
(1970) 09 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 58 of 1967

Pretish Chandra Dutta

APPELLANT

Vs

University of Saugar and another

RESPONDENT

Date of Decision : 24-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) ILR (MP) 1008 : (1973) JLJ 54 : (1973) 18 MPLJ 740

Hon'ble Judges : Bishambhar Dayal, C.J;T.P. Naik, J;G.P. Singh, J

Bench : Full Bench

Advocate : S.K. Pachori, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Allowed

Judgement

Bishambhar Dayal, C.J.

This is a petition by a student of the Saugar University. The petitioner joined the Narmada Mahavidyalaya, Hoshangabad, for pursuing studies for the B.A. Final Examination of the Saugar University. The examinations were to be held in the months of March and April, 1965. But in the month of December 1964 there was an agitation of students in which the petitioner took prominent part, and by order dated 19 February 1965 the Principal of the College expelled him from the College for three years. The candidate approached the Vice-Chancellor, who seems to have talked to the Principal on Phone. The directions which the Vice-Chancellor gave to the Principal, who at that time was incharge of the examinations, are set out in paragraph 5 of the return filed by respondent No. 1, the University of Saugar, It has been stated as follows:

Seen the papers. The boy has been expelled for three years but no date from which the expulsion will take effect has not (sic) been stated. The order was passed at the fag end of the session, after he had qualified for the examination and should normally take effect from the next session. The Principal may be advised to impose a fine of Rs. 200.00 and allow him to take the examination

and the order of expulsion may take effect from the next year.

It is said that on account of this direction by the Vice-Chancellor the Principal of the College realized from him a fine of Rs. 200, as also the arrears of tuition fee etc., which was due and the petitioner was given a roll number and was permitted to appear at the examination. After the examinations were over, the results were declared and were published on the 14 July 1965, in which the petitioner was declared successful. But since the Principal had expelled the petitioner, he could not be admitted to any College for further studies. He, therefore, filed a writ petition in this Court challenging the order of the Principal expelling him for three years. This writ petition was dismissed by this Court on 13 August 1965, holding that the order of the Principal was within his jurisdiction and the applicant had sufficient opportunity to explain his position. After this order had been passed, the Principal reported to the University that the order of expulsion passed by the Principal had been upheld by the High Court and it was improper that the result of the student, who appeared in the examination while this expulsion order was in force should stand. The matter was considered by the Academic Council, and on the 2 February 1966 the Academic Council passed a resolution cancelling the examination of this student. Thereafter, information was given to the applicant about this cancellation on the 27 September 1966 by the Registrar. It is against this order cancelling his result that the present petition has been filed. In the prayer it is said that the order Annexure G be quashed. This Annexure G is not the order, but is merely a communication by the Assistant Registrar of the decision of the Academic Council. It has been made clear in paragraph 12 of the return filed by the University that the cancellation had been ordered by the Academic Council on the 2 February 1966. The petitioner probably did not know of this date, and he has therefore asked for cancellation of the mere intimation. A direction is also sought in the petition that the respondents be ordered to treat the petitioner as having passed the Final B.A. Examination of the University in 1965.

The petition has been contested both by the Principal and by the University. The case put forward by the respondents is that the applicant could not have appeared at the examination as he was not a student of any affiliated College of the University when he appeared at such examination, he having been expelled from the College on the 19 February 1965. It is further pleaded that the applicant not having submitted (1) the required certificate from the Principal of having attended the College for the required number of meetings, (2) a certificate of character by the Principal, and (3) the necessary form for appearing at the examination, he had no right to appear at the examination. It was also contended that the Vice-Chancellor had no power to direct that the applicant be permitted to appear at the examination and therefore the appearance of the petitioner at the examination was wholly illegal and cannot be taken into account; and that in any case the Academic Council" having cancelled the result, which was within its power, the petitioner had no right either to get the cancellation quashed or to get a declaration that he was a candidate who had

passed the B.A. Examination in 1965.

The main contention raised on behalf of the applicant was that the Vice-Chancellor having exercised his emergency powers u/s 14 of the University of Saugar Act, he or the Principal had no power to withdraw that permission and therefore it must be held that the applicant rightly appeared at the examination irrespective of other defects. He has further argued that the Academic Council had no jurisdiction to cancel the examination result which was once declared by the University.

Reliance was placed by the applicant on section 14 (4) of the University of Saugar Act, which 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

A plain reading of the sub-section indicates that the Vice-Chancellor has been given emergency powers to deal with matters which any other authority of the University can deal with. The power given to the Vice-Chancellor is therefore not unlimited, and if no authority of the University had the power to admit a student to an examination without complying with the necessary conditions required therefor, the Vice-Chancellor could not do the same. In *Prakash Yadeo Rao Govardhan Vs. The Principal, Sheo Bhagwan Rameshwar Prasad Arts College and Others*, a Division Bench of this Court had occasion to consider section 14 (4) of this Act. It was observed:

The Vice-Chancellor cannot under the cloak of an emergency usurp to himself the powers which the University authorities have got under the Act, or the University Statutes or Ordinances.

