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**(1982) 08 RAJ CK 0022**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 1491 of 1981**

K.L. Rajpurohit

APPELLANT

Vs

University of Jodhpur

RESPONDENT

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**Date of Decision :** 17-08-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1982) WLN 592

**Hon'ble Judges :** Guman Mal Lodha, J

**Bench :** Single Bench

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## Judgement

Guman Mal Lodha, J.—A Researcher prays for Judges research by evaluation, interpretation and examination of the scheme of Ordinance of Ph. D Chapter instead of submitting to the "Veto" of the Research Board. He has filed this writ petition precisely for the enforcement of his legal right under Ordinance 216 Sub-clause (D) of the University of Jodhpur or re-enforcement of "Rule of Law" over "Rule of Men". The University claim "Autonomy". Mr. Parekh's plea is that Mr. Mridul is raising a worthless Storm in a tea cup, which deserves to be nipped in the bud by Nutron Bomb of Ordinance 224.

2. The twin Ordinances around which the juristic debate pivots are 216 D v. 224.

3. Let me now examine whether Mr. Parekh who is attacking 216D, by brandishing sword of 224, can be permitted to kill it in womb. Ordinance 216-D reads as under:

Order 216-D. If the examiners unanimously recommend the award of the degree, the Registrar shall fix a date for the viva voce test, to be held normally at Jodhpur.

4. It is not in dispute that the petitioner after obtaining his post graduate degree in Political Science proceeded to undertake Research for the purpose of granting the degree of Ph. D. by the University of Jodhpur. His thesis was submitted for examination by the three examiners. All the three examiners recommended that

he must be granted degree of Ph. D.

5. However, the Assistant Registrar of the University sent a letter (Annexure 1) on 19th June, 1981 in which it was pointed out that the Research Board has decided that the candidate be asked to incorporate the suggestions of the examiner in 2 Chapters of thesis in the light of the comments given by one of the examiner. Extracts of the report of the Examiner was annexed with this letter, which is a part of Annexure 1.

6. According to the extracts the Examiner was very appreciative of all the points taken by the candidate in preparing this thesis and he had all praise. However, as a passing comment he observed that he would be failing in his duty if he would not invite the attention to certain desirable changes and improvements in case the candidate chooses to publish his work. There after the following suggestions were made;:

He should first of all undertake a critical discussion of the relationship between Tradition and Modernity and all that is involved in this relationship. He has not cared to examine how fidelity to tradition is incompatible with a modernist, positivist, western scientific outlook. It just escaped his attention that positivism spells the ruin of religious faith and his eulogistic description of the synthesis of positivism and religion in Bankim Chandra is indicative of his uncritical handling

One gathers the impression that there is too much of emotional history and very little of philosophical analysis in the thesis. One is impressed by its sweep, but disappointed by its lack of preceptiveness a piece of my advice to the researcher is that he should give a second look to the thesis in general and to the Chapters on Bankim Chandra and Bipin Chandra Pal in particular; to the chapter on Bankim Chandra because an assessment of Bankim should be made against the background of the discussion on the logical tension between tradition and positivism and to the chapter on Bipin Chandra Pal, because his idea of Nation as Divinity incarnate requires us to probe into the Western origins of his thought.

7. After making the above passing comments the Examiner gave the following final report:

In spite of the above theoretical shortcomings, I am of the view that the researcher has done commendable work by bringing together a lot of new facts relating to the subject and interpreting them in a refreshing manner. The candidate has also given proof of his capacity for critical thinking. The literary presentation is also good.

I, therefore, recommend the thesis for the award of the Ph. D. degree in Political Science of the University of Jodhpur.

8. It is, therefore, not in doubt that the third Examiner was clear and Categorical in recommending the thesis for the award of Ph. D. degree in Political Science and this recommendation was not conditional.

