
(1966) 09 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 1845 of 1966 and C.M.P. No. 8929 of 1966

M. Murali Dharan

APPELLANT

Vs

The University of Madras

RESPONDENT

Date of Decision : 16-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 320(3)(c)
Government of India Act, 1935 — Section 256

Citation : (1966) 09 MAD CK 0004

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : S. Chellaswami, for the Appellant; V.K. Thiruvengkatachari for Mr. C.N.S. Chengalvarayan, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—This is a petition filed by a student who failed in the M. A. degree examination Branch VII, English Language and Literature,

held in April 1966 by University of Madras, for the. issue of a writ of Certiorari calling for the records of the University of Madras, and for

quashing the provisional results of the M. A. degree, Branch VII, English language and literature, examination held by the Madras University in

April 1966 and published in the Notice board of the University of Madras on 12th July, 1966 and for directing that the valuation of the papers be

entrusted to a legally constituted independent body of examiners. The petitioner joined the 1964-66 postgraduate course in Branch VII, English

language and literature in the Presidency College, Madras in 1964. He appeared for the final examination which was held in April, 1966. He found

that he had failed in the examination on 12th July, 1966, when the results were published by the University. The petitioner submitted that the

constitution of the Board of examiners was illegal and void and that the conduct of the valuation was vitiated by illegalities of various kinds and

therefore the provisional results published by the University were liable to be quashed. He also prayed that the valuation may entrusted to a legally

constituted independent body of examiners. The petitioner alleged that the results published were vitiated by the following irregularities:

(1) The constitution of the conducting Board was illegal as it was in contravention of the laws of the University and hence the steps taken by the

Board in conducting the examination and publishing the results were null and void.

(2) The appointment of Sri Bennet Albert as Chairman of the Board was illegal as he, along with Rev, Macpheil in 1961, had acted arbitrarily and

added marks as examiner in the examination conducted in 1961 and thus disqualified himself from acting as examiner.

(3) The result were vitiated as in the first tabulation nobody got marks securing a First Class and marks were added arbitrarily with a view to

enable a candidate to pass in the first class.

(4) Of the eight papers which the candidates were to answer, in one paper, though the total was for 200 marks the candidates were directed to

answer only four questions each carrying 40 marks and thereby though the total was 200 marks, the valuation was for 160 marks only.

(5) The examination papers were transferred at the last moment from one examiner to another and were valued by the examiner to whom they

were transferred in great hurry without taking proper and adequate care.

(6) In effecting revaluation, the Board of Examiners took the higher marks into consideration in the case of some candidates only, while they did

not do so in the case of the petitioner, and thus acted in a discriminatory manner against the petitioner.

(7) The results were vitiated by the failure of the Board of Examiners to refer the valuation to a third examiner as required by the laws of the

University when there was a difference in the valuation between two examiners exceeding ten per cent.

2. Before considering the various contentions, the powers of this Court in interfering in a writ petition in the proceedings of the University may be

considered. In England, a writ is normally not issued to a body like the

University. The constitution, functions and privileges of universities are governed by the terms of their instruments of foundation, or by Acts of Parliament. The Universities of Oxford and Cambridge are civil and lay corporations and have no visitor, whereas other universities are visitable, the Crown usually being the visitor in the case of those incorporated by modern charter. When there is a visitor, the Court will not interfere in any matter within the visitor's province and especially is this so in the case of educational bodies such as colleges and universities (see Halsbury's Laws of England, Simonds Edn., Vol. 13, page 709).

3. In *The Queen v. Vice Chancellor of Oxford* (1871) 2 VII Q.B.D. 471 in the case of the University of Oxford, the Court entertained a petition

against the Vice Chancellor of the Oxford University and directed him to show cause why a mandamus should not issue commanding them to place

the name of H. J. Eld. B. D. on the register of the congregation of the University. The Court found that the petitioner was only a resident

constructively and was not an actual resident and was therefore not a resident within the meaning of S. 48 and dismissed the writ.