Under Ordinance 33, paragraph 4, only three classes of persons were permitted to appear at the B.A. Examination The first of them was

A student of a college or of the Teaching Departments of the University.

The other two classes do not apply to the applicant. Admittedly, he had been expelled from the College on the 19 February 1965 and therefore was not a student of an affiliated College at the time of the examination. Under paragraph 5 (b) of the same Ordinance, he had to apply to the Registrar of the University through the Principal. This application of the petitioner was never submitted to the University, as the Principal did not forward the same after his expulsion. Under sub-paragraph (c) he had to produce certificates of good conduct, of fitness, and of having prosecuted regular courses of study. These certificates also were not submitted to the University. The applicant was not entitled to appear at the examination on account of these defects. No provision has been brought to our notice under which any authority of the University could have condoned these defects and permitted the petitioner to appear at the examination. That

being so, the Vice-Chancellor could not do the same under his emergency powers u/s 14 mentioned above. The permission granted to the applicant, therefore, for appearing at the examination was wholly without jurisdiction and was a nullity. No argument, therefore, can be built by the applicant in his favour on the basis of such a permission.

It was next contended by the applicant that he having passed at the examination and his result having been declared, the Academic Council could not cancel the same. This argument cannot be sustained. In the first place, the appearance at the examination by the petitioner was under an invalid order of the Vice-Chancellor and therefore has no effect in the eye of law. In the second place, u/s 25 (2) of the Act it is provided:

Subject to the provisions of this Act, the Statutes and Ordinances, the Academic Council shall have the control and general regulation and be responsible for the maintenance of standards of teaching and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed on it by or under this Act.

The Academic Council, therefore, has the control and general regulation on the teaching and examinations of the University. Section 38 provides for details how that power is to be exercised in the matter of conduct of examinations, but it does not exhaust the generality of the power u/s 25. It was contended on behalf of the petitioner that the Academic Council is concerned only with the standards of teaching and examination and not with the administrative control over the examinations. It is not possible to agree with this contention. The earlier phrase "shall have the control and general regulation" directly governs teaching and examination, and the parenthetical clause "and be responsible for the maintenance of standards of" is an extra responsibility placed upon the Academic Council with regard to the keeping up of standards of teaching and examination. To say that the Academic Council shall have control and general regulation over the maintenance of standards of teaching would be incongruous. Moreover standards cannot be maintained without control over teaching etc. It was to my mind within the power of the Academic Council to decide that the result of such a candidate, who had been expelled from the College in which he was studying and who had illegally appeared at the examination, which should never have been declared by the University, should be cancelled. No other provision in the Act, Ordinances or Statutes has been brought to our notice to the effect that any other authority has such a power.

5-A. Learned counsel appearing for the petitioner referred to section 24 (1) (p), which gives all residuary power to the Executive Council, and it was contended that this would come under a residuary power and could be exercised only by the Executive Council. It is difficult to accept this contention. It is unreasonable to hold that the Legislature left the matter of control over teaching and examination, the very purpose for which the University was constituted, to be governed by a residuary clause when specific powers are given for all kinds of

unimportant functions, particularly when sections 25 and 38 deal with the topic. There being express provision in that behalf, the general residuary power of the Executive Council cannot come into play. The cancellation of the result, therefore, by the Academic Council cannot be said to be without jurisdiction and therefore a nullity.

Learned counsel appearing for the applicant relied upon *Purushottam Das v. Board of Secondary Education* 1961 MPLJ 1393. That was a case where a student had not completed the necessary percentage of attendance. It was within the power of the Board to condone the defect, and it was held that the Board having once permitted the student to appear at the examination must be deemed to have condoned the defect. That case is therefore distinguishable. In the present case, the requirements which the applicant failed to fulfil could not be condoned by the University.

The order of the Principal under paragraph 8 of Ordinance 13 expelling the applicant having been passed within his jurisdiction and having been upheld by this Court in the previous writ petition, the applicant was not a student of any College of the University and could not appear at the examination. He cannot therefore, be held to have passed the examination. A writ cannot be issued to validate a wrong and compel the University to confer a degree to which the applicant is not entitled.

I would therefore dismiss the petition but direct parties to bear their own costs. The security deposit shall be refunded to the petitioner.

OPINION

Singh J.

The petitioner by this petition under Article 226 of the Constitution calls into question a resolution of the Academic Council of the University of Saugar quashing his examination result of B.A. (Final) Examination held in the months of March and April, 1965. The impugned resolution which was passed on 2nd February 1966 (as stated in the return) and was communicated to the petitioner by the Assistant Registrar on 27th September 1966, reads as follows:

Resolved that since the Hon"ble the High Court has upheld the order of the Principal rusticating Pretish Chandra Dutta, who appeared at the B.A. examination under Roll No. 12293, for a period of two years, his examination result be quashed.

