

(1991) 01 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5167 of 1990

Nimit R. Chowdhary and Others

APPELLANT

Vs

University of Jodhpur

RESPONDENT

Date of Decision : 21-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 1 RLW 683 : (1991) 1 WLN 1

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—The petitioners, by this writ petition, have prayed that the respondent University may be directed to accept the fees for pursuing the studies of M.B.A. Course and allow the petitioners to avail the admission granted to them by making necessary arrangements for imparting instructions to them for grant of a Post-graduate degree of M.B.A. It is further prayed that orders be issued to the respondent University to produce the orders where by the selections have been cancelled and declare such orders to be invalid and may be quashed.

2. The applications were invited for admission to the prestigious course known as Master of Business Administration (for short M.B.A.) in July, 1990. The petitioners applied for the same. A written test was held on 24.9.1990. Thereafter, the candidates were called for Group Discussion and interviews were held on 25th and 26th September, 1990. Thereafter, on 26.9.1990 the petitioners were selected and they were provisionally admitted to the said course and it was stipulated that in order to pursue this course of study you have to withdraw your admission from other courses of study in this University or other educational and training institutions. It was also stated that in case you are in service/employment you will produce a certificate categorically stating that you have been relieved from your duties and granted leave of absence for two years or till

you complete this course of study which ever is later. In pursuance of this some of the petitioners, namely, Nimit R. Chowdhary and Mahipal Singh who were in employment tendered their resignation. It was also stated that the petitioner Nimit R. Chowdhary was also called for interview at Vishakhapatnam Steel Plant for the purpose of employment in the said Institute. Therefore, on account of his selection to the M.B.A. he did not avail this opportunity. Likewise, the petitioner Miss Gunjan Sharma, who was admitted to MCA, gave up this admission. The petitioner Shyam Lal also resigned from the service held by him. It is alleged in the writ petition that some complaints were received including from the President of the Jodhpur University Students Union regarding the irregularities committed in the selection. Therefore, Shri U.S. Bhargava, a retired District and Sessions Judge was appointed as Enquiry Officer to enquire into the matter. It is alleged that father of one Miss Aysha, Shri Umar Daraj, and some more persons made applications that they may be heard or that they may be afforded an opportunity, but the same was not given to them. It is alleged that the Enquiry Officer after making enquiries submitted his report. The petitioners and some of their parents met the Registrar on 8.12.1990 and the Registrar told them that some irregularities have been committed and on account of that the selections are not going to be given effect to and fresh selections will be held on and from 30.1.2.1990. It is alleged that the Enquiry Officer's report was not sent to the Syndicate and a decision has been taken by the Vice-Chancellor on his own without referring the matter to the Syndicate. In these, circumstances, the present writ petition has been filed.

3. A show-cause notice was issued to the respondent University and the respondent University filed its reply to the show-cause notice. The respondent University in its return has not disputed the fact of complaints being received regarding the irregularities committed in the conduct of the selections and appointment of a District and Sessions Judge as Enquiry Officer to conduct the enquiry. It has been stated in the return that the Enquiry Officer was appointed by the University and that report of the Enquiry Officer has been received and it was pointed out by the Enquiry Officer that irregularities have been committed in the conduct of the selections. The Vice-Chancellor invoked his power u/s 12(5) of the Jodhpur University Act, 1962 (referred to herein after as "the Act"). As the situation was emergent, therefore, in exercise of this power he cancelled the selection and directed the conduct of a re-test. The copy of the order dated 8.12.1990 has been placed on the record as Annex. 7 by the petitioner along with the rejoinder as well as a letter dated 10.12.1990 (Annex.9) has also been submitted where by it has been notified that the University having received a spate of complaints about irregularities alleged to have been committed in this test, got an inquiry conducted by a Retired District Judge. After due consideration of the report the Vice-Chancellor had reason to believe that the said test was not fair due to certain irregularities pointed out by the Enquiry Officer, hence the Vice-Chancellor has cancelled this test conducted on 25.9.1990 and has ordered for Re-test. It has now been decided to hold Re(Entrance Examination) Test for

