

(1986) 08 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1272 of 1985

Nrushingha Charan Sarangi

APPELLANT

Vs

Chancellor, Utkal University and Another

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Utkal University Act, 1966 — Section 10(4), 5(7)
Utkal University Regulations — Regulation 7

Citation : AIR 1987 Ori 88

Hon'ble Judges : P.C. Misra, J;B.K. Behera, J

Bench : Division Bench

Advocate : S.C. Dash and B.K. Patnaik, for the Appellant; Bijan Ray, Government Advocate and Sanjit Das, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Misra, J.—The petitioner who, with a view to securing the degree of Doctorate in Philosophy in Arts had registered himself in the Utkal University and had submitted a thesis and appeared in the viva voce test, has filed this writ application with a prayer to issue a writ of mandamus directing the opposite parties to publish the result of his examination within a period of time to be specified and to quash any order or direction issued by the Chancellor in this behalf.

2. Petitioner has alleged that he had passed his M.A. Examination in Oriya in 1st Class from Utkal University in the year 1979 and had registered himself in Utkal University in December, 1981 to prepare a thesis on "A Comparative Study on Hawthorn the American Novelist and Fakir Mohan, an Oriya Novelist", with Dr. Gopal Chandra Misra, M.A.,D. Litt. Professor and Head of the Post-Graduate Department of Oriya, Sambatpur University, as his guide. According to the provisions contained in Regn. 7 of Chapt. IX, Utkal University Regulations, the thesis which was submitted by the petitioner, was referred by the Syndicate to

the Board of three Examiners and after the thesis was approved by the Board, the petitioner was informed by the Controller of Examination of the j University that the viva voce part of the Ph. D. Degree Examination will be held at 11.00 a.m. on 15-3-85 at the residence of Dr. G.C. Misra, the guide. The Syndicate under Statute 203 of the Utkal University Statutes (hereinafter called the "Statutes") considered and approved the recommendation of the Board of Examiners for publication of the results by Resolution No. 545 dt. 24-3-85 vide Annexure-3. In usual course of business the result of the examination was to be published by the University and as a matter of fact the result of four other candidates mentioned in the Resolution (Annexure-3) was published, but not the result of the petitioner. Not knowing the reason for which the petitioner's result was not published, he submitted a representation to the Vice-Chancellor of the University on 12-4-85 (Annexure-4). The petitioner came to know thereafter that the Chancellor had directed the University not to publish the result of the petitioner which according to the petitioner is beyond the powers and jurisdiction of the Chancellor, The petitioner having failed in all his attempts to have the result of his examination published by the University, has filed this writ petition praying for a direction to be issued by this Court to the opposite parties to publish his result as decided by the Syndicate is resolution No. 545 dt. 24-3-85 (Annexure-3) within a specified time.

3. In the reply the opposite parties denied all the allegations of the petitioner and contended that he is not entitled to the relief prayed for. The stand of the opposite parties in a nutshell is that the Chancellor of the Utkal University in exercise of his powers u/s 5(7), Utkal University Act (hereinafter called the "Act") has annulled the resolution of the Syndicate appointing the Board of Examiners to examine the thesis paper of the petitioner and, therefore, all the subsequent resolutions of the Syndicate are null and void. According to them, the examination in question having been conducted by a Board of Examiners, the constitution of which was itself invalid, is void ab initio and, therefore, the subsequent resolution of the Syndicate resolving to publish the result of the petitioner on the basis of the recommendation of the said invalid Board of Examiners is also void. It was further contended that the Chancellor's jurisdiction was invoked by way of a complaint alleging various irregularities committed in the matter of appointment of examiners and in conducting the viva voce test. The Chancellor in exercise of his powers under the Act passed an interim order of stay pending full enquiry into the matter and on a consideration of all reports and materials received by him, the Chancellor by a reasoned order dt. 22-5-85 annulled the resolution of the Syndicate and directed the Syndicate to constitute a fresh Board of Examiners and to conduct a fresh viva voce test after restoring the status quo ante in the matter. According to the opposite parties the Chancellor is vested with the jurisdiction to annul any proceeding of the senate, syndicate or any other authority if it, in his opinion, is not in conformity with the Act and the Statutes. In the present case the Chancellor being the Head of the University was entitled to examine the resolution of the

syndicate appointing the Board of Examiners which for the reasons recorded by him was in violation of the express provisions of the Act and the Statutes and the action taken by the Chancellor was fully justified in the facts and circumstances of the case. Though an objection was taken in the counter-affidavit that the Governor of the State who happens to be the Chancellor of the University is not amenable to the writ jurisdiction of the High Court, the same was not seriously pressed at the hearing.