The petitioner was a student of the Narmada Mahavidyalaya of Hoshangabad which is a college affiliated to the University. He was expelled from the college for a period of three years by an order of the Principal passed on 19th February 1966 for participating in a strike. The petitioner's application for admission to the final examination, which was submitted earlier, was also not forwarded by the Principal to the University. The petitioner complained to the Vice-Chancellor as also to the Collector and Chairman of the Governing Body of the college. The

petitioner's representation to the Governing Body was forwarded to the Vice-Chancellor who endorsed to the Rector a note to the effect that "the Principal may be advised to impose a fine of Rs. 200 and allow him (the petitioner) to take the examination and the order of the expulsion may take effect from next year". It seems that the Vice-Chancellor had also a telephonic talk with the Principal. The Principal thereafter on 22nd March 1965 recovered from the petitioner the fine of Rs. 200 and all arrears of tuition fees and other fines. The petitioner was then permitted to appear in the University examination. The results of the examination were published by the University on 14th July 1965 and the petitioner was declared to have passed the B.A. (Final) Examination. The petitioner was finding it difficult to get admission in any college for further studies because of the expulsion order and he, therefore, filed a writ petition in the High Court being Misc. Petition No. 323 of 1965 challenging the said order. That writ petition was summarily rejected by the High Court on 13th August 1965 on the view that the expulsion was based on a charge of misconduct in organizing a strike and the charge was established in an enquiry held against the petitioner in which he was given ample opportunity of defending himself. When the Principal came to know of the aforesaid order of the High Court, he wrote to the University Authorities for taking action to cancel the result of the petitioner. Thereupon, the Academic Council passed the impugned resolution quashing the petitioner's result.

The first contention of the learned counsel for the petitioner is that the Academic Council was not competent to quash the result of the examination and the resolution of the Academic Council by itself is ineffective and void to bring about the cancellation of the petitioner's result. The topic of "Examination" is dealt with in section 38 of the University of Saugar Act, 1946, which reads as under:

38. (1) Subject to the provisions of the Statutes, all arrangements for the conduct of examinations shall be made by the Academic Council and all examiners shall be appointed by the Executive Council on the recommendation of a Committee of not more than nine members constituted by the Academic Council.

(2) If during the course of an examination any examiner becomes for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

(3) The Academic Council shall appoint examination committees consisting of members of its own body or other persons, or both, as it thinks fit, to moderate examination questions, to prepare the results of examinations and to report such results to the Executive Council for publication.

(4) The Chairman of any such Committee shall be appointed by the Academic Council from among its own body.

The procedure provided in section 38 (3) for declaration of results of University examinations is that the Academic Council shall appoint committees which may

consist of members of its own body or other persons, or both, and the committees so appointed are to prepare the results of Examinations and to report the same to the Executive Council for publication. Here it is convenient to read section 24 (1) (a) which lays down that the Executive Council "shall publish the result of the University examinations". The Executive Council acts through resolutions passed in its meetings and, therefore, it can be necessarily inferred that the results received by the Executive Council from the committees appointed u/s 38 (3) would be placed in a meeting of the Executive Council which will pass a resolution directing the publication of the results and it is only after such a resolution is passed that the results would be published. It must be noticed that though it is the Academic Council that appoints a committee for preparation of results, the committee is a different body and it is to that body that the power of preparation of results is committed by the Act. We do not know whether the committee constituted by the Academic Council consists only of persons who are members of its own body or also of other persons. Be that as it may, the committee so constituted is distinct from the Academic Council. The declaration of examination results thus envisages the following steps : (1) Preparation of results by a committee appointed u/s 38 (3) by the Academic Council; (2) Resolution of the Executive Council directing the publication of results and (3) Actual publication of the results, as may be directed by the Executive Council. Until all these three steps have been taken, it cannot be said that an examinee has passed or failed at an examination. Now, if the results of an University examination are declared after taking the aforesaid steps (which must be presumed to have been taken in every case unless contrary is established), it may be reasonable to infer that the same procedure must be followed for cancelling the results. If it is proposed to cancel a result already published, the steps necessary to be taken will be that the committee appointed u/s 38 (3) will report to the Executive Council that result of a particular candidate as published requires modification; the Executive Council will then resolve to publish the modification reported by the committee and the same being published as directed by the Executive Council, the previously published result shall stand modified. In the instant case, none of these steps were followed. The learned counsel appearing for the respondent University, however, seeks to support the resolution of the Academic Council quashing the result u/s 25 (2) of the Act. This section provides that the "Academic Council shall have the control and general regulation, and be responsible for the maintenance of the standards of teaching and examination within the University and shall exercise such other powers and perform such other duties as may be conferred or imposed on it by or under this Act." The argument of the learned counsel is that this provision confers control and general regulation of examination on the Academic Council and within this power of control and regulation the Academic Council has power to cancel the result of any University examination. It is difficult to agree to this argument. The "control and general regulation" mentioned in this provision relate to "standards of teaching and examination within the University". The provision deals with "standards of examination" and not with "examination" as such. By this