4. In *Thomson v. University of London* (1864) L.J.R. Vol. 33 Eq. Pro and C and Statutes 625. Kindersley V.C. declined to issue a writ against

the University. At page 635, the learned Judge observed:

Here is a foundation, whether by Royal Charter or otherwise, with a Visitor-a corporation with a visitor and that corporation having certain

functions to perform within itself, that is, to deal with its Fellows, to deal with its officers, and to deal also with the persons who offer themselves as

candidates for the degrees which they are authorised by the charter to confer, and to the honours which they are authorised to give by their own

regulations,-the whole matter is a matter for their own exclusive cognisance and, if this Court were once to do what this bill calls upon the Court: to

do, to interfere in such matters, I can hardly conceive-I will not say merely a greater infliction upon the Court, but- a greater mischief to the public

than such a course could involve.

5. In *R. v. Dunsheath ex parte Meredith* (1950) 2 A.E.R. 741, Lord Goddard C.J., after citing several authorities quoted with approval, the head

note in *Thomson v. University of London* (1864) L.J.R. Vol. 33 Eq. Pro and C and Statutes 625, and came to the conclusion that the matter in

question was one within the visitorial jurisdiction of His Majesty in Council and therefore the application for mandamus should be refused.

6. In a recent case reported in *Thorne v. University of London* (1966) 2 A.E.R. 338, Diplock L.J. after quoting the observations of Kindersley

V.C. in *Thomson v. University of London* (1864) L.J.R. Vol. 33 Eq. Pro and C and Statutes 625 and the decision in *R. v. Dunsheath Ex parte*

Meredith (1950) 2 A.E.R. 741, held as follows (at page 339):

The High Court does not act as a Court of appeal from University examiners : and speaking for my own part, I am very glad that it declines this

jurisdiction. Clearly it does decline the jurisdiction.

7. It will thus be seen on an examination of the authorities in England that the Courts seldom interfere with the proceedings of the University, when

a visitor is provided for in the Act.

8. S. 7 of the Madras University Act, 1923, provides for visitor. It empowers the State Government to cause an inspection of the University, its

buildings, laboratories, libraries, museums, workshops and equipment and of any of the institutions maintained, recognised, approved, or affiliated

to the University and also of the teaching and other work conducted by the University and to cause an enquiry to be made in respect of any matter

connected with the University. The State Government is therefore empowered to cause an enquiry to be made in respect of any matter connected

with the University and to take action. In spite of such a provision relating to visitation, Courts in India, especially after the passing of the India

Constitution have not been adopting the rule laid down in the English decisions. Courts have held that the Syndicate of an University is a statutory

body created for the discharge of public duties and as such amenable to writ jurisdiction. When the Syndicate of the Utkal University cancelled an

examination on the ground of leakage of questions and refused to publish the results and resolved to hold another public examination, the High

Court issued a writ of mandamus. The Supreme Court in *Vice The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*,

reversed the decision of the High Court on the ground that the finding of the High Court as to haste and want of care on the part of the Syndicate

was unjustified. But it was not contended before the Supreme Court that the Courts had no jurisdiction to entertain the writ against the University

under Art. 226 of the Constitution of India.

9. In *Dipa Pal Vs. University of Calcutta*, , the Calcutta High Court issued a writ of mandamus as it found that the candidate had secured sufficient

number of marks for being declared to have passed the examination but was refused promotion on the ground of misconduct and adoption of

unfair means. As the decision of the University was contrary to the principles of natural justice, without proper investigation and without giving a

proper opportunity to the candidate to explain matters, a writ was issued by the Calcutta High Court.

10. Similarly, the Calcutta High Court issued a writ against the University in *Tapendra Nath Roy Vs. University of Calcutta and Others*, and

Kamala Banerjee Vs. University of Calcutta and Others, . The Supreme Court in a recent decision reported in *Principal, Patna College, Patna and*

Others Vs. Kalyan Srinivas Raman, considered the question as to the interpretation of a Regulation framed by the Academic Council of a

University and dismissed the writ agreeing with the interpretation put upon it by the Educational authorities and differing from the interpretation put

on the Regulation by the High Court. It was not contended before the Supreme Court that the Courts are not entitled to issue a writ against the

University as in England.

11. It is clear from the authorities that the High Courts and the Supreme Court in India entertain writs against the proceedings of a University and

therefore the contention that the practice in England of refusing a writ against a University should be followed has to be rejected.