9. I have come to the above conclusion because not only earlier he has prefaced the above comments by saying that the changes are desirable & the improvement may be made if he chose to publish. But in order to remove any doubt about his opinion that the thesis was worth granting of degree of Ph. D. he after making the above comments made it specific, when he observed in the last 2 paragraphs that inspite of the above theoretical short comings the Researcher has done commendable work and he recommends the thesis or awarding the degree for Ph.D.

10. In view of the above, Ordinance 216(D) is positively invoked and comes into play because there is unanimity in Examiners is recommending the awarding of the degree.

11. After 216(D) the Viva Voce test should have been conducted under Ordinance 216 Clause (E) and thereafter the procedure provided in 216 (F) should have been applied.

12. It is only after the Viva Voce examination that if the majority of the Examiners want the thesis to be revised and resubmitted then he can be redirected to present his thesis in revised form. In my view it is not necessary to deal with the implication of Ordinance 217A and 218 and 219 because obviously that stage has not come in the present case.

13. Mr. Hastimal learned Counsel for the University submitted that by virtue of Ordinance 22 4 the Research Board has got power to exercise general control over matter concerned with research work in the faculty and also to consider reports of the examiners. Ordinance 224 reads as under:

Order 224. There shall be a Research Board in each Faculty.

Constitution as proposed for each Faculty.

1. The Vice Chancellor.
2. Dean of the Faculty concerned.
3. Heads of the Departments.

The Research Board may co-opt one or two experts if deemed necessary for a period of one year, at a time.

A majority of the members shall form a quorm. The functions of the Research Board shall be:

1. To consider applications from teachers in the University for recognition as Research Supervisors.
2. To receive and consider applications of "candidates for Ph.D, D. Litt., and D. Sc. degree in the Faculty.
3. To consider the report of the supervisor on the work of a candidate for the

Ph.D. degree.

4. To recommend the award of research scholarship.

5. To recommend names of referees for examination for examining thesis for the Ph.D./D.Litt. or D.Sc. degree and to consider reports on thesis from such examiners.

6. To exercise general control over matters concerned with Research work in the Faculty.

14. Undoubtedly, broadly the submission of Mr. Hastimal Parekh is correct and the power of general control is with the research Board. However, this power of general control cannot be stretched to such wide dimensions that all Ordinances framed by the University for the purpose of providing detailed elaborate procedure regarding the procedure for doing the Research and the evaluation of the research can be made nugatory. The Ph.D. Ordinance commences from Ordinance 119 and upto 224 they visualise various facets and phasis of the Ph.D.

15. In particular after thesis is submitted the process of examination commences from Ordinance No. 215-C. It would be obvious from a close of these study Ordinances that various tests, checks and process of evaluation and examination have been provided.

16. Ordinance 216-C has become very relevant for the purpose of this consideration. Ordinance 216 Clause (C) provides that examiner has got three options in making recommendations:

(a) The thesis be accepted.

(b) The thesis be rejected.

(c) The candidate be allowed to present his thesis in revised form. The form also contains these three recommendations.

17. It is common ground that the third Examiner in the present case has given detailed report and in the concluding portion of the report he has opined that thesis should be accepted. In other words he has made the recommendation for acceptance of the thesis and not for directing the candidate to re-present his thesis in the revised form as required in Clause (c) of Ordinance 216-C.

18. In the above situation, in my opinion it was necessary for the University to hold Viva Voce test as required by Ordinance 216 D and Order 216E. It is only after this Viva Voce test that Ordinance 218 and 219 would have come into play.

19. Though it is true that the Research Board has got general control over matters concerned with research as contemplated by Ordinance 224 but that general control is to be exercised keeping in view of the scheme of the Ordinances.

