

(1972) 07 OHC CK 0029

In the Orissa High Court

In Re: Science College, Chancellor Utkal University

Date of Decision : 28-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 144
Utkal University Act, 1966 — Section 10, 10(4), 5, 5(7)

Citation : (1972) 38 CLT 1073

Judgement

1. The history of the case may be stated in brief.
2. A representation was filed before Sardar Jogendra Singh, the then Governor of Orissa, on 3-5-1972 at Angul Camp by Shri Nagendra Kumar Pradhan and 2 others on behalf of the examinees of the Pre-University examination in the Arts section of the Angul, Centre for 1972. Another representation (Annexure XVI) On behalf of the guardians and students reading in the Science College, Angul, was addressed by Shri Anil Prasad Das, Chairman, Notified Area Council, Angul, and, 24 other guardians, to the Registrar of the Utkal University which was received by the Registrar on 6-5-1972. In the first paragraph it deals with the examination held on 14-4-1972. The representation lists put their case thus:

On the subsequent date, the examinees could not take up their examination in English Paper II as per programme, partly due to police action and partly due to obstruction caused by some anti-social elements and the result of the examination scheduled for that day was suspended.

An appeal (Annexure XVIII) to conduct re-examination of English Paper II of P.U. Science class was despatched by Dr. P.C. Dey and 20 others to the Vice-Chancellor which was received on 8-6-1972. The incident with regard to 14-4-1972 was narrated therein as follows:

During the second sitting on the said date the Pre-University Science students were to appear in English Paper II and as per scheduled programme these students went to the College in time to appear in the said paper, but were prevented by Arts students (a group of miscreant students) who entered into the

College. In spite of best of efforts by the Principal and Professors of the College and also the guardians, it could not be possible to get the Pre-University Science students into the examination rooms. As such, the pre-University Science students were deprived of appearing in the said examination.

3. An application (Annexure XI) on behalf of the Angul public and guardians was filed before me on 11-7-1972. The prayer was that P.U. Science students of the Angul College might be permitted to appear in English Paper II which was scheduled to be held in the second sitting of 14-4-1972 in which the examinees could not appear. It was stated that during the first sitting when P.U. Arts students were to appear in English Paper II on 14-4-1972, there was serious disturbance in the College Campus resulting in brick-batting on behalf of some Arts students, hooligans and Goondas from the public, which led to tear-gassing and assault by the Police and passing of an order u/s 144, Code of Criminal Procedure by the Magistrate. Consequently, the first sitting of the examination on 14-4-1972 could not be held. The Science students came to appear in the examination in the second sitting, but anti-social elements amongst the Arts students and members of the public who had already been there in the College Campus, prevented the students from entering inside and threatened them with dire consequences. Though the Science students were all peaceful and were ready to appear in the examination without books and though the police and Magistrate were on the spot to allay their fear and apprehension, the atmosphere was so much surcharged with panic that all the Science students, about 168 in number, were unable to enter into the examination hall and could not appear at the examination. When the guardians came to know of their wards not appearing at the examination some time later, they approached the Principal and the Centre Superintendent and discussed with them as to how the subsequent examinations could be held. With the cooperation of the guardian, the Science students appeared in all subsequent examinations peacefully. Their case is that the Science students should be allowed to appear in English Paper. II in which they could not appear on 14-4-1972 on account of circumstances beyond their control.

This representation was sent to the Vice-Chancellor on 11th July 1972 for his views.

On 13-7-1972, the Vice-Chancellor replied that he could place the letter of the Secretary to the Chancellor (hereinafter to be referred to as the Secretary) before the Syndicate on 14-7-1972 and then intimate his views. He informed the Secretary by phone and later by a letter that the Syndicate by its Resolution dated the 15th July 1972, re-affirmed its Resolution dated the 8th July 1972 that no further examination would be held in English Paper II at the Angul Centre for P.U. Science students.

4. Thereafter the Vice-Chancellor was sent for by me for discussion on 16-7-1972 at 6 P.M. After discussion with him, I passed the following order:

Before taking further action u/s 5, Sub-section 7, of the Utkal University Act,

1966, as amended from time to time (hereinafter to be referred to as the Act), I decided to have a discussion with the Members of the Syndicate I have accordingly requested the Vice-Chancellor to inform the Members of the Syndicate to meet me at Raj Bhavan, Bhubaneswar, on 18-7-1972 at 5.30 P.M. The Vice-Chancellor has also been requested to bring all the relevant records not only relating to Angul Centre, but also relating to Purl and Nayagarh Centres, where a similar situation has arisen. A copy of this order be given to the Vice-Chancellor so as to enable him to intimate the other Members of the Syndicate.

5. On 18-7-1972, 8 out of 15 Members, came to Raj Bhavan in response to the intimation given by the Vice-Chancellor. The Syndicate who were present are:

- (1) Dr. R. Mohanty, Vice-Chancellor.
- (2) Professor B. Das, D.P.I. (H.E.).
- (3) Dr. B. Misra, Professor of Applied Economics.
- (4) Dr. M.K. Rout, Principal, Ravenshaw College.
- (5) Dr. S.C. Dash, Professor of Political science.
- (6) Dr. G. Misra, Professor of Philosophy.
- (7) Dr. G.S. Mahapatra.
- (8) Shri L.N. Mahapatra.