12. The question whether a writ should issue as a matter of right and of course against breach of any of the jaws of the University has now to be

considered, In *Montreal Street Railway Co. v. Normandin* (1917) A.C. 170 the Privy Council pointed out the distinction between discretionary

and compulsory powers in these words (at page 174):

The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no

general rule can be laid down, and that in every case the object of the statute must be looked at... When the provisions of a statute relate to the

performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general

inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main

object of the Legislature, it has been the practice to hold such proviso's to be directory only, the neglect of them, though punishable, not affecting

the validity of the acts done.

13. In *Vita Food Products Inc. v. Unus Shipping Co.* 1939 A. C. 277 at 293 the Privy Council cited with approval the following observations in

Liverpool Borough Bank v. Turner 2 De. C. F. and J. 502.

No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or

obligatory with an implied nullification for disobedience, it is the duty of Courts of justice to try to get at the real intention of the legislature by

carefully attending to the whole scope of the statute to be construed.

14. After considering the various casts the Privy Council observed at page 293:

Each case has to be considered on its merits. Nor must it be forgotten that the rule by which contracts not expressly forbidden by statute or

declared to be void are in proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider

sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds.

15. The position is stated thus in *Halsbury's Laws of England*, Simonds Edn. Vol. 36 page 434-

If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as "mandatory" "absolute

imperative" or obligatory"; if, on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be

directory". No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the

legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question to the

general object to be secured. Thus it is not possible to generalise by reference to the nature of what is prescribed. No great reliance can be placed,

either, on the suggestion that provisions framed purely in affirmative language are normally construed as directory, though the converse proposition,

that negative provisions are prima facie mandatory, would seem on principle to

be less open to criticism.

16. The Federal Court in AIR 1945 67 (Federal Court) had to consider the effect of noncompliance with the provisions of S. 256 of the

Government of India Act 1935, requiring consultation between public authorities and before conferment of magisterial powers. The Federal Court

held that the provision was not mandatory and that non-compliance with the section would not render the appointment otherwise regularly and

validly made, invalid and inoperative. The Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, in considering the question whether the

compliance with the requirement of Art. 320(3)(c) of the Constitution was mandatory or directory, quoted with approval the decisions in *Montreal*

Street Ry. Co. v. Normaddin 1917 A.C. 170 and *Biswanath Khimka v. Emperor* AIR 1945 F.C. 67 and observed that the use of the word

"shall" in a statute, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are

punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. The Court held that the provisions of Art. 320 (3) (c)

are not mandatory and that non-compliance with that provision does not afford a cause of action to the respondent in a Court of law.

17. In a later decision in *Collector of Monghyr v. Keshav Prasad* 1957 S.C. 912 the Supreme Court after referring to the decision in *State of U.*

P. v. Manbodanlal A.I. R. 1962 S. C. 1694 summed up the position thus (at page 1761)-

It is needless to add that the employment of the auxiliary verb, "shall", is inconclusive and similarly the mere absence of the imperative is not

conclusive either. The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific

provisions which, for instance, sets out the consequences of the omission to observe the requirement but on purpose for which the requirement has

been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would inter alia, depend on whether

the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.

18. It would have to be considered whether in the present case, there has been any breach of the laws of the University and if there has been any

breach, whether the provisions thus contravened were mandatory or directory, depending on the question whether the requirement is insisted on as

a protection for safeguarding the right of liberty of the person or of property, which the action might involve. It might also be observed that in writ

proceedings the High Court cannot constitute itself into a Court of appeal from the authority against which the writ is sought. If the University

authorities had acted honestly and as reasonable and responsible man confronted with the situation with which they were faced, the Court will not

issue a writ.

19. The various complaints made by the petitioner may now be examined. The first contention is that the constitution of the conducting Board is

illegal and contrary to the provisions of the laws of the University and therefore the conduct of the examination and the results published by the

University in pursuance of the proceedings of the Board are null and void. The validity of the appointment of five members, Sri K. R. Srinivasa

Aiyangar, Sri Bennet Albert, Dr. Sethuraman, Sri Jagadeesan and Sister Joseph Michael are questioned.