4. The petitioner filed a rejoinder to the counter-affidavit of the opposite parties in which it was contended that the constitution of the Board of Examiners was valid and the syndicate being the sole authority in the matter of conducting all examinations, the Chancellor has erred in law in over stepping and extending his jurisdiction to annul the resolution of the Syndicate. It has been further urged that after the Board of Examiners completed its work in accordance with the Act, Statutes and the Regulations it became functus officio and, therefore, the annulment of the resolution passed by the Chancellor is inappropriate and ineffective in law. The objections taken against the viva voce test being conducted in the residence of Prof. G.C. Misra was commented upon as irrelevant and some instances have been cited where the venue of viva voce test had been conducted in the residence or even in the hospital near the bed of the Guide. According to the petitioner an unusual course of action was resorted to by the authorities concerned which is malicious, unwarranted and not supportable in the facts and circumstances of the case.

5. The petitioner had filed an application calling upon the opposite parties 1 and 2 to produce some records enumerated in the application which was ordered to be considered at the time of hearing. During the course of hearing, learned counsel appearing for opposite parties 1 and 2 produced the file No. UI-30-1985 of the Chancellor's Office and file No. EC VI-10-84-85, from the office of the Utkal University for our reference. The aforesaid records were also made available for reference during the course of argument to the learned counsel appearing for the petitioner.

6. Before going into the legal questions urged for consideration in this case, we would set out the facts which emerge out of the writ petition, counter-affidavit, rejoinder to the counter-affidavit and the original records submitted by the learned counsel for opposite parties 1 and 2. Petitioner registered himself for Ph. D. Examination under the Utkal University and submitted a thesis the subject being "Amerikiya Oupanyasik Hatharn (Oriya Oupanyasik Fakirmohan Eka Tulanatmak Addhyayan" (In Oriya). The Utkal University by its communication dated 5-11-84 requested the Board of Studies to recommend a panel of examiners to examine the thesis submitted by the petitioner for a Ph. D. degree in Oriya. The Board of studies recommended 12 names which were placed before the Examination Committee on 19-11-84. The Examination Committee selected 2 names, i.e., Dr. N. Satpathy and Dr. A. Patnaik appearing against SI. Nos. 3 and 7. Their names were tick marked in red and countersigned by the Vice Chancellor

Dr. S. Sahoo and Sri B.S. Das, a member of the said Committee but the signature of Sri B.S. Das and the tick mark against the name of Dr. N. Satpathy have been scored through. The name of Dr. Banshidhar Sarangi has been tick marked both in red and black, but has been countersigned by Sri B.S. Das alone and not by the Vice Chancellor. According to the opposite parties the tick mark against serial No. 10 Dr. Bansidhar Sarangi was a subsequent interpolation not backed by any authority of the Examination Committee. The minutes of the resolution of the Examination Committee held on 19-11-84, which appears to have been signed by the Controller of Examinations on 24-11-84, merely state that it be recommended to the syndicate that the recommendations of the Board of Studies in the matter of appointment of examiners be accepted and appointment of examiners be made as suggested. The resolution did not mention the names of the examiners selected by the Examination Committee which according to the opposite parties was taken advantage of. As already stated, it appears from the list of persons recommended for the purpose that the tick mark in red as well as the signature of Sri B.S. Das have been scored through and instead a tick mark has been put against serial No. 10 in the list with the signature of Sri B.S. Das alone against the said name, It may be noted that the signature of the Vice-Chancellor (Sic) against serial No. 10 (Dr. Banshidhar Sarangi). On 6-12-84 the petitioner addressed a letter to the Vice-Chancellor, Utkal University, stating that he did not have any cordial relationship with Dr. N. Satpathy, Reader in Oriya and that the latter having expressed his keen interest to be appointed as the examiner of his thesis he was apprehensive for which reason he requested for appointment of any other lecturer in Oriya as his Ph.D. thesis examiner except Dr. Nityananda Satpathy. On 15-12-84 the syndicate approved and appointed the examiners as per the recommendation of the Examination Committee in its meeting held on 19-11-84. On receipt of the approval of the syndicate in the matter of appointment of examiners, the Controller of Examinations issued letters to the Board of Examiners for examining the thesis of the petitioner. The Controller of Examinations issued the aforesaid letter to Dr. A. Patnaik (Sl. No. 7) and Dr. Banshidhar Sarangi (Sl. No. 10), besides to Prof, Dr. Gopal Ch. Misra, who was the guide of the petitioner and was necessarily a member of the Board of Examiners. No communication was made to Dr. N. Satpathy (Sl. No. 3) in this behalf. The Controller of Examinations sent a copy of the thesis submitted by the petitioner along with the other necessary papers to each of the aforesaid examiners. The Controller of Examinations requested Prof. G.C. Misra to fix a suitable date for conducting viva voce test of the Ph. D. Examination of the petitioner in consultation with the other two examiners, namely, Dr. A. Patnaik and Dr. B.D. Sarangi in response to which Dr. Misra wrote back fixing 15-3-85 for holding the viva voce test and further requested that the viva voce test be held at his residence at Madhupatna as he was suffering from leg injury caused in a bus accident and was unable to move. The Controller of Examinations in the notification dt. 12-2-85 fixed the viva voce part of the Ph. D. examination of the petitioner to be held on 15-3-85 at 11.00 a.m. in the residence of Dr. G.C. Misra at Madhupatna, Cuttack.