As 7 out of 15 Members of the Syndicate had not come, I did not have the informal discussion with the Members of the Syndicate and passed an order that the proceeding would take its usual course in accordance with law.

6. Accordingly, a Notice under the proviso to Section 5(7) was issued to the Syndicate to show cause by 22.7.1972 as to why the Resolutions of the Syndicate dated 8.7.1972 and 15.7.1972 relating to the examination in English Paper II, which was scheduled to be held at the second sitting at Angul College Centre on the 14th April 1972, should not be annulled. The date of hearing was fixed to 24th of July, 1972 at 9.30 A.M. The Vice-Chancellor and any other Members of the Syndicate who wanted to make any statement were given the option of appearing at the hearing.

On 22.7.1972, the Syndicate wanted permission to appear through a Counsel. Permission was accorded. The Chancellor requested the Advocate General to assist him at the time of hearing.

7. The Syndicate showed cause on 22-7-1972, The show cause application consists of 15 pages with Annexure running from pages 16 to 49 of the paper book filed by the Registrar of the University.

The case was taken up for hearing on 24.7.1972. Shri S.C. Mahapatra, Advocate for the Syndicate, and the learned Advocate-General were heard. They rendered

very valuable assistance. The Vice-Chancellor and the Registrar of the Utkal University were throughout present at the time of hearing. Dr. S.C. Dash and Sarvashree Abani Kumar Baral, P.K. Mohanty, Advocate, A.P. Mohanty, Advocate, and L.N. Mahapatra wanted to be heard in person. After the Syndicate appeared through a Counsel, there was no necessity to hear any of the Syndics-separately. However, these 5 Syndics were separately, heard. Dr. S.C. Dash supported his dissenting note given to the Resolution passed on 15-7-1972. The other 4 Syndics supported the Resolutions and advanced no argument which had not been urged by Mr. S.C. Mahapatra.

The hearing was concluded on 24-7-1972 and order was reserved.

8. I would now proceed to examine the merits of the case itself.

9. The Resolutions of the Syndicate dated 8-7-1972 and 15-7-1972 run thus:

Resolution dated 8-7-1972 "Considered the letter No. 3332-SG dated 28-5-1972 from the Secretary to the Governor, Orissa, enclosing therewith a representation dated 3-5-1972 from Shri Nagendra Kumar Pradhan and two others and in this connection considered also the representations submitted by the following persons about conduct of examination at Angul College:

1. Representation by Shri Anil Prasad Das, Chairman, Nac, Angul, and 24 other guardians.

2. Representation by Dr. P.C. Dey and 20 other guardians.

Resolved that the examination scheduled to be held on April 14, 1972 in the Angul College Centre, Angul, in both the 1st and 2nd sittings, which could not be held as the candidates did not turn up inspite of the request of the Centre Superintendent be not held again.

Resolution dated 15.7-1972;

Considered letter No. 4020 dated 11th July 1972 from the Secretary to the Governor forwarding there with representation by some guardians of P.U. Science candidates of the Angul College along with reports of Principal and Centre Superintendent dated 13-7-1972 and resolve that the Syndicate reiterates its decision as per Resolution dated the 8th July 1972 as no fresh facts have been brought to the notice of the Syndicate to justify, a change in decision.

(Sd) R.N. Mohanty Vice-Chancellor.

A. dissenting note was given to this Resolution by Dr.

B.C. Dash which is as follows:

Note of dissent I do not agree with decisions of the Syndicate regarding the P.U. examination in English in Angul College as the Syndicate has decided to conduct two sittings in S.C.S. College, Puri, and two sittings In Nayagarh College in similar circumstances.

The dissenting note, however, is not much of practical importance as the Syndicate's view is to be determined by the majority decision.

10. By the aforesaid two Resolutions the Syndicate decided that no further examination in English Paper II for the P.U. Science students at Angul Centre would be held. The issue to be determined in this case is whether the aforesaid two Resolutions are in conformity with the Act and the Statutes of the University.

11. Some relevant provisions of the Act and the Statutes may be noticed. Section 10, Sub-section (4) of the Act runs thus:

10.

(4) Subject to the provision of this Act and Statutes, the syndicate shall perform the functions and exercise the powers as herein specified namely:

(f) Control of examinations.

Statute 75(12) is as follows:

Subject to the provisions of the Act, the Syndicate shall have the following powers and functions, namely:

(12) to conduct the University examinations and publish the results thereof.

Thus, Section 10(4)(f) of the Act, read with Statute 75(12) vests powers in the Syndicate to control and conduct examinations and publish the results thereof.

12. In this case there is no dispute that the Syndicate made arrangements for examination being held in English Paper II for the P.U. Science students in the second sitting at Angul Centre on 14-4-1972. Full opportunity was given to the P.U. Science students to appear in the examination. If opportunity was given by the Syndicate to examinees to appeal in the examination and the examinees voluntarily abstained from appearing in such examination then they shall have to thank themselves. The Syndicate is not bound in such circumstances to arrange for another examination to give a further opportunity.

If on the other hand, due to circumstances beyond their control the examinees could not appear at the examinations despite their readiness to appear, the Syndicate accepts the position that it would give further opportunity to examinees to appear at the examination.

