

**(1965) 02 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 536 of 1964**

Prakash Yadeo Rao Govardhan

APPELLANT

Vs

The Principal, Sheo Bhagwan Rameshwar Prasad Arts College  
and Others

RESPONDENT

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**Date of Decision : 26-02-1965**

**Acts Referred:**

Sugar University Act, 1946 — Section 14(4)  
Sugar University Ordinance — Ordinance 33

**Citation :** AIR 1965 MP 217 : (1967) ILR (MP) 517 : (1965) JLJ 405 : (1965) 10  
MPLJ 387 : (1965) MPLJ 387

**Hon'ble Judges :** P.V. Dixit, C.J.; K.L. Pandey, J

**Bench :** Division Bench

**Advocate :** Y.S. Dharmadhikari and M.V. Tamaskar, for the Appellant; R.N. Rai,  
(For No. 1), R.L. Seth, (For No. 2) and A.P. Sen, (For No. 3), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dixit, C.J.

The petitioner in this case is pursuing B. A, Three Year Degree Course as a student of Sheo Bhagwan Rameshwar Prasad Arts College, Bilaspur. While the College was affiliated to the Saugar University, the petitioner appeared for the Preliminary Examination held by that University in March 1963. He failed thereat. He also failed at the Supplementary examination held by the University in October 1963. On 2nd July 1963 the Vice-Chancellor of the Saugar University made an order purporting to act u/s 14(4) of the University of Saugar Act, 1946. permitting provisional admission to the next higher class of students who had failed in one or two subjects or who had obtained a compartment, or who had failed in the aggregate, subject to the condition that they would be reverted to the lower class "if they failed to clear the compartment or pass the Supplementary Examination" Again, on 8th February 1964 the Vice-Chancellor made an order with regard to the continuance of fresh students in higher classes

in the following terms:

"Students who were provisionally admitted to the next higher class are allowed to continue in those classes and appear at the next examination subject to the condition that they will be reverted to the lower class in case they fail to pass the examination."

On the basis of these two orders of the Vice-Chancellor the petitioner was admitted to the second year class of the Three Year Degree Course. In March 1964 the petitioner appeared at the Preliminary Examination held by the Saugar University and also appeared at the second year examination held by the College. He passed this Preliminary Examination. On the reopening of the College in July 1964 after the Summer Vacation the petitioner, who had passed the Preliminary Examination in 1964 and who also claimed to have passed the second year examination held by the College during that year, made a demand on the Principal of the College which then became affiliated to the newly founded Ravishankar Shukla University, Raipur, that he should be admitted to the third year class of the Three Year Degree Course. The Principal refused to admit the petitioner to the third year class. According to the applicant, the Principal directed him to seek clarification from the Saugar University authorities. It appears that the applicant then approached the Vice-Chancellor of the Saugar University who advised him to move the Vice-Chancellor of the Raipur University as the College of which he was a student was no longer affiliated to the Saugar University. The petitioner says that on 30th September 1964 he submitted an application to the Vice-Chancellor of the Raipur University who promised to look into the matter, but that till now he has not received any reply from the Raipur University authorities with regard to his admission in the third year class. The applicant now seeks a direction under Article 226 of the Constitution to the opponents for his admission to the third year class of the Three Year Degree Course.

Having heard learned counsel for the parties we have reached the conclusion that this application must be dismissed. Under paragraph 12 of Ordinance No. 33 of the Saugar University relating to B.A. Three Year Degree Course no candidate can be admitted to the B.A. Part II course unless he has passed B.A. Part 1 or the Preliminary Examination. It is, therefore, clear that the petitioner could not be admitted to the second year class of the Three Year Degree Course in 1963-64 when he had failed at the Preliminary Examination held in March 1963 as well as at the Supplementary Examination held in October 1963. It is true that on 2nd July 1963 the Vice-Chancellor of the Saugar University, purporting to act u/s 14(4) of the University of Saugar Act, 1946, issued an order permitting the admission to the second year class of even those students who had failed to pass the Preliminary Examination, and the applicant was admitted to the second year class in the College even when he had failed at the Preliminary Examination held in March 1963. He also failed at the Supplementary Examination held in October 1963, the results of which were declared in January 1964. But still under the

authority of the order issued by the Vice-Chancellor of the University of Saugar on 8th February 1964 he continued to remain in the second year class.

