
(1992) 10 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 558 of 1991

Ku. Bhagyashree	Vs	APPELLANT
Vice Chancellor, Amravati University and Others		RESPONDENT

Date of Decision : 22-10-1992

Acts Referred:

Amravati University Act, 1983 — Section 11(4), 73(3)

Citation : (1994) 2 BomCR 32

Hon'ble Judges : M.B. Ghodeswar, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; B.P. and J.B. Jaiswal for respondents 1, 2 and 4, A.P. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—The petitioner who appeared for the Final M.B.B.S. Examination held by the Amravati University has originally challenged the result of the said examination declared by the University. However, at the fag end of the arguments, when some defect was noticed and when in particular, it was brought to our notice that the petitioner had made application for revaluation of marks in three subjects because of which she should be estopped from challenging the result of the Final M.B.B.S. Examination declared by Amravati University, an amendment application is filed to challenge the result of revaluation itself. Although we were not inclined to allow the amendment, since the learned Counsel for the University has agreed that we should consider the same in this writ petition itself and since he has produced the relevant material in that regard, we allow the C.A. No. 2924 of 1992 for amendment and consider the said question so as to finally conclude the grievance of the petitioner in regard to valuation and revaluation of her papers in Final M.B.B.S. Examination held in November 1990, particularly when the examination itself is an old one.

2. The facts are that the petitioner alongwith the other candidates appeared for the final M.B.B.S. Examination held by the Amravati University in November

1990. After the papers of the said examination were valued, the University found that there were mal-practices on large scale and code numbers were leaked, which were also published in newspapers. The Vice-Chancellor appointed a Committee to go into the said question. Till then, the results on the basis of the valuation of papers of November 1990 were withheld. The said Committee was constituted under the chairmanship of the Vice-Chancellor himself. The said committee gave its report on 22-1-1991. According to its report, it recommended that all the answer papers of the final M.B.B.S. Examination held in November 1990 should be given for reassessment immediately and its results should be declared on the basis of reassessment of marks. Accordingly, the answer books of the said examination were reassessed and it is thereafter that the result of the final M.B.B.S. Examination was declared on 2-2-1991. The said report was placed before the Executive Council in its meeting held on 13-4-1991. The said report was accepted by the Executive Council and it further resolved to appoint a Committee to find out as to who was actually responsible for the leakage of code numbers of answer books of the final M.B.B.S. Examination held in November 1990.

2-A. After the results were declared in February 1991, the petitioner made an application for revaluation of her answer books in three subjects in which she had failed viz. Community Medicine, E.N.T. and Surgery. The said application was made as per Ordinance No. 159 of the Amravati University. Her answer papers in the above subjects were therefore sent for revaluation by the University. The result of the revaluation was communicated to the petitioner on 26-5-1991 according to which, in two subjects, her marks were further reduced and in the third subject, the marks obtained by her were maintained. It may be seen that as per the original declaration of result, the petitioner had failed and as per the revaluation also, she could not succeed. It is pertinent to see that even before her result of revaluation was declared, she had already preferred a writ petition in this Court on 26-2-1991 challenging the re-assessment of papers made by the Amravati University as hereinbefore shown. As already pointed out, the petitioner has amended the petition to challenge the result of revaluation only on 25-8-1992 as stated in para 1 of the judgment.

3. The principal question raised for our consideration both as regards the original assessment as well as revaluation is that the valuation is not made by the Examiners whose names are contained in the list prepared by the Committee constituted u/s 73 of the Amravati University Act, 1983 (for short "73 Committee"). The submission is that the Vice Chancellor has no power to send the answer books on his own to the examiners of his own choice because as provided in sub-section (3) of section 73, it is only in a case where any examiner whose name is contained in the list prepared by the 73 Committee, is unable to accept the examiner ship and a fresh appointment cannot be made in time by the Executive Council, that the Vice Chancellor can appoint another examiner and report such appointment to the Executive Council.