An illustration would make the position clear. Take for instance the case when successive cyclones occurred in Orissa. Suppose in a particular Centre University examinations had been arranged by the Syndicate but due to the cyclone the students could not appear at the examination. In such circumstances, the Syndicate accepts the position that it would hold a further examination. In fact, both the Vice-Chancellor and the Registrar admitted during the hearing that the University held further examination in cases where due to cyclone the examinees could not take up scheduled University examination. The aforesaid analysis is accepted by the learned Advocates on either side.

13. It would, therefore, be appropriate to examine if the P.U. Science students were prevented from appearing at the English Paper II examination in the second sitting on 14.4.1972 by Goondas and anti-social elements and whether an atmosphere of panic was created whereby they could not appear in the examination.

14. To determine the aforesaid issue, one has to examine the background of events which constituted the prelude to the abstention of students from appearing at the second sitting. It is admitted by the learned Counsel for the University that the Arts students were very violent on the first sitting of 12.4.1972. Despite serious resistance from the Superintendent, most of them came with books inside the examination hall. A Report (Annexure IV) was submitted by Shri K.C. Panda, Centre Superintendent, (hereinafter to be referred to as Shri Panda; on the 13th April 1972 to Shri B. Misra, Assistant Registrar of the Utkal University. With regard to the first sitting where the students were appearing at English Paper I, he reported thus:

In spite of all our persuasions the candidates rushed into the examination premises with books and notes. Some of them, however, did not have books, etc. with them or surrendered these after our said persuasion. Out of the candidates who took books, etc. with them to the halls, some candidates surrendered those to the Invigilators before the examination commenced. The Roll numbers of the candidates who took the examination with the help of books and notes have been indicated below:

xxx xxx xxx

During the examination petty mischief's in form of disconnecting the telephone line, cat-calls, pelting of small stones, etc. were committed during the 1st sitting of the examination.

xxx xxx xxx:

With regard to the P.U. Science students in the second sitting on 12.4-1972 Shri Panda reported as follows:

During the second sitting of the examination there was no mass malpractice. There was no unwanted situation.

xxx xxxxxx

15. The report clearly gave the roll numbers of 112 Arts examinees as resorting to malpractice so far as the first sitting was concerned. It refers only to 4 Science examinees resorting to malpractice in the second sitting on 12-4-1972. It is thus clear that on the 12th, the P.U. Science students appeared in the examination without books peacefully. They resorted to no violence. Only 4 candidates resorted to malpractice which is not unusual in any examination held in normal course.

16. In its Resolution dated 8.7.1972, the Syndicate did not permit the P.U.

students both in Arts and Science to appeal in a further examination as they, did not turn up inspite of the request of the Centre Superintendent. The Syndicate did not make any distinction between the first sitting and the second sitting on the 14th April 1972 and resolved not to hold examination in respect of both the sittings on the common ground that the candidates did not turn up inspite of the request of the Centre Superintendent. The admitted position is that in the first sitting on 14-4-1972 there was serious trouble. It was not a mere question of the Art students not responding to the request of the Centre Superintendent to appear at the examination. In fact the Arts students themselves in association with anti-social elements pelted stones and wanted to enter into the examination hall forcibly with books. Their demand not being accepted by the Centre Superintendent, their indulgence in rowdism and violence necessitated resorting to tear-gassing by the police and passing of an order u/s 144, Code of Criminal Procedure by the Magistrate. I am not expressing any final opinion as to whether the examination in respect of the first sitting should be held or not as that issue is not before me. I am merely discussing the incidents concerning the first sitting to pointedly focus attention on the question that the Syndicate acted arbitrarily and capriciously in not distinguishing between the two cases. If the first sitting of the examination could not have been held and there are materials to support a prima facie view that the explains for Arts were themselves responsible for the trouble created in the first sitting their request for further examination might reasonably be turned down. It may also be that there were a few miscreants and most of the Arts students were loyal, but that is a matter which is not before me and I do not express any final view on it. The fact, however, remains that Arts students cannot be wholly absolved of the responsibility for their failure to appear at the first sitting by committing unjustified acts of violence.

17. The violent incidents arising out of brick-batting, tear-gassing and passing of the Order u/s 144, Code of Criminal Procedure constituted the prelude to the second sitting. In such an environment even the most innocent examinees would get terrified and would desist from spearing at the examination. The panic was sufficient to disturb the normal tempo required for appearing act an examination with equanimity of mind and concentration. The Syndicate?s emphasis In the Resolution of 8.7.1972 that the P.U. Science students did not respond to the request of the Superintendent is not by itself decisive and does not counteract the assertions made in the representations of Shri Anil Das and others and Shri P.C. Dey and others as has been extracted in paragraph two of this order.

18. Shri Panda in his Report dated 14-4-1972 (Annexure V-A) did not put any blame on the Science students. Most part of the report is devoted to the hooliganism resorted to by the Arts students and anti-social elements. So far BS the Science students are concerned, all that is said in the report is:

Similarly the second sitting students were told to come without books. No body came and the examination could not be held as in the first sitting.

This Report does not allege any violent act or conduct to the P.U. Science

students. It merely says that the examinees did not respond to the request of the Superintendent. The report does not cover or counter the? allegations made on behalf of the Science students that the atmosphere and circumstances were such whereby they could not appear at the examinations. Not only during the first sitting was there some sort of skirmish between the students and the public on the one hand and the police of the other, but also some of the miscreants during the second sitting threatened the P.U. Science students with dire consequences if they appeared at the examination.