provision, the Academic Council is made responsible for the maintenance of "standards of teaching and examination" and, therefore, it is also given the power of control and general regulation of those matters, because it would not have been reasonable to make it responsible without conferral upon it of power of control and regulation. It is not possible to read the section as if the power of control and general regulation conferred by it is in respect of "teaching and examination", whereas the responsibility for the maintenance is in respect of "standards of teaching and examination". The responsibility for the maintenance, and control and general regulation go together and relate to the same matter viz. "Standards of teaching and examination". There is an additional reason for this construction. The topic of "examinations" as distinct from the standard of examinations, is the subject-matter of section 38. That section deals with the arrangements for the conduct of examinations, the appointment of examiners, moderation of examination questions and preparation of results. When section 38 specifically deals with these matters, it is reasonable to infer that they are out of the provision contained in section 25 (2). Even if it be assumed that the power of cancellation of result is not included within the power of preparation and publications of result dealt with in section 38 (3), that power cannot be implied in section 25 (2). Such a power will then fall under the residuary powers conferred on the Executive Council by section 24 (1) (p) which provides that the Executive Council "shall subject to the powers conferred by this Act on authorities of the University, regulate, determine and administer all matters concerning the University and, to this end shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes". On a consideration of the relevant provisions of the Act, it has to be held that the Academic Council has no power to cancel the result of an examination already declared and the resolution impugned in this case is ineffective.

The second contention of the learned counsel for the petitioner is that the reason given in the resolution of the Academic Council for cancellation of result is not valid. The only ground for cancellation of petitioner's result mentioned in the resolution is that the High Court has upheld the order of the Principal rusticating the petitioner for a period of two years. The apparent error in this order is that the Principal did not pass any order of rustication and no such order was upheld by the High Court. The principal only passed an order of expulsion and the High Court only upheld that order. There is a material difference between expulsion and rustication. The operation of rustication is absolute, whereas the operation of expulsion can be suspended with the consent of the Principal passing the order. u/s 8(1) of Ordinance No. 13, the Principal of a college can (a) expel, (b) rusticate and (c) disqualify a student from being a candidate at the next ensuing University examination. These are different types of punishments and have different results. It is explained in sub-section (2) of section 8 of this Ordinance that no student who has been expelled shall be admitted into another college without the permission of the Principal of the college from which the student was expelled, and no student who has been rusticated shall be admitted into another

college within the period of his rustication. If a student has only been expelled, he can be admitted into another college with the permission of the Principal of the college from which he was expelled. It necessarily implies that the Principal who has expelled the student can also subsequently permit him to be admitted in his own college from which he was expelled. Thus, the effect of expulsion can be entirely taken away by permission of the Principal for admission of the student. In the instant case, it is not disputed that after the Vice-Chancellor had a telephonic talk with the Principal, the Principal did recover from the petitioner a fine of Rs. 200/- (which was suggested as punishment by the Vice-Chancellor in lieu of expulsion) and also recovered from him all arrears of fees due till the end of the session. By this act, the Principal readmitted the student in the college and the expulsion order ceased to be effective at any rate, for that session. The contention of the Principal that he was ordered to do so by the Vice-Chancellor and therefore, all this was ineffective, is not acceptable. Really speaking there is no order of the Vice-Chancellor modifying the order of the Principal. The note of the Vice-Chancellor, which has already been referred, is a sort of advice to the Principal that he should impose a fine of Rs. 200/- and permit the student to take his examination and the expulsion order may be made effective from the commencement of the next session. To the same effect must have been his telephonic talk. The Principal of the college, as admitted in the return, is a practising Advocate and it cannot be readily held that he acted under pressure of the Vice Chancellor. It is difficult to believe that the Principal in realizing the fine, tuition fees and other dues till the end of the session was merely implementing an illegal order of the Vice-Chancellor. May be that he was persuaded strongly by the Vice-Chancellor, but it cannot be doubted that the acts of the Principal in accepting the fine and the dues from the petitioner were his own free acts and by these acts the expulsion order was made ineffective atleast for that session. The question before the High Court in the previous writ petition (M.P. No. 323 of 1965) was not this whether the expul-order was later on suspended or modified by the Principal. The only question decided in that petition was that the expulsion order as initially passed was regular and legal. The upholding of the expulsion order by the High Court had therefore, no bearing on the question of the validity of the result of the examination. It is nowhere provided that if a student is expelled, he cannot sit in the examination. All that one can guess from the resolution of the Academic Council is that that authority wrongly thought that the order of the principal was one of rustication after which the petitioner ceased to be a student and could not sit in the examination and therefore, his examination result was liable to be quashed. But as has been stated above, the petitioner was only expelled and not rusticated and could be admitted either into the same college or in any other college with the consent of the Principal. In the present case, the Principal by recovering fine in lieu of expulsion and all the dues did consent to readmit the student and the ban of the expulsion order was atleast lifted for that session and the petitioner continued to be a student. The resolution of the Academic Council thus proceeded upon grounds which are factually wrong and also irrelevant.