admission to M.B.A. for the year 1990-91. The Entrance Examination will now be held only for those candidates who were, founds eligible and appeared on 25.9.1990 except those who were provisionally allowed to appear on that day. However, they may be allowed to appear if they are now found eligible on all counts for M.B.A. Re(Entrance Examination) test. It was also laid down that the eligibility of candidates to appear at the test shall be they have secured atleast 50% marks in case of general category; and 45% marks in case of Scheduled Caste and Scheduled Tribe candidates in the aggregate at the Graduate or Post-graduate examination. They will be required to submit documentary evidence of their having secured aforesaid eligibility percentage of marks before they are permitted to take up the examination. It was further stipulated that the candidates should bring with them all the marks sheets in original along with spare photo-stat copies duly attested relating to all the examinations they have passed for verification of past academic record. Verification will be done before the commencement of the written test and also prior to their participation in the Group Discussion and personality assessment test i.e. interview. It was directed that the M.B.A. Re(Entrance Examination) Test will be held on 30.12.1990 at 11 A.M. in the Faculty of Engineering, M.B.M. Engineering College Campus, Jodhpur.

4. In this back-ground, the contentions raised by Mr. Mridual, learned Counsel for the petitioners, shall be examined.

5. Mr. Mridual, learned Counsel for the petitioners, submitted that the order passed by the Vice-Chancellor in exercise of the power u/s 12(5) of the act is wholly illegal as there was no emergency what so ever. In this connection, learned Counsel submitted that the meeting of the Syndicate was scheduled to be held on 15.12.1990, therefore, he should have waited for that meeting or he should have called an urgent meeting of the Syndicate, in terms of Regulation 58(a) and he should have also been got the matter approved through the Academic Council under Regulation 64-Article Learned Counsel submitted that the action of the Vice Chancellor in issuing the order dated 8.12.1990 in exercise of the powers u/s 12(5) of the Act is wholly illegal and deserves to be quashed.

6. As against this, Mr. Bhandari, learned Counsel appearing for the respondent University, submitted that as per the report was submitted before the Vice-Chancellor on 27.11.1990 and after going through the report, the Vice-Chancellor felt satisfied that grave, irregularities have been committed in the conduction of the selections and the situation warrant an emergent action in the matter, therefore, he cancelled the examination and directed the re-test. Learned Counsel submitted that the situation was urgent, therefore, the Vice-Chancellor exercised his powers of emergency provided u/s 12(5) of the Act. It is further submitted that in the meeting of the Syndicate held on 15.12.1990 the Vice-Chancellor apprised the Syndicate of all the facts and also reported the action taken by him in this regard. An affidavit to this effect of the Registrar has also been filed that the matter was reported to the Syndicate and the Syndicate was apprised of the facts of the matter and thereafter the Syndicate has noted the

report as well as the action taken and there was no dissentsions whatsoever. It was further slated in the affidavit that the Syndicate fully approved and ratified the action of the Vice-Chancellor passed u/s 12(5) of the Act.

7. I have considered the rival submissions made by the learned Counsel.

8. The question as to when the Vice-Chancellor should exercise his emergency power u/s 12(5) of the Act also came up for consideration before this Court in *Bajran Singh Shekhawat v. University of jodhpur* 1976 R.L.W. 310 and in *University of jodhpur v. Ramchandra Sharma* 1976 R.L.W. 674 and in *Virendra Kapur Vs. University of Jodhpur and Others*,

9. In order to appreciate the rival contentions of the learned Counsel for the parties, it will be necessary to reproduce Section 12(5) of the Act reads as under:

12(5). In any emergency, when, in the opinion of the Vice-Chancellor, immediate action is required, the Vice-Chancellor shall take such action as he may deem necessary and shall at the earliest opportunity report the action taken to the officer, authority, or body who or which in the ordinary course would have dealt with the matter, but nothing in this Sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly authorised and provided for in the budget.

10. Sub-section (5) of Section 12 confers a discretionary power on the Vice-Chancellor to take an urgent action when in his opinion it becomes necessary that the matter requires immediate action and the only rider on his discretion is that he shall report the matter and the action at the earliest opportunity to the officer, authority or body who or which is the ordinary course would have dealt with the matter. It further prohibits the Vice-Chancellor from incurring any expenditure not duly authorised and provided for budget. Thus, a plain reading of Sub-section (5) of Section shows that the Vice-Chancellor being the administrative Head of the Institute has to be clothed with the power to use his discretion in an emergent situation, and take action. But he is duly bound to report the matter at the earliest to the officer, authority or body who or which in the ordinary course would have gone.

