy and quietness of his First Class AC Compartment in the presence of other Theory Examiners.

26. In the counter affidavit filed on behalf of the University the averments have not been denied and it is only stated that they are not relevant for deciding the question whether the Petitioner has any right to be appointed as an Examiner. In view of the reply given by the University we do not see any reason why once they think this question to be irrelevant and still they consider this question for

determining whether the Petitioner should be dissociated from the examinations of 1987 or not.

27. We have gone through the averments in paragraphs 49(d), 49(e) and 49(f) and we find that in fact the Petitioner accepted the examinership in a very special circumstance in the interest of the students as well as in the interest of the Kanpur University as he was offered to be appointed as an External Examiner telephonically. The censure entry dated 28th July, 1986, passed against the Petitioner has been filed as Annexure to the supplementary affidavit filed on 17th April, 1987, and is quoted below:

Dr. N.D. Tahiliani, Professor of Surgery, M.L.N. Medical College, Allahabad, along with Dr. R.S. Grewal made part of the result of M.B.B.S. final Professional Surgery Examination of Kanpur University held in December 1983/January 1984 at Kanpur Railway Station in the absence of other examiners. The above action of Dr. Tahiliani was highly improper and deserves to be censured.

From this censure entry it is clear that the only allegation made against the Petitioner is that the Petitioner had made part of the result at the Kanpur Railway Station in the absence of other examiners. The Petitioner has clearly stated that Dr. Satyanand, who was one of the examiners, was present at the Railway Station. It has been further stated in the affidavit that no show-cause notice or action had been taken against Dr. R.S. Grewal, Dr. N.C. Misra and Dr. Satyanand who were other examiners in the same examination. To us, it appears that the censure entry made against the Petitioner is a motivated one and wholly unjustified and we do not find any such irregularity committed by the Petitioner on the basis of which this censure entry could have been" given.

28. The only ground on which the resolution passed by the Board of Studies in the Department of Surgery taken in the meeting held on 26th April, 1986, was not accepted by the University, was firstly on the legal ground that the quorum was not complete and secondly because of the two allegations made against the Petitioner. We have already held above that the decision taken in the meeting on 26th April, 1986, by the Board of Studies was a valid decision. We have also held that the allegations made against the Petitioner for dissociating him from the examination have not been made out. The Petitioner is a Head of the Department of Surgery and in accordance with recommendations of Medical Council of India it is in the interest of justice and appropriate that he should be associated with the examinations held by his Department.

29. In the result we allow the petition and issue a writ of mandamus directing the Vice Chancellor of the University of Allahabad to appoint examiners in the Department of Surgery for the examinations to be held in the year 1987 in accordance with the decision taken by the Board of Studies of the said Department in its meeting held on 26th April, 1986. In order to avoid delay in holding; the examinations the appointment be made by the Vice Chancellor forthwith. The parties shall bear their own costs.

30. After the judgment was delivered learned Counsel for the University Respondent made an oral prayer for grant of leave to appeal to the Hon''ble Supreme Court. We have considered the said prayer. We are of the opinion that no substantial question of law of general importance arises in this case which needs to be decided by the Hon''ble Supreme Court. In these circumstances leave to appeal to the Hon''ble Supreme Court is refused.