19. While passing its Resolution on 8-7-1972, the Syndicate merely acted on the report (Annexure V-A) and did not make further enquiry as to whether the P.U. Science students were justified in not responding to the request of the Centre Superintendent. Though the Resolution itself refers to the representations of Sarvashree Apil Das and Dr. P.C. Dey, no effort was made to test the truth of their assertion. It was patent that the report of Shri Panda of 14-4-1972 did not negative the assertion made on behalf of the Science students that they were unable to appear due to panic and-threat by anti-social elements. The Syndics knew that there was an order u/s 144, Code of Criminal Procedure passed by a Magistrate. Any reasonable body of persons could infer that the District Magistrate of Dhenkanal must be in the know of the entire situation in which tear-gassing was resorted to and an order u/s 144, Code of Criminal Procedure was passed. In fact, the Vice-Chancellor wanted to know the real position from the District Magistrate, who sent his letter (Annexure XV) dated 15.4.1972. There was enough material in relation to the first sitting which ought to have alerted the Syndicate to make an enquiry regarding the truth of the assertions of the Science students in relation to the second sitting. The Syndicate ought to have asked Shri Panda and the Principal much earlier to clarify and elucidate the Position and to fix responsibility whether the Science students themselves were responsible in not appearing at the examination or the atmosphere was such that they could not have appeared.

20. On the aforesaid analysis I am satisfied that the Resolution of the Syndicate dated 8-7-1972 was not based on any materials to repel and negative the assertion on behalf of the Science students. The Resolution was not the outcome of any rational enquiry as to whether the P.U. Science students should be allowed to sit in a further examination for English Paper II.

21. In paragraph 34 of the counter filed by the Syndicate It is admitted that in exercise of its power the Syndicate directs holding of the examination again where due to unforeseen circumstances examination could not be held at the scheduled hour. Such unforeseen circumstances arose In respect of the second sitting. The P.U. Science students claimed not to be responsible for the hooliganism resorted to by Arts students and anti-social elements of the public during the first sitting. The Syndicate ought to have called for (a) further reports from Shri Panda and the Principal as to the truth of the assertions made on behalf of the Science students, (b) a copy of the u/s 144, Code of Criminal

Procedure, (c) the Report of the Magistrate who passed such an order, and (d) the Report of the District Magistrate who was in know of the over-all state of law and order situation prevailing on 14-4-1972. Though the incident happened on 14-4-1972 and the representations to hold the examination were filed in the months of May and June, the Syndicate took its decision long after on 8.7.1972. The Syndicate had enough time to have a thorough inquiry into the matter to fix up responsibility and to come to a conclusion as to whether the Science students voluntarily abstained themselves from appearing at the examination or they were unable to appear due to circumstances beyond their control. The Report of Shri Panda dated 14-4-1972 (Annexure V-A) was incomplete and did not give a clear picture as to the part played by the Science students. Thus, the Resolution dated 8.7.1972 has the formal and apparent appearance of being in conformity with the provisions of the Act and the Statutes. In pith and substance and in reality, however the Resolution is not in conformity with the provisions of the Act and the Statutes in as much as the Syndicate failed to exercise its jurisdiction and power to adopt the principle of natural justice to arrive at truth and to fairly decide the issue before it. A purported colourable exercise of power is not a real exercise of power. The Resolution dated 8.7.1972 is liable to annulled on the aforesaid analysis.

22. On 8-7-1972, the Syndicate by other Resolutions allowed the examinees in P.U. Science at Purl and Nayagarh Centres to appear in English Paper II. Shri Panda appears to have learnt that Angul P.U. Science students were not allowed to sit in examination for English Paper II though Puri and Nayagarh students were allowed to appear at such examination. He accordingly suo motu addressed the letter (Annexure X) on 13.7.1972 to the Vice-Chancellor urging that P.U. Science students of Angul Centre should be allowed to appear in English Paper II. In that letter he had given a clear picture that the Science students were not to be blamed and penalised for their abstention from sitting at the examination in the second sitting.

Relevant part of the Report may be extracted in his own language:

The English Paper II examination for P.U. Science students on the second sitting of the same day could not also be held as the students did not turn up due to fear and panic in view of the Law and Order problem prevailing in the College Campus. Quite a few of them might be under the impression that under the circumstances there may not be any examination on the second sitting. The P.U. Science students did not resort to concerted malpractice on 12.4.1972 or in examinations held subsequent to 14-4-1972. Many of them are meritorious students and are expected to secure good divisions.

In view of the above I request you to kindly consider the case of the P.U. Science students of the Angul College Centre sympathetically and allow them to appear in English Paper II on the dates fixed for students of Purl and Nayagarh Colleges.