11. In *Virendra Kapur's* case (*supra*), Section 12(5) came up for interpretation and a Full Bench of this court observed as under:

It is doubtful whether Section 12(5) of the Act can be properly resorted to for legislative purposes in as much as from the setting and the context in which this section finds its place in the Act, it appears to provide for the taking of executive or administrative action by the Vice-Chancellor to meet an emergency such as a strike or a riot or similar other unexpected situation which action he is required to report under the next following Sub-section to the competent authority at the earliest opportunity. This section, therefore, not being designed to enable the Vice-Chancellor to act as a substitute for the various statutory authorities of the University in academic matters, there can be no question of its

being unconstitutional on the ground of excessive delegation. But accepting that the Vice-Chancellor could not have acted u/s 12(5) in making the regulation, the validity of that regulation is not adversely affected if it could be passed under any alternative valid authority.

12. Similarly, in Bajrang Singh Shekhawat's case (supra) it was observed that the Vice-Chancellor may act only in case of emergency and that too not as a substitute to act for all statutory bodies or authority. This judgment was taken up in appeal and the Division Bench in the case of Ramchandra Sharma (supra) observed as under:

The language of Section 12(5) makes it clear that the Vice-Chancellor under emergency power can act on behalf of any one of the authorities, officers or body, but it cannot assume the functions of all the authorities, officers or bodies simultaneously. The Vice-Chancellor, in our opinion was not competent to repeal the Ordinance 368 by issuing a notification under the emergency powers. To the extent to which the notification repeals the Ordinance 368, it is ultra vires the powers of the Vice-Chancellor.

13. In this connection, my attention was also invited to a recent judgment of the Hon'ble Supreme Court in the case of Marathwada University Vs. Seshrao Balwant Rao Chavan, where in a similar power also came up for consideration before their Lordships of the Supreme Court. In that case, their Lordships observed as under:

The Vice-Chancellor in every university is the conscious keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. (Section 11 (3). The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University (Section 11 (6) (a). He has also emergency powers to deal with any untoward situation (Section 11(4). The power conferred u/s 11 (4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must, however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the Magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations.

14. Therefore, the only rider which has been put by the legislature is that the Vice-Chancellor can act on behalf of the officers and bodies but he cannot amend the Ordinance or legislate on the subject. Therefore, so far as the power of the Vice-Chancellor u/s 12(5) of the Act is concerned, he has been clothed with the power to act in an emergent situation.

15. Now, the question before me is as to whether there was sufficient material before the Vice-Chancellor to invoke the provisions of Section 12(5) of the Act or not. It has been admitted by both the parties that complaints regarding irregularities in the conduct of selections for admission to the M.B.A. Course held on 25.9.1990 were, received and on receipt of such complaints a retired District and Sessions Judge Shri U.S. Bhargava was appointed to conduct the enquiry into the so-called irregularities. The report of the Enquiry Officer Shri U.S. Bhargava though has not been given to the other side, how ever the major extracts of the report have been quoted in the reply and the original report was also placed before me for persual. On the basis of the report submitted by the Enquiry Officer Shri U.S. Bhargava, the Vice- Chancellor thought that looking to the irregularities, which have been pointed out in the said report, it will be in the interest of the Institution and the prestigious examination that a re-test should be held. The report was submitted on 27.11.1990 and on 8.12.1990 the Vice-Chancellor in exercise of the powers u/s 12(5) of the Act cancelled the earlier examination and directed holding of fresh test. The matter was reported to the Syndicate on 15.12.1990. Now, in the present situation, it cannot be said that the Vice-chancellor has acted in any manner against the provisions of Section 12(5) of the Act.

16. Now, the question which arises for my consideration is that as to when the Vice-Chancellor can invoke his emergency power and in which case.