20. Regarding Sri K.R. Srinivasa Aiyangar, it was stated that at the time Sri Srinivasa Aiyangar was appointed to the Board, he had completed the

maximum possible period of five years and his appointment to the Board was violative of the mandatory provisions of the ordinance. Sri Srinivasa

Aiyangar was a Member of the M. A. Board in the years 1960 and 1962 to 1965 and his appointment as Member of the M. A. Board in 1966

was his fifth consecutive year. The Ordinance relating to appointment of examiners is found in Ch. 32 of Vol. I of the University of Madras

Calendar 1964-65. Clause 8 of the Ordinance provides that examiners shall be appointed for one year and shall be eligible for reappointment in

two successive years following their appointment and shall ordinarily be so reappointed. It is also provided that the three year rule will not apply to

examinations in subjects in which the number of competent examiners is so limited as to make it undesirable in the opinion of the Syndicate that the

rule should be enforced strictly, and to the Members of the Conducting boards of the B.A. (Hons) and B. Sc. (Hons) degree examinations with

reference to which it shall be competent to the Syndicate to extend the period of appointment for any member to five years. In the present case,

we are concerned with the M. A. degree examination and the three year rule is not applicable to this examination. It is competent for the Syndicate

to extend the period of appointment of any member up to five years. So far as Srinivasa Aiyangar is concerned, he was a member of the M. A.

Board in 1966 as his fifth consecutive year. Therefore, there has been no breach of the ordinance.

21. In the case of Sri Bennet Albert it was alleged that he was an examiner along with Rev. Macphail and manipulated marks in violation of the

rules in 1961, and at the instance of one of the dissenting Members of the Board, the Vice Chancellor directed revaluation of the papers and

because of his conduct in 1961 he should not have been appointed subsequently as Chairman of the Board. Sri Bennett Albert completed his term

of examiner ship in 1964 and was not included in the Board of Examiners for 1965 and, in the first instance, for the year 1966, but was later

appointed Chairman in March 1966 as Rev. Machpail, Chairman of the Board, suddenly fell ill. As serious allegations regarding the conduct of Sri

Bennett Albert as an examiner in 1961 was made in the affidavit, I looked into the entire file and permitted the learned Counsel for the petitioner to

peruse the records. In the valuation of papers by two examiners there was a difference of marks exceeding ten per cent. The rule that it should be

referred to a third examiner was not followed by the Board but after the matter was referred to the Vice Chancellor the rules were strictly

followed. While the file discloses that at the first instance the rule relating to valuation of papers was not strictly followed by the Board, the

procedure adopted by the Board was accepted by all the Members except one, Rev. Macphail presiding at the meeting. Apart from the complaint

that the rule was not strictly followed, there is nothing in the record to show that Sri Bennet Albert or the Board acted in any manner which would

amount to reprehensible conduct. There was no question of undue preference or manipulation of marks as alleged by the petitioner. There is

nothing in the record relating to the 1961 examination which would establish that Sri Bennett Albert or the other examiners acted in any manner

unbecoming of their position as Members of the Board of Examiners. From the mere fact that the Board of Examiners did not follow the rule

strictly, it cannot be said that their conduct was reprehensible and that they should be disqualified from being appointed as examiners for future

examinations.

22. The next allegation against Sri Bennet Albert is that though he completed the period of five years in 1964, before the expiry of the two years

from 1964, he was again appointed as Chairman of the Board. The explanation of the University is that he was not appointed as examiner in the

first instance in 1966 but as Rev. Macphail suddenly fell ill and regretted his inability to accept the Examiner ship, Sri Bennet Albert was appointed

as Chairman by the Syndicate. Ordinance 32 relates to examiners. R. 8 relating to the appointment for a period of three years is not applicable to

examiners in subjects in which the number of competent examiners is limited as to make it undesirable in the opinion of the Syndicate that the rule

should be enforced strictly. Though with regard to the conducting Boards for the B. A. (Hons) and B. Sc. (Hons) and other examinations specified

therein it shall be competent to the Syndicate to extend the period of appointment of any member to five years, no period is specified regarding the