According to the opposite parties it is the Syndicate who had to decide the venue of the examination and not the Controller of Examinations who unauthorisedly fixed the residence of Prof. G.C. Misra for the purpose. In the viva voce test held on 15-3-85 at the residence of Prof. G.C. Misra the petitioner appeared and the Board of Examiners unanimously recommended that the Ph. D. Degree be awarded to the petitioner by the Utkal University. The said report of the Board of Examiners was placed before the Syndicate on 24-3-1985 along with their report in respect of other candidates in other subjects and the Syndicate considered the recommendation of the Board of Examiners and approved the results for publication. In the meantime a complaint dt. 20-3-85 from Dr. N. Satpathy was received by the Chancellor alleging that there has been a foul play examining the thesis of the petitioner and in conducting his viva voce test and bringing to his notice the illegalities and manipulations made at the instance of interested persons with the mala fide intention to interfere in the examination system of the University. He alleged that though the Examination Committee had selected him to be one of the examiners, his name was changed and various other illegalities were committed affecting the examination system itself. He further alleged that the attempt of the candidates to change and choose examiners of their choice would paralyse the examination system for which reason intervention of the Chancellor in the matter was solicited. On receipt of the said letter the Chancellor sought for a report from the Vice-Chancellor and ordered that as the Ph.D. degree has not been awarded to the petitioner by that time the same, may be stopped till full enquiry is made. In compliance to the above, the Vice-Chancellor reported that Dr. N. Satpathy's, name was recommended by the Examination Committee on 19-11-84 for appointment as an examiner to evaluate the thesis of the petitioner, but before the appointment and approval of the Board of Examiners was made by the Syndicate Sri Sarangi (Petitioner) reported to the Vice-Chancellor that his thesis may be examined by any other examiner except Dr. Satpathy, as he suspected that Dr. Satpathy would try to harm him intentionally. The said letter of the petitioner was placed before the Syndicate in its meeting on 8-12-84 and while considering the proceeding of the meeting of the Examination Committee held on 19-11-84 the Syndicate decided to appoint Dr. B. Sarangi whose name was included in the panel of examiners recommended by the Board of Studies in Oriya in place of Dr. Satpathy. The Vice-Chancellor also reported that in the changed circumstances appointment was given to Dr. B. Sarangi to evaluate the thesis of the petitioner and after favourable reports were received from all the three examiners, viva voce test was held on 15-3-85. The petitioner having qualified himself in the viva voce test, the syndicate in its meeting held on 24-3-85 approved the result of the petitioner for publication. It may be mentioned here that Sri M. N. Das was the Vice-Chancellor who submitted the aforesaid report to the Chancellor though he was not the Vice-Chancellor at the time who the examiners were selected on 19-11-84. On receipt of the said report of the Vice-Chancellor, the Chancellor was satisfied that this was a fit matter for his interference and issued a show cause notice to the, Syndicate of the Utkal University u/s 5(7), Utkal University Act, to show cause by