17. It is not possible to put it in a straight jacket formula that in such and such given situation only the Vice-Chancellor can invoke his emergency power. The existence of emergency is a condition precedent and what kind of emergency should be there so as to invoke the power conferred by Section 12(5) of the Act depend upon case to case. The sole arbiter in this matter is the discretion of the Vice-Chancellor. Thus, it is for the Vice-Chancellor to exercise his discretion and it has to be exercised after his subjective satisfaction in an objective manner. In the present case, after going through the report and the extracts which have been quoted in the reply, which will be dealt with here in after, it appears that the Vice-Chancellor has rightly exercised his discretion so as to uphold the dignity of the Institution and prestige of the course so that the faith and confidence of the people is restored. The complaints were of various nature, namely, wards of some of the examinees participated in the test and there was a departure from the past long established practice in the formation of groups of candidates, there was some variation in the rechecking and so on so forth. Therefore, in the present situation having satisfied on the material before Vice-Chancellor that irregularities have been committed in the conduct of the

examination, he felt satisfied that it is better to hold a re-test so that the time may not be lost and the faith of the people in the prestige of the Institution should be maintained. I am of the opinion, that invoking of the power u/s 12(5) of the Act by the Vice-Chancellor cannot be said to be bad or illegal as there was sufficient material before him to invoke his emergency power.

18. The another rider which has been put by Sub-section (5) of section 12 of the Act is that he has to report the matter to the authority which in ordinary course would have dealt with the matter. The matter was reported to the Syndicate which met on 15.12.1990 and the Syndicate ratified the action of the Vice-Chancellor as per the affidavit filed by the Registrar of the respondent University. Thus, the requirement of Section, 12(5) of the Act was squarely fulfilled in the present case.

19. Mr. Mridual, learned Counsel for the petitioners, submitted that under Regulation 58(a) in case of emergency, the Vice-Chancellor can call a special meeting of the Syndicate and like wise under Regulation 64-A, a special meeting of the Academic Council can also be called. Learned Counsel submitted that when the report was received by the Vice-Chancellor on 27.11.1990 and the meeting of the Syndicate was scheduled to be held on 15.12.1990 where was the occasion for the Vice-Chancellor to exercise his power u/s 12(5) of the Act. In the alter native, learned Counsel submitted that the Vice-Chancel for could have called an emergent meeting of the Syndicate under Regulation 58(a) and of the Academic Council under Regulation 64-Article.

20. It is true that the Vice-Chancellor could have called the meeting of the Syndicate under Regulation 58(a) with 3 days notice. But since the meeting of the Syndicate was scheduled to be held on 15.12.1990, therefore, it was not felt necessary to call an emergent meeting. But the question is I that when the report was received from the Enquiry Officer and the matter was considered by the Vice-Chancellor to be urgent, why he should not exercise this power in the interest of the Institution I as well as the students. If he had waited upto 15.12.1990 and thereafter the fresh test was to be held it would have unnecessarily prolonged the agony of the students as from the report it appears that a large number of irregularities were committed in the conduct of the selections. More-so, the matter was placed before the Syndicate on 15.12.1990 and there was not a single dissention. The Registrar in his affidavit has clearly stated asunder:

3. That I was present in the Syndicate meeting throughout in the capacity of Non-Member Secretary. This matter was reported to the Syndicate and they were apprised of facts of the matter and thereafter the Syndicate has noted the report as well as action taken and there was no dissentions what so ever. The Syndicate fully approved and ratified the action of the Vice-Chancellor passed u/s 12(5) of the Jodhpur University Act, 1962.

21. Now, since the matter was required to be reported to Syndicate and it was so

reported, if the Syndicate was of the opinion that the Vice-Chancellor's action u/s 12(5) of the Act was not warranted it could have set aside the same and it would have allowed the test as conducted on 25.9.1990 and the admissions made thereof. But the Syndicate in its meeting held on 15.12.1990 approved the action taken by the Vice-Chancellor. That shows that the Syndicate was also satisfied on the basis of the report of the Vice-Chancellor that the action by the Vice-Chancellor canceling the examination is correct.

22. Mr. Mridul, learned Counsel for the petitioner, pointed out that it is one thing to place the matter before the Syndicate for its consideration and it is another thing to take post ratification of the action. Since the matter was reported to the Syndicate and if the Syndicate was of the opinion that the action of the Vice-Chancellor is not correct then nothing would have prevented the Syndicate to overrule the action of the Vice-Chancellor. But since the same has not been done, therefore, now to I say that a different view could have been taken by the Syndicate if the matter had been reported before cancellation of the examination. That is purely a conjecture and nothing concrete can be inferred from that. Since the Syndicate is the highest body so far as administration of the University is concerned and if it had felt that the action taken by the Vice-Chancellor is not correct, then there was nothing to prevent The Syndicate to assert and overrule the action of the Vice-Chancellor and the Vice-Chancellor would have been duty bound to abide by the directions issued by the Syndicate. But the Syndicate since has approved the same, therefore, it appears that the Syndicate was satisfied that the cancellation of the examination was warranted. In this view of the matter, I am of the opinion that the action taken by the Vice-Chancellor in cancelling the examination is correct and does not warrant any interference by this Court.