23. Mr. Mahapatra commented upon the conduct of Shri Panda in writing the

aforesaid letter to the Vice-Chancellor suo motu. Shri Panda Voluntarily wrote this letter (Annexure X) on account of his knowledge of the true state of affairs that Science students of Angul could not appeal at the examination due to the atmosphere of panic prevailing subsequent to the violent acts done during the first sitting and threat of miscreants just before the second sitting. The fact that he suo motu addressed the letter to the Vice-Chancellor without the latter asking for it does not in any manner detract from its value. His notice having been drawn to the fact that Puri and Nayagarh students have been allowed to appear in P.U. Science examination, he was justified in bringing the true circumstances to the notice of the Syndicate so far as tile Angul Centre was concerned. No adverse inference can be drawn against the conduct of Shri Panda unless the Syndicate examined him and had given him opportunity to explain why he voluntarily wrote such a letter. Shri Panda is a Header in Mathematics and is an officer of high status. Without examining Shri Panda or without obtaining further facts on independent enquiry to ignore Shri Panda?s Report, comment on Shri Panda?s conduct is not justified. The Syndicate in its Resolution dated 15-7-1972 does not also come to the conclusion that the report of Shri Panda was not genuine or not based on correct facts. It merely said that no fresh facts came to their notice. It is only in the counter that the Syndicate has come forward with an altogether new case that the report was not genuine and did not represent the true state of affairs.

24. After 11-7-1972, the Vice-Chancellor came to learn that Shri Shankarsan Mahapatra was the Principal of the Angul College on 14-4-1972 and was cognizant of the incidents occurring on that day. He accordingly called upon him to submit a report. Shri Mahapatra was on causal and special casual leave from 2-4-1912 to 13-4-1972 on account of the illness of his wife and joined the Angul College on 14-4-1972 at 10.30 A.M. His wife was suspected to have been suffering from uterine cancer. He again took leave from 16.4.1972. As he was very much mentally disturbed and upset on account of the illness of his wife, he did not submit a report as to the incidents happening on 14-4-1972 though he had full knowledge thereof. Shri Panda also did not submit his report in consultation with Shri Mahapatra. Shri Mahapatra made the position clear in his letter (Annexure XIV) dated 13-7-1972. Shri Mahapatra narrated the entire history, the relevant portion of which is extracted hereunder:

On expiry of my leave, I proceeded to Angul in the morning of 14.4.1972. I reached the College by about 10.30 A.M. on that day. I found that P.U. Arts examinees had assembled in front of the collapsible gate of Angul College and were protesting vehemently against the posting of police at the gate and the premises of the College and they were not entering the examination hall as they intended to take the examination with books. I persuaded them to go to the examination hall without books, but to no avail. The S.D.O, Angul, and the Second Officer were also present in College office. By this time half-an hour had already elapsed. The law and order authorities then announced to the candidates to leave the college premises without creating any further disturbance but the

crowd still continued to stay inside the compound and inspite of a promulgation of Section 144 in the College Campus, the situation did not improve. The police was forced to fire two tear gas shells to disperse the crowd, and the constables with lathi chased them out of the College compound. Some of these students gathered in front of the College hostel and threw stones at the patrolling police vehicles. After this I along with Shri B. Misra, Hostel Superintendent, and Shri K. Mahapatra, Reader in Oriya proceeded towards the hostel to persuade the boarders to stay inside the hostel and close the hostel gate to avoid clash with the police. When we reached the hostel, the mob waiting outside threw stones at us which hit Shri Misra and Shri Mahapatra. Under these circumstances, the first sitting of the examination could not be conducted.

The aforesaid passage brings in to bold relief the fact that there was complete hooliganism and a tense atmosphere prevailing. In the first sitting Shri Mahapatra ha first-hand, personal knowledge. He wrote this letter in response to S.D.O. letter addressed to him by the Vice-Chancellor himself. After, the expiry of his leave Shri Mahapatra has been posted at Ravenshaw College as Reader in Mathematics. He is a person of high status and has no axe to grind by making a false statement. His report is entitled to highest respect and weight unless it is proved to be untrue by any other material before the Syndicate.

25. With regard to the second sitting on 14-4-1972, his Report is as follows:

In the 2nd sitting, P.U. Science English Paper II examination was to commence at 2 P.M. About half an hour before the commencement of the examination, P.U. Science examinees began to gather outside instead of entering through the gate to proceed to their respective rooms. The number gradually increase and along with them some of the P.U. Arts examinees and some outsiders were also there. They were threatening to manhandle the P.U. Science candidates if they take the examination. I found most of the P.U. Science examinees without books waiting outside as they had not the courage to come inside at the threat of these miscreants. It was announced in the mike by the law and order authorities that the candidates should proceed to their respective rooms through the main gate but no student turned up. We waited for half an hour after 2 P.M. in the gate. As no students turned up and they left the College premises gradually the examination could not be conducted in the second sitting also.

At about 2.45 P.M., some of the local guardians came to my office and requested me to devise ways and means so that the examinations on the subsequent day could be conducted peacefully. I requested them to contact the ring leaders to persuade them to take the examinant without books. On 15.4.1972, the examination was conducted peacefully although at the gate books were recovered from some Arts students concealed within their pants and other parts.

The candidates of P.U. Science examination had appeared in English Paper I on 12.4.1972 in accordance with the rules without books and it is reasonable to expect that they would have appeared in second paper also in accordance with

the rules had they not been intimidated by the disturbing elements. A large percentage of the Science students of Angul College are first divisioners holding National and State Merit Scholarships and their career will be ruined if they are not allowed to appear in English Paper II.