30th April, 1985 as to why the resolution dt. 8-12-84 of the syndicate changing the examinership of Dr. N. Satpathy shall not be annulled and a set of fresh examiners be not appointed. The show cause of the Vice Chancellor was submitted on 29- 4-85 stating that nothing improper or irregular has been done in the matter of conducting evaluation of the thesis and viva voce examination of the petitioner. He stated that on the representation made by the petitioner the then Vice Chancellor Dr. S. Sahoo placed it before the Syndicate on 15-4-84 (though in his earlier report dt. 11-4-84 to the Chancellor he had stated that it was placed before the Syndicate in its meeting dt. 8-12-84) when the matter was discussed by the Syndicate and it was decided that Dr. B. Sarangi whose name also occurred in the panel be appointed to evaluate the said thesis of the petitioner. The show cause further reveals that the application of Prof. Dr. G.C. Misra requesting for holding the viva voce test at his residence on 15-3-85 was placed by the Controller before him (Vice- Chancellor) and so the same was conducted at his residence as he had the personal knowledge that Dr. Misra was actually hospitalised on account of a bus accident. In the complaint dt. 20-3-85 made by Dr. Satpathy to the Chancellor he had alleged that Dr. B.N. Sinha, a member got his name changed from the examinership. Dr. B.N. Sinha in reply to the said charge denied the allegation and stated that the Syndicate considering the letter of Sri N. Sarangi (petitioner) decided to substitute Dr. Satpathy as the examiner by another name from the panel recommended by the Board of Studies. He, however, made out a different story that the Examination Committee had recommended the names of three examiners (not two) among whom Dr. Satpathy was one. On a consideration of all the materials placed before him, the Chancellor in exercise of his powers conferred u/s 5(7) of the Act annulled the resolution of the Syndicate dt. 8-12-84 (15-12-84) and ordered that the status quo ante be restored, i.e., (a) constitution of Board of Examiners; (b) conducting a fresh viva voce test with immediate effect. To justify the aforesaid conclusion the Chancellor recorded the following findings.

1. Substitution of the name of Dr. Satpathy by Dr. Sarangi was without any valid reason.

2. Holding of the viva voce test in quick succession at the residence of the Guide gives an impression that the entire exercise for awarding Ph. D. degree in favour of Sri Sarangi (petitioner) was completed in haste and inadvertence leaving scope for a doubt about the propriety of the said exercise.

7. Before we enter into the discussion on the points urged by the petitioner a general analysis of the law relating to conduct of examinations by the University would be helpful. The Utkal University is constituted as per the provisions of the Utkal University Act consisting authorities, namely, the Senate, the Syndicate, the Academic Council and such other authorities as the Statutes may declare to be authorities of the University. The powers and functions of each of the aforesaid authorities have been defined in the Act. Apart from other functions the Syndicate has been empowered to conduct examinations as per the provisions u/

s 10(4)(f) of the Act and the said power is to be exercised subject to the provisions of the Act and the Statutes. Section 15(3)(c) and Section 23(1)(c) of the Act authorise the Academic Council to make regulations relating to courses, examinations and the conditions subject to which students shall be admitted to examinations for degree of the University. Section 22 enumerates the provision for admission of students to the University and their examinations, and the mode of appointment and duties of examiners.

Certain provisions of the Utkal University Statutes deserve specific mention. Statute No. 75(12) authorises the Syndicate to conduct the University Examinations and publish the results thereof. According to the provisions of Statute 198 all examinations held shall be at places as the Syndicate may decide from time to time. The examinations shall be conducted by a duly constituted Board of Examiners appointed for the purpose by the Syndicate, which shall have power to publish the results of such examinations as and when received from the Board of Examiners, vide Statute No. 203. The appointment of examiners shall be made by the Syndicate as per Statute No- 192 and the Syndicate shall have the power to cancel or terminate any appointment made in accordance with these Statutes without assigning any reasons therefor, at any time, as and when necessary. In the matter of appointment of Board of Examiners, the Regulations provide that the Syndicate is to consider the recommendation of the Board of Studies and that of the Examination Committee.

It needs no special mention that the Governor is the Chancellor of the University and by virtue of his office he is the Head of the University. As per the Utkal University Act the Chancellor has a right to make inspection, among other things, of the examinations and may make an enquiry in respect of any matter connected with the University. Section 5(7) of the Act with which we are very much concerned in this case is in the following words.