23. So far as the calling of the meeting of the Academic Council is concerned, it has been pointed out by the respondent University that the matter was to be sent to the Admission Board only under Ordinance 337 and not to the Academic Council and it has been brought to the notice of the Admission Board on 21.12.1990.

24. Mr. Mridul, learned Counsel for the petitioners, has also argued that in the order dated 8.12.1990 issued by the Vice-Chancellor u/s 12(5) it has been mentioned in clause 3 that conduct of the examination has been entrusted to the Registrar of the University instead of Head of Department i.e. Dean of the Faculty. Learned Counsel submitted that this cannot be done. Since this question has not been raised in the writ petition, therefore, I need not to enter into this controversy. However, it has been brought to my notice that the matter was reported to the Admission Board about this change on 21.12.1990 and a documentary proof to this effect has been produced on the record as Aimex. Rule 3 along with the affidavit of the Deputy Registrar. Therefore, nothing turns on this question. Admissions will still be made by the Dean of Faculty of Commerce to this Course. However, the supervision has been given to the Registrar. In this

view of the matter, I don't find any substance in this argument also.

25. Learned Counsel for the petitioners next contended that the Syndicate has acted in a mechanical manner in approving the action of the Vice-Chancellor.

26. This argument of the learned Counsel is also of no avail as the Syndicate in its meeting held on 15.12.1990 has approved the action of the Vice-Chancellor and it is too much to say that the Syndicate has acted mechanically. The Syndicate is a body of academicians and other persons from all walks of life and they are very responsible persons. Therefore, the argument of the learned Counsel that they have acted in a mechanical manner is far from correct and it cannot be said that the Syndicate, a body consisted of highly educated persons and masters of the subjects would act in a mechanical manner. Therefore, this argument of the learned Counsel cannot be sustained.

27. Next, learned Counsel submitted that no notice of cancellation of the examination has been given to the students.

28. It is true that no individual notice was given to candidates. But a Judicial Officer of the rank of District and Sessions Judge conducted the enquiry, after recording the statements of some of the complaints like President of the University Students Union and various teachers and Heads of the Departments and other persons concerned with the conduct of the examination and after considering the matter in great detail submitted his report. He has pointed out a number of irregularities and on that basis the action was taken by the Vice-Chancellor.

29. Mr. Bhandari, learned Counsel for the respondent University, submitted that in such matter of mass irregularities it is not necessary to give an individual notice to all the concerned persons. Learned Counsel in this connection has invited my attention to the The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, . In this case on account of adoption of unfair means by vast majority of examinees at a particular centre, the examination of Bihar School Examination was cancelled by the Chairman of one of the Centres which was endorsed by the Board. But notice/opportunity was not given to all the candidates to represent their case. In this connection, their Lordships of the Supreme Court observed as under:

Where the Bihar School Examination Board on being satisfied that a vast majority of the examinees at a particular centre have adopted unfair means, it is not necessary for the Board, before cancelling the examination as a whole at that centre, to give an opportunity to all the candidates to represent their cases. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances, it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

30. Now, in the present case also, no individual candidate has been charged and only the irregularities have been brought to the notice of the Vice-Chancellor in the report submitted by Shri U.S. Bhargava and these findings warranted immediate action. Therefore, the Vice Chancellor in exercise of his powers u/s 12(5) of the Act invoked the emergency clause and cancelled the examination. It is not necessary nor it would be expedient to give individual notice to each examinee where it is found that there were irregularities like that wards of the examiners have appeared and one of the candidates was registered with the Head of the Department for Ph.D. and various other irregularities in the conduct of the examination like various groups were formed for group discussions but the members of the Admission Committee were not taken in confidence for making such arrangements; re-checking was not proper, there was a variation in the marks ranging from 0.05 to 33% marks in the copies. In such matters, it was not possible, to have given an individual notice to each individual candidate or each individual candidate should be heard for that matter. Therefore, in these peculiar facts and circumstances of this case, I am of the opinion that giving of individual notice, was neither necessary nor expedient.