The aforesaid passage fully supports the stand of the representation list that P.U. Science students could not appear at the examination of the second sitting on account of the atmosphere of panic and hooliganism created. The invitation by the examining authorities through mike did not dispel the fear and apprehension created in the minds of the examinees to receive injury from miscreants. It is not a mere mathematical assessment of facts at the relevant time which would resolve the difficulty. The psychology of fear cannot be allayed or dispelled by mere invitation through mike when the prelude was one of brick batting, tear-gassing and proclamation of an order u/s 144, Code of Criminal Procedure and actual threat of violence to the Science examinees who had assembled immediately before the second sitting.

26. The Syndicate in its Resolution dated 15.7.1972 exercised its jurisdiction legally in recording a finding that no fresh facts were brought to their notice by the two reports of Shri K.C. Panda and the Principal Shri Shankarshan Mahapatra. In fact, both these reports given independently corroborate each other in material particulars and highlight the position that there was an atmosphere of panic and the P.U. Science examinees were threatened by hooligans and miscreants which any invitation by the examining authority through the mike could not allay or dispel. The true significance of these reports were not appreciated by the Members of the Syndicate whose minds seem to have been closed to any reasonable approach. One can understand if they would have come to the conclusion that these two reports were subsequently procured under pressure and did not represent the true state of facts and, as such, were not acceptable. Such a conclusion could only be reached if the Members of the Syndicate would have sent for Shri Panda and Shri Mahapatra and would have examined them in their presence and found out either through their admission or other relevant materials procured by independent enquiry that they were unreliable. Without any independent enquiry or examination of Shri Panda and Shri Mahapatra the Syndicate committed an error of recorded in passing a Resolution that no fresh facts came to its notice. The reports of Shri Panda and Shri Mahapatra dated 13-7-1972 gave detailed facts, while the earlier report of Shri Panda dated 14-4-1972 merely gave a partial picture that the P.U. students did not turn up for examination despite invitation by the examining authorities through the mike. The earlier report did not assign the reason as to why the Science examinees did not turn up while the subsequent reports gave a complete picture. The Resolution of 15.7.1972 is, therefore, liable to be annulled on the ground that the basic and fundamental facts on which the conclusion was reached rested on mis-statement of fact. The Syndicate did not exercise its jurisdiction having due regard to the facts and circumstances. The conclusion that was reached by the Syndicate could not have been reached by any

reasonable body of persons whatsoever. The Syndicate exercises its jurisdiction arbitrarily and capriciously. In pith and substance and in reality it did not exercise the power vested in it in conformity with the Act and the Statutes, though apparently there was an exercise of power by calling a meeting and in passing a Resolution.

27. It is contended by Mr. Mahapatra that even assuming that the Resolution of the Syndicate dated 15-7-1972 was liable to be annulled for the aforesaid reasons, the Resolution dated 8-7-1972 stands as it was based on a consideration of the Report of Shri Panda dated 14-4-1972. The argument though ingenious is fallacious. The Syndicate is not governed by the principle of *res judicata*. If fresh materials came to its notice by which its earlier Resolution dated 8-7-1972 required alteration, a duty is cast by the Act and the Statutes on the Syndicate to exercise jurisdiction in the light of the fresh facts coming to its notice. It does not sound well for the Syndicate to say that it would close its mind and shut up all considerations even though fresh facts came to its notice whereby its earlier decision cannot stand. The Resolution of 8-7-1972 is liable to be annulled on the further ground that though fresh materials came to the notice of the Syndicate by the two subsequent reports dated 13-7-1972, yet it failed to exercise its jurisdiction which vested in it under the Act and the Statutes. Judged from any point of view, both the Resolutions are liable to be annulled on the aforesaid analysis.

28. It would be appropriate to mention at this stage that in arriving at my conclusion that both the Resolutions are liable to be annulled, I have not discreetly taken into consideration the report of the District Magistrate (Annexure XV) dated 15-7-1972 which verbatim incorporates the relevant portions of the report (Annexure V) of Shri V.S. Rao, Magistrate, 1st class, who issued the order u/s 144, Code of Criminal Procedure. I have not taken into consideration the District Magistrate's report for the simple reason that such report had not been taken into consideration by the Syndicate in both the Resolutions. The District Magistrate sent this report in response to a telephonic conversation with the Vice-Chancellor, and the District Magistrate's report and the report of Shri V.S. Rao, fully support the stand of representation list that the P.U. Science students could not appear at the second sitting on account of the atmosphere of panic created during the first sitting and also at the time when the Science examinees tried to enter into the hall to appear at the examination.

29. As I have already stated, the Syndicate, before it passed its Resolution on 8.7.1972 ought to have called for a Report from the District Magistrate to know the real situation. The Report of Shri Panda dated 14.4.1972 was incomplete and did not present the picture as to why the Science students abstained from appearing at the examination. I have referred the report of the District Magistrate only to point out that in response to a request from the Vice-Chancellor. he gave the clear picture. After receiving this report, subsequent to the Resolution of the Syndicate on 15.7.1972, the Syndicate could have

convened a further meeting to consider the report of the District Magistrate. The failure on the part of the Syndicate to consider the report of the District Magistrate by a meeting convened subsequent to 17-7-1972 is a failure on the part of the Syndicate to exercise jurisdiction vested in it. It appears to me that the Syndicate had a closed mind.