"The Chancellor may, by order in writing, annul any proceeding of the Senate, Syndicate, Academic Council or any other authority which is not in conformity with this Act and the Statutes :

Provided that, before making any such order he shall call upon the authority concerned to show cause as to why such an order should not be made and if any cause is shown within a reasonable time, he shall consider the same.

The language of the Section as stated above provides in unequivocal terms that the Chancellor by virtue of his office and being the head of the University may annul any proceeding of the Senate, Syndicate, Academic Council or any other authority which is not in conformity with this Act and the Statutes. The said power is to be exercised by the Chancellor after calling upon the authority concerned to show cause as to why an order u/s 5(7) of the Act shall not be made and if any cause is shown within a reasonable time in pursuance of such notice, he shall consider the same.

8. Dr. Dash appearing for the petitioner contended that the syndicate is the sole

authority in all matters relating to examinations and publication of result of an individual candidate and that the Chancellor has no authority to interfere with the same. His contention is that the Chancellor as the head of the University exercises his powers vested in him by the Utkal University Act and the Statutes having no inherent or residuary powers. The said contention requires careful examination with reference to different provisions of the Act and the Statutes. We have already made a reference to Section 10(4)(f), Utkal University Act, which empowers the syndicate to control the examinations and Statute No. 75(12) empowers the syndicate to conduct University examinations and publish the results thereof. In Section 5 of the said Act the functions and powers of the Chancellor and the procedure for exercise of such powers have been enumerated. So far as this case is concerned, we are primarily concerned with the powers of the Chancellor under Sub-section (7) of Section 5 of the Act which vests on the Chancellor with the authority to annul any proceeding of the senate, syndicate, academic council or any other authority if such proceeding is not in conformity with the Act and the Statutes. Thus the Chancellor by virtue of his office is not merely the ceremonial head of the University but is possessed of the power to examine the proceedings of any of the authorities of the University with a view to finding out if the same is in conformity with the Act and the Statutes. The language of the Section admits no exception so as not to apply to the proceedings of the syndicate relating to examinations. Dr. Dash in his argument particularly stressed on the evils which are likely to flow by vesting the Chancellor with the authority to interfere with the result of an examination, as, according to him, in such an event there can be no finality to examination result and the Chancellor's office will be flooded with large number of complaints which could not be the intention of the legislature. It is well settled in law that the Court must construe an enactment as it finds it and it cannot go beyond the language of the Section and speculate as to what the legislature might have intended, where the words used in the Statutes are clear and unambiguous. It has often been stressed by authorities that the fundamental rule of construction is to give effect to the clear and unambiguous language used by the legislature and to give effect to the legislative intention as expressed in the language contained therein. It is not the duty of the court to give an interpretation which the legislature might have more properly done or which it approves to be more proper. In our view, the expression "to annul any proceeding of the syndicate which is not in conformity with this Act and the Statute" covers all proceedings even relating to the conduct and publication of the result of examinations which according to Section 10(4)(f) and Statute No. 75(12) are matters of exclusive jurisdiction of the syndicate, provided that the Chancellor finds that the proceeding is not in conformity with the Act and the Statutes. If the proceeding of the syndicate " suffers from any manifest error of law or the decision arrived at by the syndicate in such proceeding is in clear violation of the Act and the Statutes, the Chancellor in exercise of his powers u/s 5(7) of the Act can annul such proceeding. The proceeding of the syndicate may be said to be not in conformity with the Act and the Statutes, if the syndicate does not take into

consideration in reaching a conclusion which the Act and the Statutes requires it to consider or if the proceeding of the syndicate is vitiated by consideration of irrelevant matters or by wrong interpretation of the provisions of the Act and the Statute. It is not possible to give an exhaustive list of the situations to warrant a conclusion that the proceeding of the syndicate is contrary to the Act and the Statutes, but there can be no doubt that in justifying cases the Chancellor will have jurisdiction to annul the proceedings of the syndicate even relating to examinations. The said power of the Chancellor is not circumscribed by any limitation or exception provided that the Chancellor will be satisfied that the proceeding of the syndicate is not in conformity with the Act and the Statutes.