31. Mr. Mridul, learned Counsel has next argued regarding the irregularities committed in the conduct of the examination and he has submitted that a copy of the report of the Enquiry Officer should be supplied to him if the University wants to use the same so that he can make necessary submissions in respect thereof.

32. As against this Mr. Bhandari, learned Counsel appearing for the University submitted that it would not be in the public interest to give the report of the Enquiry Officer as certain remarks have been made against the teachers/lecturers of the University, which may warrant necessary disciplinary action against them. Therefore, the disclosure of the report at this stage would be prejudicial to their interest. Learned Counsel submitted that the necessary extracts of the report under various headings have been incorporated in the reply.

33. Mr. Mridul, in this connection, submitted that no privilege can be given to the respondent in regard to disclosure of this report and he has invited my attention to the observations made in S.P. Gupta Vs. President of India and Others, He has also made comments on the various irregularities which have, been pointed out in the report and gist thereof has been given in the reply.

34. So far as seeking privilege for not disclosing the entire report is concerned, suffice it to say, perhaps the disclosure of the names of some of the Assistant Professor/Associated Professors who were associated with the conduct of the examination is bound to affect their image and before the University decides to take action against them, the premature disclosure of the names and the irregularities committed by these academicians would not be proper at this stage. The disclosure of these names and the acts might unnecessarily tarnish the image and without facing the enquiry they will suffer the public ignomy. I am of the opinion that in these circumstances, it will not be proper to insist upon the

University to disclose whole of the report along with the findings of the E.O. to the public at this stage.

35. Now, coming to the question of irregularities committed in the conduct of the examination. Some of the extracts which have, been given in the reply by the University read as under:

(a) Formation of Groups of candidates for Group Discussion Test and Personality Assessment interview:

GIST:

The gist of the report is that the departure has been made from the past long established practice in the formation of groups of candidates eligible for group discussion test and personality assessment interview. Other members of Admission Committee were not taken in confidence for making such an arrangement. Such a departure was unwarranted, unreasonable, arbitrary and avoidable.

In the past grouping was made containing candidates from different discipline while this time it was made from the same discipline.

The verbatim important findings in this regard also mentioned as under:

It is also curious to note, may be intentional or even unintentional, that the names of.....and.....appear in the first ten groups which were to face Board one Group discussion and Board one for personality assessment interview. It has been alleged that out of 23 candidates selected from general category as many as 18 candidates had appeared before Board one.

In view of the above mentioned facts and circumstances, I am constrained to say that a departure from the past long established practice in the formation of groups of candidates eligible for group discussion test and personality assessment interview was unwarranted, unreasonable, arbitrary and avoidable. Further, it was not desirable and proper for the.....of his own to have done so without taking into confidence the Members of the Admission Committees atleast without consulting them in this regard.

(b) Participation of the persons in the process of conduct of Tests whose son/daughter or near relations appeared at the Test:

GIST:

One teacher admitted that his daughter had appeared in the test. He had worked as Invigilator as also evaluator.

Another teacher worked as Invigilator though in different room than the one in which his niece was also taking up the test.

They are responsible for committing irregularities.....failed to discharge his duty carefully and faithfully in as much as persons, whose wards and relatives

had appeared in the test and they were involved in the process. Equal responsibility lay on such persons as they ought to have withdrawn from such participation when they know that their ward and relations are appearing in the same test.

The verbatim important finding in this regard are as follows:

It is also clear from the record that people have been going out and coming back to the P.G. Library Hall during the period when the process of evaluation work was continuing.

I, accordingly, hold that the.....and the other persons responsible to look after the entire process of admissions have failed to discharge their duties carefully and faithfully in as much as persons, whose ward and relative had appeared at the test, were involved in the process. Equal responsibility lay on the persons, whose ward or relative had appeared at the test, to have withdrawn from the participation either as an invigilator or as an evaluator or as both.

I find that this is the result of forming the group of candidates on the basis of their academic discipline and putting the candidates belonging to commerce and Arts discipline in the beginning batches and by making the first ten groups to go before the Board I for Group Discussion Test and Board I for personality assessment Interview.