The learned counsel for the respondents also attempted to support the resolution of the Academic Council on grounds not mentioned therein. It was argued that the application of the petitioner for admission to the examination was withheld by the Principal and was not forwarded to the Registrar, that no certificate of good conduct was issued by the Principal, that the petitioner had not attended the required number of classes and that because of all this he was not eligible to appear in the examination as provided in Ordinance No. 33. These are not the grounds on which the Academic Council cancelled the result, and it is not possible in these proceedings to substitute new grounds in support of the resolution of the Academic Council. If the examination result is cancelled on these grounds by a proper authority, questions about their factual existence and legal validity will then require consideration. It may then have to be seen whether, the aforesaid requirements of Ordinance No. 33 are directory or mandatory and were not substantially fulfilled by the Principal's conduct of readmitting the student and permitting him to appear in the examination. At present it is not necessary to go into these questions.

The petition is allowed. The resolution of the Academic Council cancelling the result is hereby quashed. There will be no order as to costs of the petition. The security deposit shall be refunded to the petitioner.

ORDER OF REFERENCE

By the Court--Per our separate opinions we have differed on the points:

- (i) Whether the Academic Council was competent to quash the petitioner's examination result; and
- (ii) Whether the grounds on which the result was quashed were valid.
- (iii) Even if the cancellation is wrong, can a writ be issued as prayed?

The proceedings shall now be placed before Hon''ble the Chief Justice for nominating one or more of the other Judges to deal with the matter.

OPINION

Naik J.

This petition has come before me on a difference of opinion between Hon''ble the Chief Justice and Hon''ble Shri Justice G.P. Singh. The points on which they have differed and which have been referred to me for opinion are as follows:

- (i) Whether the Academic Council was competent to quash the petitioner's examination result; and
- (ii) Whether the grounds on which the result was quashed were valid,
- (iii) Even if the cancellation is wrong, can a writ be issued as prayed ?

The facts necessary for our purpose may shortly be stated as follows:

The petitioner was prosecuting his studies in the Narmada Mahavidyalaya, Hoshangabad, for the degree of Bachelor of Arts of the Saugar University. He was a student of the final year and was due to appear in the examination scheduled to be held on 22nd March 1965.

In December 1964, there was some agitation in the College in which the petitioner was alleged to have taken a prominent part. In consequence, the Principal of the College, respondent No. 2, ordered a departmental enquiry against him and by his order dated 19-2-1965 expelled him from the College for a period of three years under clause 8 of Ordinance No. 13 of the Saugar University. The aforesaid order of expulsion was served on the petitioner on 3-3-1965.

The petitioner represented to the Chairman of the Governing Body of the College for a reconsideration of the expulsion order passed against him. The representation was forwarded by the Chairman to the Vice-Chancellor of the Saugar University on 6-3-1965. The Vice-Chancellor endorsed to the Rector the following note on the representation.

Seen the papers. The boy has been expelled for three years but no date from which the expulsion will take effect has not (sic) been stated. The order was passed at the fag end of the session, after he had qualified for the examination and should normally take effect from the next session. The principal may be advised to impose a fine of Rs. 200.00 and allow him to take the examination and the order of expulsion may take effect from the next year.

Thereafter, the Principal, respondent No. 2 recovered from the petitioner Rs. 200/- as fine. He also recovered from him the arrears of his tuition fees and other dues.

The petitioner was given an admission ticket with 12293 as his Roll Number. He was thus permitted to appear in the "B.A. Examination, 1965".

The petitioner was declared successful in the said examination and his result was also duly published on 14-7-1965 by the Executive Council.

As the expulsion order passed by the Principal, respondent No. 2, on 19-2-1965 was considered a hindrance by the petitioner, he, on or about 29-7-1965, moved the High Court by a Miscellaneous Petition No. 323 of 1965, for quashing it. The High Court, however, rejected the petition by its order dated 13-8-1965, holding, inter alia, that as the charge of misconduct in organizing a strike in the College had been established against the petitioner in an enquiry held by a Professor and an Assistant Professor of the College and as at the enquiry he had ample opportunity of defending himself against the charge, there was no ground for interference with the action of the Principal.

On 2-9-1965, the Principal, respondent No. 2, wrote to the Vice-, Chancellor that as his order expelling the petitioner had been upheld by the High Court in Miscellaneous Petition No. 323 of 1965, the Vice-Chancellor may be pleased to

cancel the result of the petitioner or place the matter before the Academic Council for consideration.