The admission of the petitioner to the second year class when he had not passed the Preliminary Examination was contrary to the express provision contained in paragraph 12 of Ordinance No. 33, and the orders passed by the Vice-Chancellor, Saugar University, on 2nd July 1963 and 8th February 1964 were also in violation of paragraph 12 of the Ordinance. In the return filed by the Vice-Chancellor no attempt whatsoever has been made to show the authority under which these two orders were issued by the Vice-Chancellor. It has been repeatedly stated in the return that the aforesaid two orders speak for themselves. The first order dated 2nd July 1963 mentioned in the very beginning that it had been made by the Vice-Chancellor in exercise of the powers vested in him by Section 14(4) of the University of Saugar Act. The second one made no such mention. But, presumably, that order was also made by the Vice Chancellor purporting to exercise the power given to him by Section 14 4. Now, Section 14(4) is as follows:

"The Vice-Chancellor may, in any emergency which in his opinion requires that immediate action should be taken, take such action as he deems necessary, and shall at the earliest opportunity report his action to the authority which in the ordinary course would have dealt with the matter."

It will be seen that under this provision the Vice-Chancellor can act only in a matter which any authority of the University is competent to deal with and if, in the opinion of the Vice-Chancellor, there is an emergency which requires immediate action in the matter without reference to the University Authority concerned, the Vice-Chancellor is no doubt the sole judge of the existence of any emergency calling for immediate action and this Court cannot inquire into the existence of emergency or the propriety of the action taken by the Vice-Chancellor without reference to the University authority. But this Court can certainly examine the legality of the action taken in the purported exercise of the power u/s 14(4) and see whether the Vice-Chancellor has taken action in a matter which any of the University authorities was competent to deal with. The Vice-Chancellor cannot under the cloak of an emergency usurp to himself the powers which the University authorities have not under the Act, or the University Statutes or Ordinances. When paragraph 12 of Ordinance No. 33 strictly laid down that no candidate could be admitted to the second year class of the Three Year Degree Course unless he had passed the Preliminary Examination, the Vice-Chancellor could not, by making any order u/s 14(4), permit the admission of any failed student into the second year class. In our opinion, the orders passed by the Vice-Chancellor on 2nd July 1963 and 8th February 1964 were altogether ultra vires the Act and Ordinance No. 33

If, then, the petitioner was given benefit of the orders of the Vice-Chancellor, Saugar University, and admitted into the second year class and if those orders were wholly illegal, then it follows that the petitioner's admission into the second

year class itself was illegal; and if the admission was illegal, the petitioner's appearance at the second year examination held by the College was also illegal. In this view of the matter, even if the petitioner passed in 1964 the second year College examination and also passed in that year the Preliminary Examination, that did not entitle him to admission into the third year class of the Three Year Degree Course

The respondent No. 1, the Principal of Sheo Bhagwan Rameshwar Prasad Acts College, Bilaspur, was therefore right in refund % to admit the applicant to the third year close in July 1964 when he passed the Preliminary Examination only in March 1964, and when his admission into the second year class without having passed the Preliminary Examination was illegal. The applicant was rightly admitted to the second year class; and under the Ordinance, which is in force in the Raipur University, relating to Three Year Degree Course he has to pass the University examination at the end of the second year course Without passing this examination, he cannot clearly he admitted into the third year class of the Three Year Degree Course.

The result is that this petition fails and is dismissed. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of the security deposit shall be refunded to the petitioner.