(c) Constitution of Board for Group Discussion and Personality Assessment Interview:

From the evidence, and the given data, I am of the view that no fixed norms or parameters were evolved for the assessment of the candidates which could result in their evaluation.

(d) Rechecking of answer books:

GIST:

Rechecking done collectively on random basis. Re-Checking was felt and decided as one of teacher had brought to the notice of the H.O.D. an answer book in which 97.5 marks were secured by the candidate.

36. Mr. Bhandari, learned Counsel for the respondent, submitted that in a situation where the ward has participated in the examination where his father is examiner has not been looked upon with favour, and in this connection, he has invited my attention to para 24 of the decision given in the case of Pr. (Mrs.) Kirti Deshmankar Vs. Union of India (UOI) and Others, which reads as under:

Therefore, the proper conduct of respondent No. 6 ouhi to have been not only not to participate but to withdraw from the selection process. 40. This conduct of respondent No. 6 certainly gave an apprehension in the mind of the petitioner of bias, but, on facts, the plea of bias is out of consideration, as, admittedly, respondent No. 5 is more meritorious having secured 17 marks more than that of

the petitioner. In view of this fact, the selection cannot be said to be vitiated.

37. In this case, since the examiner withdrew and the respondent was found to be otherwise meritorious, therefore, the examination was not held to be vitiated on that count. In this connection, learned Counsel has also invited my attention to *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, and in that case it was observed as under:

There can be no doubt that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. However, the principle which requires that a member of a Selection Committee whose relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need not be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission, were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him.

38. Learned Counsel has also invited my attention to *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . Since this case, was followed in the case of *Ashok Kumar Yadav (supra)*, therefore, it is not necessary to dilate on this case any more.

39. Learned counsel has also invited my attention to *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*,

40. Learned Counsel submitted that in case where the ward has participated and the examiner happens to be his father then in that case it would have been proper to have withdrawn himself from the process rather than to participate, I don't want to express my opinion on the subject. But the fact remains that

certain glaring irregularities were committed, which was not warranted. It is different matter that such wards of the examiners were not selected but in the ordinary course the examiner would have more circumspect that when they knew that their wards are appearing they should not have participated.

41. Mr. Bhandari, learned Counsel submitted that normally the courts should be slow in interfering in academic matters and in this connection, learned Counsel has invited my attention to Bagleshwar Prasad's case (supra) and made a great stress on the following observations of their Lordships of the Supreme Court:

In dealing with writ petitions against the orders of the Universities or Education Boards, canceling the examination results of the candidates who were declared to have been passed, it is necessary to bear in mind that educational institutions like the Universities or the Boards, set up Enquiry Committee to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic tribunals to decide all relevant question in the light of the evidence adduced before them. In the matter of adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities circumstantial evidence. This problem which educational institution have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decision of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities Under Article 226, the High Court is not sitting in appeal over the decision in question its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate Opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice, but it would not be reasonable to impart into these enquiries all considerations which govern criminal trials in ordinary Courts of Jaw.... Where no animus is suggested and no mala fides have been pleaded and the enquiry has been fair and the student has had an opportunity of making his defence.....Held, that the High Court was not justified in interfering with the order passed against the student cancelling his examination result by which he was declared to have passed the examination.

42. It is true that the Courts should be very slow in interfering in matters where the academic institutions are involved and their discipline is concerned. In the present case also, as I have, found that on the basis of the report received from a quasi judicial authority i.e. the retired District and Sessions Judge, the Vice-Chancellor felt satisfied that in order to maintain the prestige and confidence of

the students that the examination of such a prestigious nature should be above board and the irregularities should not be permitted, cancelled the examination and reported the matter to the. Syndicate and the Syndicate in its turn ratified the report of the Vice-Chancellor, it only shows that the academic bodies like Syndicate which is the highest authority in the University felt satisfied that the conduct of the examination was not fair and the irregularities have been committed which would certainly tarnish the image of the prestigious examination and felt satisfied by the action taken by the Vice-Chancellor. Since the Syndicate being the highest academic body felt satisfied on the report of the Vice-Chancellor that the examination should be cancelled, this court sitting in extra-ordinary jurisdiction would not like to interfere and substitute its opinion on this academic body.

43. In this view of the matter, I am of the opinion that this case does not warrant any interference by this Court and, there fore, the writ petition is dismissed No orders as to costs.