examination in subjects in which the number of competent Examiners is limited as to make it undesirable in the opinion of the Syndicate that the rule

should be enforced. On a reading of the rule it cannot be said that the Syndicate has no discretion, in the case of examination in subjects in which

the number of competent examiners is limited, to relax the rule and to appoint an Examiner even for a period exceeding five years. Though it may

not be desirable it cannot be said that the syndicate would be acting contrary to the provisions of the rule if they, had to extend the period due to

the limited number of competent examiners. On behalf of the petitioner it was pointed out that the printed list would show that there are quite a

number of competent examiners and the appointment of Sri Bennet Albert for a subsequent period before the expiry of two years would show

undue preference. On behalf of the University it was contended that though the other Examiners were available, most of them belonged to foreign

Universities and the Syndicate thought it fit to appoint a senior man with the qualifications of Sri Bennet Albert as he would be available to take

part in all proceeding of the Board of Examiners The question is mainly for the Syndicate to decide taking all the circumstances into consideration

and the Court will not interfere when the Syndicate is acting within its powers.

23. Regarding Dr. Sethuraman, it was alleged that the Board of Studies did not

recommend his name and the Syndicate acted in an arbitrary and high handed manner in appointing him as an examiner. It was further contended that the Syndicate had no power to appoint a person as examiner who has not been recommended by the Board of Studies. Dr. Sethuraman was Reader in the Department of English in the Annamalai University with a teaching experience of 21 years. He joined the St. Joseph's College as Professor of Post Graduate Department in August, 1965. As he joined the St. Joseph's College in August, 1965, his name was not placed before the Board of Studies. Chap. 15 R. 6 empowers the Board to recommend to the Syndicate persons suitable for appointment as examiners in the subject with which it deals. Chap. 12, R. 2 (r) (1) empowers the Syndicate to appoint examiners after consideration of the recommendations of the Board of Studies- Chap. 32, R. (1) provides that appointment of examiners shall be made by the Syndicate. It was contended on behalf of the petitioner that as Dr. Sethuraman had not been recommended by the Board of Studies, the Syndicate had BO authority to appoint him as an Examiner as the power to appoint an examiner by the Syndicate it only after consideration of the recommendation by the Board of Studies. The procedure for preparation of the list of examiners is provided in Ch. 32. Under R. 6 a list of person employed in colleges arranged in the order of subjects shall be compiled from the annual returns submitted by the colleges and kept upto date showing the several particulars. To the list of persons employed in colleges shall be added teachers of the University with particulars about their qualifications etc. The question is whether the power to appoint given to the Syndicate in Ch. 12, R. 2 (r) (i) can only be exercised after consideration of the recommendation of the Board of Studies. While considering the effect of the expression ""having regard to the Privy Council held in AIR 1943 164 (Privy Council) . The expression "having regard to" or expressions very close to this, are scattered throughout this Act, but the exact force of each phrase must be considered in relation to its content and to its own subject matter. Any general interpretation of such a phrase is dangerous and unnecessary, but it is fairly clear as a matter of English that the view taken by the majority of the Collective Board is nearer to the ordinary meaning of the phrase "having regard to"" when it appears in a statute than is that of the dissentient

member.

24. The majority took the view that the requirement ""have regard to"" in the provision in question has no more definite or technical meaning than that of ordinary usage and only requires that this provision must be taken into consideration.

25. The words ""shall have regard to"" and ""after consideration of the recommendations"" can only mean that the Syndicate should consider the recommendations. It would not have the effect of prohibiting the Syndicate from appointing any person who has not been recommended by the Board of Studies. In this view, the complaint made against Dr. Sethuraman's appointment as examiner cannot be accepted.