30. I would sum up the factual aspect thus:

(a) There was positive assertion before the Syndicate in Annexures XVII and XVIII that the P.U. Science students were unable to appear in the second sitting of 14-4-1972 on account of circumstances beyond their control arising out of breach of law and order, hooliganism and goondaism. Though their assertion was not negated or disproved by the report (Annexure V-A) of Shri Panda, the Syndicate passed the Resolution on 8.7.1972 not to hold further examination without making any independent enquiry on the material point in issue. The Syndicate acted in a manner in which no reasonable person would act. The Resolution is not in conformity with the provisions of the Act and Statutes and is liable to be annulled.

(b) Annexures X and XIV, the second report of Shri Panda and the report of the Principal fully establish the stand of the representationalist in Annexure XI. Without rejecting those reports as untrue or having been obtained under pressure the Syndicate acted illegally in the exercise of its jurisdiction in not resolving on 15-7-1972 to hold the examination after recalling the Resolution passed on 8.7.1972.

(c) The Syndicate also failed to exercise its jurisdiction by completely ignoring the District Magistrate's letter (Annexure XV). The Syndicate ought to have called a further meeting to discuss the District Magistrate's letter and to change its views, if necessary.

(d) There is abundant unassailable material on record that the P.U. Science students were peaceful and law-abiding and were ready to appear at the examination, but for external interference and threat from goondas and anti-social elements.

(e) P.U. Science students of Angul should therefore be allowed to appear at an examination for English Paper II as is done by the University in similar cases.

31. I would now proceed to examine the points of law raised by Mr. Mahapatra challenging the jurisdiction of the Chancellor. They are:

(i) The Chancellor can annul the Resolution of the Syndicate only if the Resolutions are not in conformity with the provisions of the Act and the Statutes. He cannot go into facts, however perverse the Syndicate's decision may be.

(ii) Even if the Resolutions are annulled in the facts and circumstances of this case as not being in conformity with the provisions of the Act and the Statutes, the Chancellor cannot issue a direction that the examination would be held:

32. The first contention has already been dealt with by me. The expression "to annul any proceeding of the Syndicate which is not in conformity with this Act and the Statutes" occurring in the main part of Section 5(7) of the Act takes within its sweep cases where the Syndicate apparently or ostensibly purports to act under the Act and the Statutes, but does not really so act. This position would arise where the Syndicate reaches a conclusion without any evidence or by taking into consideration irrelevant matters or by excluding relevant matters which would essentially affect its decision on merits or acts on errors of record or fails to resort to the principles of natural justice to arrive at a just decision after unrevelling truth.

33. Moreover, a proceeding of the Syndicate may not be in conformity with the provisions of the Act and Statutes both on questions of law as well as on questions of fact. The decision of the Syndicate may be contrary to legal construction to be put on the provisions of the Act and Statutes. The decision may also be unsustainable on facts and as such not in conformity with the provisions of the Act and Statutes. In either case the Chancellor has wide and unrestricted powers to annul the proceeding. The Chancellor would exercise the power like a first Appellate authority by examining the decision of the Syndicate both on legal and factual aspects. The Chancellor's powers are not restricted as u/s 115, CPC or Article 226 or 227 of the Constitution.

For reasons already discussed at length, I have pointed out ,how the two Resolutions are not in conformity with the provisions of the Act and the Statutes and are contrary to unassailable materials on record.

34. The second contention is equally untenable. Section 5 confers wide powers on the Chancellor without any limitations. By virtue of his office he is the Head of the University. He is to preside at the Convocation of the University convened for the purpose of conferring degrees or for any other purpose. Unless the proposal for conferment of an Honorary Degree has been confirmed by the Chancellor, the same cannot be conferred on anybody. It is he who shall finally decide all disputes with regard to election of the Members of the authorities of the University. The Chancellor has wide powers of inspection. He can himself do it or can get it done by persons appointed by him. The Inspection extends to every aspect of the University life. It extends to examinations, teaching and other work conducted or done by the University. The Chancellor may communicate the results of any Inspection to the Vice-Chancellor who shall communicate the same to the Syndicate. The Syndicate shall submit report of compliance to the Chancellor of any action suggested in the Chancellor's inspection note. The Chancellor by order in writing shall annul any proceedings of the Senate, Syndicate or the Academic Council not in conformity with the provisions of the Act and Statutes. The Chancellor may, by an order and for reasons to be recorded in writing, postpone the holding of elections to the Senate, Syndicate and the Academic Council for a period not exceeding four months.

35. It would thus be seen that the ambit and amplitude of power exorcsised by

the Chancellor admit no limitation or restriction. The necessity for the exercise of these powers would be few and far between and sparingly such power should be exercised as the functions of the University have been entrusted to a high and respectable authority like the Syndicate. The fact that the Syndicate is an august body does not, however, derogate from the wide power to be exercised by the Chancellor if the facts find circumstances of a particular case so justify. It would herefore be idle to contend that after annulment of the Resolution the Chancellor cannot issue an ancillary order giving direction to the Syndicate to implement the decision of the Chancellor.

36. I now proceed to consider certain arguments of Mr. Mahapatra which were raised in the show cause petition (Counter) and were pressed into service at the time of hearing.

Paragraph 35 of the counter runs thus:

That the Act and Statutes have given wide power to the Syndicate for the purpose of proper conduct of the examinations. While taking decisions by way of resolutions, the Syndicate takes into consideration different relevant factors which are collected not only from the reports of the Centre Superintendents and Supervisors who are the agents of the University at the spot but also takes earlier and subsequent actions of the circumstances to come to a decision. These decisions of the august body are to be viewed in high esteem. It cannot be lightly interfered with.