9. We would next examine the contention of Dr. Dash that the Chancellor was not justified in annulling the resolution of the syndicate which according to him was in conformity with the Act and the Statutes. In this behalf Dr. Dash further argued that the decision of the Chancellor dt. 22-5-85 annulling the resolution of the syndicate is liable to be quashed also for the reason that the procedure indicated in the proviso to Section 5(7) has not been complied with inasmuch as the show cause notice issued to the authority concerned does not make a specification of the provisions of the Statutes under which the Chancellor supports, (purports?) to have acted and the petitioner who is vitally interested in the matter was not given an opportunity to show cause which according to him is a violation of the principles of natural justice. Dr. Dash, however, could not support his argument by reference to any decided cases that the proceeding stands vitiated by non-mention of the specific provisions of the Act or Statutes under which the show cause notice is purported to have been issued. The aforesaid submission is factually incorrect inasmuch as the office copy of the notice available in the Chancellor's file does make a mention that the said notice was u/s 5(7), Utkal University Act, to show cause why the relevant resolution of the Syndicate shall not be annulled and a set of fresh examiners be not appointed. Section 5(7) of the Act requires that before making any order under the, said Section the Chancellor shall call upon the authority concerned to show cause as to why such an order should not be made and if cause is shown within a reasonable time he shall consider the same. Syndicate is the authority concerned in this matter. The Chancellor, therefore, after making preliminary enquiries as to whether he would proceed to exercise jurisdiction u/s 5(7) of the Act issued notice to the syndicate as to why the resolution of the syndicate shall not be annulled. The Vice-Chancellor of the University who is a member of the syndicate, in response to the show cause notice issued, submitted a show cause justifying the actions of the syndicate. He has emphasized in the show cause that nothing improper or irregular has been done by the syndicate and that the decision of the syndicate should be upheld. Thus the aforesaid contention of Dr. Dash that the provisions of the Act under which the show cause notice was issued had not been mentioned is devoid of any merit.

10. It has also been submitted by Dr. Dash that the order made by the Chancellor u/s 5(7) of the Act is liable to be quashed also for the reason that the

petitioner has not been given opportunity of being heard. It is no doubt true that the matter for consideration by the Chancellor very much concerned the petitioner as the result of the examination in which he appeared was the matter in issue before the Chancellor. Admittedly none of the acts and omissions on the part of the petitioner was the subject-matter for consideration by the Chancellor. It was the action of the Syndicate which was alleged to be illegal, improper and not in conformity with the Act and the Statutes for which the jurisdiction of the Chancellor u/s 5(7) of the Act was invoked. The matters for investigation by the Chancellor relate to the actions of the Syndicate alone in which the petitioner had no scope to participate. In the circumstances of this case, we do not think that the petitioner had a right of being heard by extending the principle of natural justice. The proviso to Section 5(7) of the Act requires the Chancellor to call upon the authority concerned to show cause as to why its proceedings shall not be annulled. Thus the Act does not provide for giving opportunity to any other person to show cause or for being heard in the matter of annulment of any proceeding of the concerned authority. The plea as to violation of principles of natural justice by not requiring the petitioner to show cause or to be heard in the matter is not available to him in the facts of this case. As has been held in the decision reported in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent in the facts and circumstances of that case, the framework under which the enquiry is held and the constitution of the tribunal or a body of persons appointed for that purpose. We do not feel that in the facts and circumstances of this case, the extension of the principle of natural justice by giving show cause notice to the petitioner or giving him a chance of hearing in the matter by the Chancellor was necessary for a just decision by the Chancellor when a special procedure has been prescribed in the Statutes and the same has been complied with. There is no room for a contention that the order of the Chancellor was in violation of the principles of natural justice in this case.

11. We could next proceed to examine the contention of Dr. Dash that there were no materials before the Chancellor to annul the proceedings of the Syndicate by which the examiners were appointed for this particular examination. This Court in exercising jurisdiction under Article 226 of the Constitution shall not go into merits of the decision of the Chancellor unless it suffers from any manifest error of law or considers the decision of the Chancellor to be otherwise manifestly unjust. This Court can also interfere in the matter, if the Chancellor has assumed jurisdiction otherwise not existing in law. We have already held that the Chancellor is possessed of the authority to examine and annul any of the proceedings of the Syndicate which is not in conformity with the Act or the Statutes. We have gone through the text of the order passed by the Chancellor which takes into consideration all the relevant facts and we must express that the Chancellor has approached the matter judiciously keeping in view the problems which the educational institutions are now facing from time to time.