26. Regarding Sri Jagadisan and Sister Joseph Michael it was contended that they did not possess the seven years post graduate teaching experience as required; Sri Jagadisan had teaching experience of 18 years in several colleges including the Presidency College where he was teaching the M. A. Class. was also an examiner on the M.A. Board from 1963. Sister Joseph Michael had put in 7 years experience in the Stella Marl's College including post graduate teaching and was head of the Post Graduate department in English from 1963. She was on the Board of Examiners since 1962. Cl. 32, R. 7 (b) provides that persons with less than seven years teaching experience in college will not ordinarily be eligible for appointment. The learned Counsel for the petitioner would construe the words ""less than seven years experience in college"" as less than seven years Post Graduate experience in college. The learned Counsel submitted that the only proper interpretation is to read it as ""seven years"" post graduate teaching experience as otherwise it will lead to undesirable results since a person who has not had post graduate teaching experience would be eligible for appointment for examination in post graduate studies. The learned Counsel referred to the decision in *Nokes v. Doncaster Amalgamated Collieries Ltd.* 1940 A.C. 1014 at 1022, where it was laid down that a construction which would reduce legislation to futility should be avoided and a bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result should be accepted. This passage cannot be of any help as it cannot be said that the Syndicate should have insisted on seven years post graduate

teaching experience before appointing as examiner, for it may be that the required number of examiners with such qualifications may not be

available. There is nothing in the wording of the Rule which would make it incumbent to superimpose the words ""Post graduate"" teaching

experience. This contention therefore cannot be accepted and the objection relating to the appointment of Sri Jagadisan and Sister Joseph Michael

as examiners will have to be rejected. The submission that the conducting Board was not properly constituted has therefore to be rejected. The

allegation against Sri Bennet Albert that he acted improperly in the examination in 1961 is also rejected.

27. It was next contended that in the first tabulation of the entire marks of all the candidates, not a single candidate got marks qualifying him for a

first class and that marks were manipulated and tampered with and some candidates belonging to the College of the Chairman of the Board got

first class. These allegations were denied by the University. It was denied that marks were manipulated or tampered with or that grace marks were

awarded. But it was admitted that the Board of Examiners carried out revaluation of answer books of certain candidates and took the higher

marks into account in deciding on the marks to be awarded to certain candidates. It was submitted on behalf of the petitioner that the Board was

guilty of discrimination in that it took the higher marks into account in deciding on the marks to be awarded only in the case of certain candidates.

There is no justification for this allegation, for the Board had acted uniformly in the case of all the candidates and in the revaluation took the higher

marks obtained by the candidates. It would be seen from the marks obtained by the petitioner that even if the higher marks were taken into

account, the petitioner would not have secured a pass.

28. It was next alleged that a substantial number of answer books which had been originally assigned for valuation to Sister Joseph Michael of

Stella Maris College and Sri Jagadisan were transferred in a hurry to an examiner in she Osmania University who was unfamiliar with the rules and

regulations of the Madras University. The allegation was denied by the University. It was stated that Sri Varsdachari, one of the examiners

originally appointed, declined the appointment and the papers were redistributed to the other members of the Board. As it was found that one

other examiner had to be appointed, the papers were assigned to Dr. Kumar to whom 222 answer books were sent on 13th June 1966. The

papers were valued by Dr. Kumar in time before the meeting of the Board on 8th July 1966. Dr. Kumar had been recommended by the Board of

Studies and has been connected with the Madras University examinations and it was not stated that Dr. Kumar was not qualified to be an

examiner. The contention that the examiner did not have enough time to correct the papers cannot also be accepted, for there was nearly four

weeks for correcting about 222 papers. There is no substance in this allegation as well.

29. It was next contended that in the language paper which carries a maximum of 200 marks according to the Regulation, the examinees have been

asked to answer only four questions each of which carried only 40 marks. Thus, though the total was for 200, the maximum for which the paper

was valued was only for 160 marks. It was submitted that the petitioner was prejudiced by the paper having been valued only for 160 marks and

that he would have certainly secured higher marks if the paper was valued for 200 instead of 160. On behalf of the University it was stated that the

examination was conducted on 23rd April 1966 and that the Chairman by its letter dated 26th April 1966 issued instructions to the Examiners

concerned regarding the maximum marks per question in the paper. It was further stated that the examiners have actually awarded more than 40

marks to certain answers in this paper showing thereby that they did not act on the presumption that the maximum to be awarded for each question

was only 40. On behalf of the petitioner it was submitted that the Board of Examiners had no power to alter the marks and the examiners were not

bound to follow the instructions given by the Chairman even if the Chairman had in fact given instructions as stated by the University. It was further