The contention is that events subsequent to 14.4.1972 were taken into consideration by the Syndicate in passing the aforesaid two impugned Resolutions. Reference was made to paragraphs 18, 19, 20 and 23 of the counter.

In paragraph 18 reference was made to the malpractice resorted to by 30 examinees in Chemistry on 18th April 1972 in the second sitting.

In paragraph 19 reference is made to the fact that 13 candidates were found resorting to malpractice in Physics in the second sitting on the 19th April 1972.

In paragraph 20 reference has been made as to how a large number of students resorted to malpractice in Economics in the first sitting of 19-4-1972.

Paragraph 23 refers to the fact that on the 29th April 1972 at about 2 P.M. there was an explosion in the quarters of the Centre Superintendent causing grievous hurt to Shri Panda and his wife.

Mr. Mahapatra contends that all these subsequent events were taken into consideration by the Syndicate in not allowing the Angul P.U. Science Students to appear at a further examination.

37. If the Syndicate really took these subsequent activities into consideration, then both the Resolutions are ultra vires and void. The malpractices resorted to on the 18th, 19th and 20th April all relate to individual cases and it is open to the University to disqualify those candidates from passing the examination. That

is altogether a different matter. Similarly, for the explosion caused in the quarters of the Centre Superintendent, the miscreants must be criminally prosecuted and if some of the examinees have been identified to have been involved therein, their results can be withheld if legally permissible. The Syndicate acted wholly on irrelevant and extraneous matters if it was influenced by the materials referred to in paragraph 18, 19, 20 and 23 of the counter to decide that there would be no further examination in English Paper II at Angul Center for P.U. Science students. As these facts have been relied upon in passing the impugned Resolutions, they are liable to be annulled as being void.

38. In paragraph 38 of the Counter, the following stand was taken:

That apart from the legal hurdle on the part of the Chancellor to interfere with the Resolutions of the Syndicate, it can legitimately be felt that the entire body of the students will suffer in case a few students of Angul College are permitted to sit at a fresh examination. Publication of the results which has been delayed is likely to be further delayed. In the light of the decision of the Chancellor, the Syndicate may have to review the Resolution relating to other Centres also.

39. All the points urged in this paragraph are wholly irrelevant to the question in issue. The fact that the Syndicate had decided to hold the examination in English Paper II for P.U. Science students in Puri and Nayagarh Centres on 24.7.1972 which has been subsequently adjourned without fixing a particular date, itself demolishes the theory that delay in holding examinations is hardly bug-bear with the Syndicate. It has almost become customary with the Syndicate not to hold the examination and not to publish the results in time and it lies very ill in its mouth to say that on account of the delay likely to be caused by the Chancellor's order the claims and rights of the examinees, if any, are to be frustrated. Neither the Syndicate nor the Chancellor is to be influenced by extraneous and irrelevant considerations. The rights of the examinees should be determined in an atmosphere free from prejudice.

40. The further argument that if Angul students are allowed to appear in the examination the Syndicate may have to review the Resolution relating to other centres is somewhat fantastic. It is to be presumed that an august body like the Syndicate passes its Resolution after matured consideration. The facts and circumstances prevailing in one particular Centre may not be similar to those arising in other Centres. Merely because Angul P.U. Science students might be permitted to appear in an examination, it does not follow that students in other Centres resorting to malpractice either wholly or in part or voluntarily abstaining from the examination must get a similar chance. The considerations pertaining to different Centres must vary according to facts and circumstances of each case. In fact, the Syndicate Itself has allowed examination to be held in English Paper II for P.U. Science students in the Puri and Nayagarh Centres while refusing the case of Angul. At the Resolutions regarding Puri and Nayagarh Centres are not before me, I do not propose to delve into that matter and I presume that on appropriate considerations the Syndicate must have taken that decision. At any

rate, the argument that the Chancellor would not exercise his power in respect of a particular Centre merely because the principles enunciated in the order might affect the Resolutions of the Syndicate in respect of other Centres, is wholly untenable and cannot be accepted. These arguments obviously show that the Wyandotte carries the fervour of an ordinary litigant and is prepared to defend its action on any pretext.

41. I have discussed at length all aspects presented to me by Mr. Mahapatra on behalf of the Syndicate. I am satisfied that the two impugned Resolutions were arrived at arbitrarily and capriciously wholly divorced from the unassailable materials leading to the conclusion that all the P.U. Science students were unable to appear in the second sitting on 14.4.1972 on account of external interference from anti-social elements goondas and hooligans and the prevailing atmosphere of panic. As they voluntarily did not abstain from appearing at the examination and were themselves the victims of circumstances, they should be permitted to appear in that examination on any date to be fixed by the Syndicate and the Vice-Chancellor within 2 weeks from today.

42. It need hardly be stated that the Chancellor is no less anxious than the Vice-Chancellor and the Syndicate to extinguish malpractice rampant on an extensive scale in the University examinations. The Chancellor is equally anxious that the student indiscipline must be curbed. The aforesaid anxiety, however, does not mean that justice should be thrown to the winds in particular cases merely because the students community as a whole are indulging in violent activities.

43. In the result, the two Resolutions are annulled. An Examination in English Paper II for P.U. Science students be held at Angul Centre on any date within two weeks from today.