On 28-10-1965, the Assistant Registrar of the University of Saugar gave to the petitioner a notice to show cause why the result of his B.A. Examination be not cancelled. The petitioner replied to the show-cause notice on 17-12-1965.

On 27-9-1966, the petitioner was communicated the following resolution of the Academic Council (Annexure G);

Resolved that since the Hon"ble High Court has upheld the order of the Principal rusticating Pretish Chandra Dutta, who appeared at the B.A. examination under Roll No. 12293, for a period of two years, his examination result be quashed.

The petitioner has, therefore, come up to the High Court for quashing the aforesaid resolution of the Academic Council.

The first question that has been referred to me for opinion relates to the competence of the Academic Council to quash the examination result of the petitioner after it had been published by the Executive Council.

The question shall have to be answered with reference to the University of Saugar Act, 1946, its Statutes and Ordinances. The Act provides the following to be the authorities of the University:

- (i) The Court,
- (ii) The Executive Council.
- (iii) The Academic Council,
- (iv) The Committee of Reference,
- (v) The Faculties, and
- (vi) Such other authorities as may be declared by the Statutes to be authorities of the University.

(See section 19 of the Act.)

Of these, the Court shall be the supreme governing body of the University and shall have power to revise the acts of the Executive and Academic Councils and shall exercise all powers and perform all duties conferred or imposed on it by or under the Act, and shall exercise all the powers of the University not otherwise provided for by or under the Act: (See section 22 of the Act) ; while the Executive Council shall be the executive body of the University : (see section 23 of the Act). Under clause (n) of sub-section (1) of section 24 of the Act, the Executive Council shall publish the result of the University examinations. The Academic Council shall be the academic body of the University: and subject to the provisions of the Act, the Statutes and Ordinances, it shall have the control and general regulation, and be responsible for the maintenance of standards of

teaching and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed on it by or under the Act. It has also been given the right to advise the Executive Council on all academic matters: (see section 25 of the Act). Section 38 then deals with examinations. Sub-section (1) of the section provides that subject to the provisions of the Statutes, all arrangements for the conduct of examination shall be made by the Academic Council and all examiners shall be appointed by the Executive Council on the recommendation of a Committee of not more than nine members constituted by the Academic Council. Sub sections (3) and (4) then say

(3) The Academic Council shall appoint examination committees consisting of members of its own body or other persons, or both, as it thinks fit, to moderate examination questions, to prepare the results of Examinations and to report such results to the Executive Council for publication.

(4) The Chairman of any such Committee shall be appointed by the Academic Council from among its own body.

Section 41 of the Act deals with the withdrawal of degrees. It says:

On the recommendation of the Executive Council, made with the concurrence of not less than two thirds of the members present at the meeting, the Court may, by a resolution passed with the concurrence of not less than two-thirds of the members present at a meeting comprising not less than one-half of the members of the Court, withdraw any degree or diploma conferred by the University, other than an honorary degree.

Of the Ordinances, Ordinance No. 16 deals with the dates of the University Examination and its results; and Ordinance No. 19 deals with the general rules for examinations. Clause 15 of this latter Ordinance provides:

Any candidate who, in the opinion of the Superintendent is guilty of any misconduct in an examination room other than misconduct within the meaning of the preceding articles of the Ordinance, may be expelled by the Superintendent for that paper and shall be reported to the Executive Council who, if satisfied that the facts alleged are true, may disqualify him from passing the Examination for that year.

Statute 9 defines the powers of the Academic Council but contains no provision regarding examinations conducted by the University.

Now, u/s 25 (2) of the Act, the Academic Council, which is the academic body of the University, shall have, subject to the provisions of the Act, the Statutes and Ordinances, the control and general regulation, and be responsible for the maintenance of standards of teaching and examination within the University, and shall exercise other powers and perform such other duties as may be conferred or imposed on it by or under the Act. The section is rather clumsily worded, because the construction of the clause does not clearly indicate whether the "control and general regulation" with which the Academic Council has been

entrusted is of "teaching and examination simpliciter" or of "standards of teaching and examination". But, in my opinion, whether it governs the one or the other, the power of "control and general regulation" provided therein does not extend to the cancellation of the result of an examination once published and declared by the Executive Council.

It would be observed that the Act makes no specific provision for conferral of degrees. It is, therefore, reasonable to presume that the conferral is automatic on a candidate being successful in an examination.

Now, in regard to the withdrawal of degrees, specific provision is made in section 41 of the Act which has been quoted in full in paragraph 8 above. Consequently, if, on a candidate being successful in an examination, the conferral of degree on him is a matter of course, the provision would also govern cases where the result of an examination of a candidate is being cancelled.