There is no error or misconstruction of law apparent on the record justifying interference with the conclusion reached by the Chancellor. According to the Chancellor the Syndicate did not apply its mind and there was absence of valid reasons which should have been reflected in the resolution passed by the Syndicate for substituting the name of Dr. N. Satpathy by Dr. B.D. Sarangi for the purpose of evaluation of the thesis of the petitioner. He is of the view that there was no proper enquiry as to the allegations against Dr. N. Satpathy being in the Board of Examiners and the Syndicate should have handled the problem with utmost care, caution and circumspection before reaching any conclusion. We have already referred to the selection of the examiners made by the Syndicate on 19-11-84 in which against the names of Dr. N. Satpathy and Dr. A. Patnaik there were tick marks in red and signatures of the Vice-Chancellor and Mr. B. Das were there in the list prepared and recommended by the Board of Studies. We have also noticed that the signature of Mr. B. Das along with the date has been scored through in the said list and his signature alone appears against the name of Dr. B. Sarangi who was in item No. 10 in the list. Admittedly Dr. B. Sarangi was not selected as an examiner on 19-11-84 and inclusion of his name in a subsequent meeting of the Syndicate does not explain as to how Mr. B. Das signed against his name on 19-11-84. It has also not been explained as to why the Vice-Chancellor has not put his signature against the name of Dr. B. Sarangi if the Syndicate decided to substitute him in place of Dr. N. Satpathy. There appears to be discrepancy as to the date of the meeting of the Syndicate when Dr. N. Satpathy was substituted by Dr. B. Sarangi by the Board of Examiners. In some communications by the Vice-Chancellor it was stated that the Syndicate in its meeting dt. 8-12-84 considered the representation of the petitioner that his thesis may be examined by any examiner except Dr. Satpathy when the Syndicate decided to appoint Dr. B. Sarangi in place of Dr. N. Satpathy in the panel of examiners. In the show cause submitted by the Vice-Chancellor to the notice issued u/s 5(7) of the Act it has been stated that on representation made by the petitioner the Vice-Chancellor Dr. S. Sahoo placed the matter before the Syndicate on 15-12-84 when the matter was discussed and it was decided that Dr. B. Sarangi whose name also appeared in the panel be appointed to examine the thesis of the petitioner in place of Dr. N. Satpathy. In matters relating to the conduct of examination every thing should be above board and clean. In the facts and circumstances of this case the Chancellor in our view has taken an appropriate decision by annulling the proceeding of the Syndicate and directing for reconstitution of the Board of Examiners and for conducting fresh viva voce test. We do not feel it necessary to go into other question as to the venue of the viva voce test, which under some circumstances was held in the residence of Dr. G.C. Misra, as according to the Chancellor it should have been better postponed to a latter date when Dr. Misra would have been in a better position to conduct the test. This direction of the Chancellor is consequential to the annulment of the proceedings of the Syndicate the effect of which is that the petitioner's thesis was evaluated by the Board of Examiners not properly constituted.

12. The last contention of Dr. Dash is that the Board of Examiners after submission of their evaluation report became functus officio and did not exist any more at the time of annulment of the proceeding appointing examiners. He, therefore, contends that the Chancellor could not have nullified the appointment of examiners after they had performed their job and submitted their report. The argument in our view lacks proper analysis. The Board of Examiners having discharged their duties and having accomplished the work for which they were appointed certainly became functus officio as there was no further authority in them to perform the work. It is not correct to deduce therefrom that whatever the examiners did after their appointment is sacrosanct and cannot be called in question. As a matter of fact none of the functions of the Board of Examiners was under examination by the Chancellor. The only question which came to be considered by the Chancellor is as to whether the change said to have been effected in the appointment of examiners by the Syndicate was in conformity with the Act or the Statutes. The appointment of Board of Examiners having been found to be not in conformity with law in the Subject all that was done by the Board of Examiners became automatically non est in the eye of law as a necessary consequence. The accomplishment of the work by the Board of Examiners by the date of the order of the Chancellor is not at all relevant for statutory exercise of the jurisdiction of the Chancellor.

13. On the aforesaid analysis, we see no mark (merit?) in this writ application which is accordingly dismissed. But in the circumstances, there shall be no order as to costs.

B.K. Behera, J.

14. I agree. The Chancellor's action impugned in this writ application is justified and is sustainable in law. It is in accordance with and not in violation of the provisions contained in Section 5(7) of the Act.