alleged that there is nothing to show that the Examiners acted on the instructions of the Chairman and valued the paper for 200 marks. It was

stated on behalf of the University that as a matter of fact more than 40 marks were awarded for certain questions and there is no reason for not

accepting the statement made on behalf of the University. On the material on record I am unable to say that the petitioner has succeeded in proving

that the paper was valued only for 160 marks and that the petitioner was prejudiced. It is unfortunate that the candidates were directed to answer

only 4 questions each carrying 40 marks when the paper had to be valued for 200 marks. But this mistake will not have the effect of invalidating

the entire examination in the paper. It may be that the Chairman of the Board might not have the authority to direct the examiners to value the

paper for 200. But on the facts it cannot be said that the paper was valued for 160 marks only. As already stated, the error as regards the

language paper has not adversely affected the examinees, and would not justify interference by this court.

30. Finally it was contended that the rules relying to revaluation had not been followed by the Board of Examiners in this examination. Ex. B is the

statement showing the marks obtained by the petitioner. In the first valuation the petitioner obtained 43 and 69 in Romantic Age, and Tennyson to

Elliot, where as the prescribed minimum is 60. He obtained 73, 76 and 65 in the Special Period, Shakespeare and History of English Language

papers respectively, the minimum prescribed for each being 80. In the second valuation he obtained 74, 51, 62, 50 and 54 respectively in

Romantic Age, Tennyson to Elliot, Special Period, Shakespeare and History of English languages papers. The Board of examiners took the

average of the first two valuations and found that the petitioner had failed in Romantic Age, Special Period Shakespeare and History of English

Language papers. Even if the higher marks were taken into account, the petitioner would have failed in three papers, namely, Special Period,

Shakespeare and History of English language. In the confidential instructions to examiners, R. 5 says how the papers should be valued. R. 5 (f)

provides that when the examiners differ in their valuation by no more than ten per cent, the final marks to be awarded should be decided by the

Chairman in consultation with the two examiners. R. 5 (g) provides that where this margin is exceeded, it should be the duty of the Chairman to

request the two examiners concerned to revalue the paper in the light of each other's valuation, or refer the matter to the Board of Examiners for

decision, when great divergence in valuation is noted. The Board may accept the valuation arrived at by the two examiners or refer the paper to a

third examiner for independent valuation whose decision shall be final. In the case of three subjects, the divergence between the first and second

valuation exceeded ten per cent and it was the duty of the Chairman to have requested the examiners concerned to revalue the papers in the light

of each other's valuation. After revaluation the two examiners decided to take the average marks of the two valuations and the higher marks

obtained in the first and second valuation for deciding the question whether the candidate has passed or not. It appears that the two examiners

agreed to take the average of the two valuations. It is not clear whether there was a revaluation as such. The Board accepted the revaluation by the

two examiners. It cannot be stated that there is any wide divergence calling upon the Chairman to refer the matter to the Board of Examiners.

Apart from the paper on Romantic Age, there is not such divergence. It may be that there was not a strict compliance with the provisions of R. 5

(g) of the Confidential Instructions to Examiners. Even accepting that there was no strict compliance, it cannot be said that the Board accepting the

average marks would be a violation of any of the laws of the University which would call for interference by the Court, the confidential instructions

to the examiners cannot be said to be mandatory. The two examiners and the Board in revaluing the paper acted honestly and with the best of

motives in deciding the question as to how the revaluation should be effected. It may be that the revaluation might have been effected in some other

way but as observed by the Supreme Court in Vice Chancellery Utkal University and others v. S. K. Ghosh and others 1954 S.C.R. 803 at p.

890 "it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in

question is entrusted by the law. The University authorities acted honestly as reasonable and respectable men confronted with an urgent situation

are entitled to act.

31. These observations are fully applicable to this case and I see no justification for interference.

32. The matter was argued at considerable length and thoroughness by Sri V. K. Thiruvengkatachari for the University and Sri Chellaswami for the

petitioner and I am thankful to them. The petition is dismissed. Serious allegations were made without any justification especially against an

examiner and to register my disapproval, I dismiss the petition with costs of the University, Rs. 150.