Alternatively, section 38 of the Act deals with examinations. Under clause (1) of its provisions, all arrangements for the conduct of an examination are to be made by the Academic Council. Clause (2) then provides that for the moderation of questions, for preparing the result of the examination and for reporting such result of the examination it shall act through an "examination committee" consisting of members of its own body, or other persons, or both, as it thinks fit. The point to note is that in respect of the aforesaid specified matters, the Academic Council has to act only through the "examination committee" as constituted under clause (3) of section 38; and even here, the function of the Committee is only to report the result of the examination to the Executive Council which alone has been empowered to publish the result of the examination. It, therefore, appears reasonable to hold that neither in the preparation of the result nor in the publication of the result the Academic Council has any hand ; and that consequently, it could not have the power to cancel the result of the examination.

It may be that on the aforesaid analysis, there being no specific provision for cancellation of the result of an examination, the matter may fall within the residuary powers of the Executive Council which has, under clause (p) of section 24 (1) of the Act, been empowered, subject to the powers conferred by the Act on other authorities of the University, to regulate, determine and administer all matters concerning the University, and, to this end, to exercise all other powers of the University not otherwise provided for by this Act or the Statutes.

The aforesaid conclusion also gets some support from the facts that, in the first place, it is the Executive Council which has been empowered to publish the results of the University examinations, and secondly, the power to disqualify a candidate from passing an examination on account of any misconduct has been conferred on the Executive Council under clauses 14 and 15 of Ordinance No. 19.

I need not pursue the matter further because I am not called upon to determine which authority, whether the Executive Council u/s 24 of the Act or whether the

Court u/s 41 of the Act, shall have the power to cancel the result of an examination which has already been published by the Executive Council, because all that I have to decide in this petition is whether the Academic Council could exercise such a power, and I am clearly of opinion that it could not.

The aforesaid discussion also takes no note of the cases where the result of a candidate is vitiated by fraud in examination, tabulation or publication of his result, because in such cases different considerations shall apply.

The second question that has been referred to me is whether the grounds on which the result was quashed were valid.

The resolution of the Academic Council, which I have reproduced in paragraph 6 above, cancelling the result of the petitioner's B.A. examination is based on the fact that the High Court had upheld the order of the Principal rusticing Pretish Chandra Dutt.

Before I discuss the validity of the order, I may briefly recapitulate the factual position as it obtained on the date of the order.

The Principal, respondent No. 2, had, as a result of a departmental enquiry, by his order dated 19-2-1965 expelled the petitioner from the College for a period of three years. The order was passed under clause 8 (1) of Ordinance No. 13 whereunder the Principal of a College has been empowered to expel, rusticate or disqualify a student from being a candidate at the next ensuing University examination, if found guilty of grave misconduct. The three prescribed punishments have different consequences. A student, who has been expelled, can be admitted into another college with the permission of the Principal of the college from which he was expelled. A student, who has been rusticated, cannot be admitted into another college within the period of rustication ; while the disqualification is only in relation to the next ensuing University examination. In the instant case, the petitioner had been expelled for a period of three years. As a result of the expulsion, he would have ceased to be a student of the Narmada Mahavidyalaya, Hoshangabad, and could not also have been admitted to another college without the permission of the Principal of the Narmada Mahavidyalaya, Hoshangabad. Another result of the expulsion would have been that the petitioner could not have appeared in the ensuing B.A. examination as a student of the Narmada Mahavidyalaya, Hoshangabad. But, before the examinations were held, the Principal, respondent No, 2, had accepted from the petitioner a fine of Rs. 200, arrears of tuition fees and other dues and permitted him to appear in the ensuing B.A. examination. A perusal of the order of the Principal (Annexure R-1), dated 19-2-1965, shows that of the three students, the petitioner had been expelled for three years, while the other two had been fined Rs. 150 each. On the acceptance of fine from the petitioner, the Principal should be deemed to have revised his order, set aside the order of expulsion and imposed a fine of Rs. 200 instead on the petitioner also.

The respondents, however, state that the Principal (respondent No. 2) may have

accepted the fine of Rs. 200 from the petitioner out of deference to the wishes of the Vice-Chancellor; but it is rather difficult to understand the import of the submission. It is alleged that neither under the College Code nor under any of the Ordinances the Vice-Chancellor had any authority to advise the Principal to impose a fine of Rs. 200 and allow the petitioner to appear in the ensuing examination. But, then, if the advice of the Vice-Chancellor was illegal or unauthorised, it does not in any way invalidate the act of the Principal. Under clause 8 of Ordinance No. 13, the Principal had the authority to impose a punishment in respect of any grave misconduct committed by a student; and if he chose to act on the advice of the Vice-Chancellor and modified his punishment of expulsion to one of fine the act was nonetheless his and he cannot seek to nullify it on the ground that he did it out of deference to the wishes of the Vice-Chancellor. In my opinion, the motive, which prompted the Principal to modify the punishment of expulsion to a punishment of fine is immaterial; and it is surprising that the respondents should have taken such a naive plea which does no credit to the Principal.