4. We shall first consider the question whether it is open to the petitioner to challenge the re-assessment of her papers upon the above ground.

4-A. It is pertinent to see that after the reassessment was made, the petitioner herself had applied for revaluation of the marks given to her in reassessment of her answer papers which would show that she had accepted the marks on reassessment and complained about the same by making an application for revaluation. The petitioner is thus estopped from challenging the reassessment made by the University. Moreover, it may be seen that it has wider repercussions in the sense that entire reassessment of the examination which is held long back in November 1990 can be reopened if the petitioner is allowed to raise the said contention. That apart, on perusal of the writ petition itself, we do not find that any challenge is given by the petitioner on the ground that the answer books were not given to the examiners whose names were contained in the list prepared for the same by the 73 Committee.

4-B. The only allegation made in para 8 of the writ petition is that the revaluation can be made only in accordance with the provisions of Ordinance 159 at the instance of examinee himself and there is no other provision in the ordinance or any regulation which would empower the Vice Chancellor to get the answer books reassessed even though the examinee had not applied under the rules. As regards the above said contention which is raised, it will have to be considered on its own merits. It may be seen that this is not a case of revaluation of answer papers because the question of revaluation arises after the results are declared. So far as the question of reassessment is concerned, even before the results were announced, the mal-practice was noticed for which reason the announcement of the result was withheld. It is pertinent to see that the results are announced in accordance with the provisions of Ordinance No. 9 after the approval of the same by the Special Examination Committee. The submission on behalf of the petitioner that the revaluation has to be at the instance of the examinee and that the question of reassessment is governed by Ordinance No. 155 has thus no merit.

5. As regards the question of revaluation, the question is raised that it is not done by the examiners whose names are contained in the list prepared by the Committee. The learned Counsel for the petitioner has relied upon the judgment of this Court in Rohini Dattatraya Tare and etc. Vs. Nagpur University, Nagpur, to emphasize that even in the case of revaluation, the answer papers have to be assessed by the examiners whose names are contained in the list prepared by the Committee constituted for the said purpose i.e. 73 Committee. It may be seen that the said case relates to revaluation of answer books under Ordinance No. 159 framed by the Nagpur University under the Nagpur University Act. In Clause 4(i) of the said Ordinance of the Nagpur University it is provided that appointments of examiners for revaluation should be made by the Executive Council in accordance with the provisions of section 64 of the Act which means through the Committee constituted u/s 64 of the Nagpur University Act.

5-A. As regards the Ordinance No. 159 framed by the Amravati University under the Amravati University Act, Clause 4(i) of the said Ordinance is as follows :

"4(i). Appointment of Examiners for revaluation shall be made by the Hon"ble Vice-Chancellor from the list of examiners recommended by section 73 Committee and approved by the Executive Council. The answer books shall be revalued by two examiners other than the original examiner who valued them initially."

It is clear from the said ordinance that there is difference in the said ordinance and the ordinance for revaluation applicable in the Nagpur University. Clause 4(i) of the Amravati University Ordinance further provides that :

"In case the revaluation warrants the appointment of an examiner from outside the University area or in case where no name is available or found suitable in the given list, the Hon"ble Vice Chancellor be authorised to make appointment on behalf of the Boards of Studies. Section 73 Committee and the Executive Council as the need be."

6. The learned Counsel for the respondent-University has placed before us the documents in regard to the question of revaluation of answer papers of the candidates who appeared for November 1990 Examination of Final M.B.B.S. It appears from the said documents that the Officer concerned had put up a note that the Board of Studies in the Faculty of Medicine and the 73 Committee had not given the list of examiners for revaluation and therefore, the Vice Chancellor should nominate the examiners for the said purpose. The said letter was placed before the Vice-Chancellor with the recommendation that in such a contingency, under Clause 4(i) of the Ordinance No. 159, the Vice-Chancellor could make such appointment. The Vice-Chancellor had approved the said office note and thereafter the appointment of the examiners for revaluation was made by him. It appears from the office note that the 73 Committee is expected to give separate names of examiners for the purpose of revaluation. It is not shown to us that such separate names are given by the 73 Committee in the instant case. It is also not shown to us that according to the 73 Committee a panel of some examiners was available for revaluation of answer papers. If that is so, then as per clause 4(i), when the names of the examiners are not given for revaluation by 73 Committee and are thus not available, the Vice-Chancellor can act as provided in the said Clause 4(i) of the revaluation Ordinance No. 159.