20. I am, therefore, clearly of the view that the stage for invoking Ordinance 219

would come only after the viva voce test is held in accordance with Ordinance 216 Clause (E)

21. Mr. Hastimal learned Counsel for University has submitted that this Court would not interfere in the academic functions of the University and in support of his contention he relied upon the decision reported in *Suraj Pal Vs. The State of Uttar Pradesh, Mahendrasingh v. University of Jodhpur* 1981 WLN 18 and *Jawaharlal Nehru University v. B.S. Narwal* 190 (4) SCC 480. Mr. Mirdul has relied upon *Priti Prabha v. Dr. C.P. Singh* ILR 1968 Raj. (1612)

22. In the above decision of *Priti Prabha*'s case this Court observed as under:

We are quite conscious that court of law should not too readily interfere with the internal working of a University which is an autonomous body without adequate care and caution. But at the same time, where the University may be found to be acting clearly in breach of its own rules and regulations or in excess of its lawful authority or contrary to a provision of the Constitution, as in this case, then the High Court cannot abdicate its duty of stepping in and calling it to perform its lawful duty under the obligation which has been imposed upon the Court by the Constitution of the country, as enshrined in Article 226 thereof.

The principles enunciated in the above decisions cited by Mr. Hastimal are well known and any tendency to interfere in the academic administration of the University cannot be encouraged. I am also of the view that the Academic authorities in the University should be allowed to exercise and discharge their functions as an autonomous apex authority in the educational field. It was on account of this that I did not allow Mr. Mridul to develop his theme that in this case there was discrimination and where as the petitioner was asked to re-submit the thesis, certain other candidates for whom two examiners have opined and recommended for resubmission of the thesis were allowed the degree of doctorate by the Research Board. I have not even discussed the contention of Mr. Mridul in this respect because I am of the opinion that the members of the Research Board who are educationaists and academicians are normally masters of their fields and this Court cannot become appellate forum in considering the correctness or propriety of their actions in awarding degree of Ph.D to one candidate and rejecting to the other one. That would be usurping of the jurisdiction of the Research Board and Academic Council which is not permissible under Article 226.

23. It is well known that the power of judicial review in such matters is very limited and this Court inspite of there being no fetters in the words of Article 226 have always restrained from interfering in such fields and matters.

24. However, the present one is a case where I am firmly of the opinion that if Ordinance 224 is interpreted to mean that the Research Board can make 216D, 216E, 217A, 218 and 219 nugatory then it would result in outrageous violence to all these Ordinances, which have been framed after full nature and thoughtful consideration by none less than the apex bodies of the University itself.

25. I have therefore not been able to persuade myself to restrain from interfering in view of a clear case of violation of Ordinance 216 clause D having been made out by the petitioner. It was in this spirit that in Priti Prabhas case this Court observed that where the University may be found to be acting in breach of its Rules and Regulations or in excess of its lawful authority then High Court cannot abdicate its duty of stepping in and calling it to perform its lawful duty under the obligation which has been imposed upon the court by the Constitution of the country as enshrined in Article 226.

26. It is with great reluctance that I am interfering in this matter but I feel that non-interference would result in making all the Ordinances referred to above nugatory, and giving unbridled, naked, arbitrary and unrestricted veto power to Research Board and doing violence to "Rule of Law."

27. Mr. Hastimal learned Counsel for the University further submitted that the present one is a interlocutory order and it does not affect any right of the petitioners because his thesis has not been rejected.

28. Broadly speaking in a way the order can be called interlocutory. However, nonobservance of Ordinance 216 D and Ordinance 216 E has resulted virtually in passing an order detrimental to the interest of the petitioner. Undoubtedly the petitioner has got a legal right under Ordinance 216 clause(D) for claiming that first a date for viva voce test must be fixed and then only matter should go before the Research Board, under Ordinance 219. I am, therefore, convinced that the petitioner's legal right has been infringed and it is a fit case where interference should be made at this stage.

29. The result is that the writ petition is accepted and the respondents are directed to fix a date for Viva Voce test of the petitioner as required by Ordinance 216 clause D and then proceed further in the matter according to the other Ordinance contained in this Chapter.

30. The writ petition is accepted as indicated above. The parties are left to bear their own costs.