7. As regards section 73 of the Amravati University Act, it may be seen that the Committee constituted under sub-section (1) thereof, prepares the list from amongst the persons whose names are included in the panel prepared by the Board of Studies and it then sends the said names for approval to the Executive Council, who then appoints the examiners. Even, according to the proviso to section 73(2), no change in the list can be suggested or made by the Executive Council except by passing a resolution stating the specific ground on which each change suggested or made is based. As regards the power of Vice-Chancellor,

sub-section (3) of section 73 provides that, if for any reason, the examiner is not available from the list prepared by the 73 Committee and fresh appointment cannot be made in time by the Executive Council, then he can appoint the examiner for the said purpose.

8. It is clear from the scheme of section 73 that it is the Executive Council which is the ultimate authority to finalise the names of the panel of examiners in each faculty. The only obligation which is cast upon it under the proviso is that if it wants to deviate from the list or make any change, then it has to pass a resolution giving specific ground why it is making such a change. Clause 4(i) of the Ordinance No. 159 provides that the normal rule is that the examiner should be from the panel prepared u/s 73 of the Amravati University Act. However, there is an exception carved out therein in certain cases, such as if the revaluation itself warrants the appointment of an examiner from outside the University area or in case no name is available or found suitable in the given list. As per the said ordinance, the Vice-Chancellor is acting on behalf of the 73 Committee, the Board of Studies or the Executive Council as the case may be. The validity of the said provision is not impugned before us. However, the submission is that it should be read down so as to make it consistent with the provisions of section 73 of the Amravati University Act.

9. In our view, the provisions of Clause 4(i) of the Ordinance No. 159 cannot be said to be inconsistent with the provisions of section 73 of the Amravati University Act. It may be seen that Clause 4(i) provides for contingencies which may not normally be covered by section 73. It may further be seen that if the name of an examiner is not available for revaluation from the panel suggested by 73 Committee, the revaluation of paper cannot wait till such Committee meets, recommends its name and the Executive Council approves the said name which is a time consuming process. It is in such contingency that the power is given to the Vice-Chancellor to act and appoint the examiner. Such powers are necessary in order to subserve the purpose of revaluation effectively. It is therefore neither necessary nor proper to read down the provisions of Clause 4(i) so as to hold that eventhough the name is not available from the list submitted by the 73 Committee, the appointment cannot be made of the examiner by the Vice-Chancellor. It may be seen that, for instance, if the panel of examiners prepared by the 73 Committee is for a fixed period and the said period is over and if no such power is allowed to the Vice-Chancellor by reading down Clause 4(i), great hardship can be caused to the students applying for revaluation. In fact, by section 11(4) of the Act, emergency powers are also conferred upon the Vice-Chancellor to tide over the emergent situations. We, therefore, cannot accept the construction sought to be placed on behalf of the petitioner upon Clause 4(i) of the Ordinance No. 159.

10. It is well settled that in matters of education, the High Courts should be slow to interfere with the decisions of the academic bodies. In this matter, the facts show that there was leakage of Code Numbers because of which reassessment of

papers had to be made. It may further be seen that the Executive Council had itself constituted a Committee to fasten the responsibility upon the persons who were responsible for the said leakage. Under these circumstances, even assuming that the Vice Chancellor had sent the answer papers to the valuers who were outside the panel prepared by the 73 Committee, this Court will not interfere in such action of the Vice-Chancellor.

In the result, the instant writ petition fails and is dismissed. However, in the circumstances of the case, there shall be no order as to costs.