What I mean to bring out clearly from the aforesaid discussion is that in July 1965 when the petitioner moved the High Court for quashing the order of his expulsion dated 19-2-1965, he was wrongly advised, because on that date the expulsion order had ceased to exist and there was nothing to quash. It appears that all the aforesaid facts were not brought to the notice of the High Court and it was led into passing the order it did because of the incomplete and incorrect fact presented before it.

I may also mention that the High Court had dismissed the writ petition in motion and, while doing so, had assumed the factual position as given by the petitioner in the petition filed by him to be correct. Consequently, if, on the basis of wrong premises, the High Court declined to interfere and quash the non-existent order, it could not be argued that it had thereby revived and confirmed it. The dismissal of the writ petition by the High Court was, under the circumstances, of no legal consequence and cannot help the respondents.

Now, if we examine the resolution of the Academic Council in the light of the aforesaid circumstances, it would be apparent that it proceeds on a total misconception of the factual and legal position existing on the date of the resolution, namely:

(a) The petitioner had not been initially rusticated for a period of two years but expelled for a period of three years, which (expulsion), even if operative on the date of the examination, would have had consequences very much different from that of rustication.

(b) Even this order of expulsion had ceased to exist when the petitioner offered himself for the B.A. examination. The resolution, however, proceeds on the assumption that it was yet alive and operative.

(c) The High Court by dismissing the writ petition in limine was not upholding

"the order of the Principal rusticating Pretish Chandra Dutt" but only declining to interfere with the impugned order, the legal existence of which it was not called upon to enquire. The reason for its refusal to interfere was that there was no illegality or impropriety in the order of the Principal as the charge of grave misconduct had been established in a departmental enquiry where the petitioner had been given a full opportunity of defending himself. It has also to be borne in mind that the jurisdiction of the High Court under Article 226 of the Constitution for a writ in the nature of certiorari is a special one where, unlike an appellate jurisdiction, the High Court does not sit in appellate judgment on the orders sought to be quashed by affirming, modifying or setting them aside but only examines their legal validity from the point of view of jurisdiction of the tribunal passing them, as also from the point whether the tribunal had acted judicially in the exercise of its jurisdiction and had not therein committed an error on the face of the proceedings.

In my opinion, in so far as the resolution of the Academic Council dated 2-2-1966 proceeds on the incorrect assumption that there was an operative order of rustication (or expulsion, if rustication be taken to be a typographical error, though this is not the case of the respondents so far) against the petitioner on the day he appeared in the examination, which order had been upheld by the High Court in its writ jurisdiction under Article 226 of the Constitution, it proceeds on a factually incorrect assumption; and consequently the grounds on which it quashed the result of the petitioner's examination were not valid.

I may here also dispose of the contention that the petitioner was ineligible to appear in the B.A. Examination, 1965, and that for that reason his application for admission to the examination had not been forwarded to the Registrar by the Principal as provided for in clause 1 of Ordinance No. 19. I may, at the outset, say that, in so far as the Academic Council has not cancelled the petitioner's result on that ground, it has no relevance in the context of the impugned resolution of the Academic Council. But, that apart, I am of opinion that the contention has no merit.

According to the respondents, the petitioner was not eligible to appear in the examination because he had not fulfilled the conditions laid down in clauses 4 and 5 of Ordinance No. 33 dealing with B.A. examination.

Under clause 4 of Ordinance No. 33, subject to his compliance with the requirements of the Ordinance, a person shall be eligible for admission to the examination if he was a student of a college. As the petitioner was a student of the Narmada Mahavidyalaya, Hoshangabad, and his order of expulsion had impliedly been set aside by the acceptance from him of a fine of Rs. 200 by the Principal of the College, clause 4 *ibid* did not come in his way.

Clause 5 of the Ordinance No. 33 then provides:

A student of a college shall

(a) have prosecuted a regular course of study in one or more colleges under the Act for not less than three academical years after having passed the Preparatory Examination of this University or an examination equivalent thereto;

Explanation --Prosecution of a regular course of study means attendance at seventy-five percent, of the lectures delivered in each subject of the course instructions for the examination and in the case of a subject where practical work is prescribed, the completion of seventy-five percent, of such work, the attendance in both cases being calculated upto a date four weeks next preceding the date of the commencement of the written examination. The certificates of the Principals relating to the completion of the required attendance of the applicants at their respective Colleges shall reach the Registrar not later than three weeks next preceding the date of the commencement of the written examination.

(b) apply for admission to the Registrar through the Dean or Principal of the college he last attended;

(c) Produce the following certificates signed by the Principal of the college submitting his name:

(i) of good conduct.

(ii) of fitness to present himself at the examination)

(iii) of having prosecuted a regular course of study;

* * * * *

Before I consider the question of the petitioner's compliance with the aforesaid provision, I may refer to the provisions of clause 6 of the Ordinance, whereunder "every application for admission to the examination shall be in the form prescribed by the Academic Council and shall reach the Registrar at least eight weeks before the commencement of the examination", and the provisions of clause 1 of Ordinance No 19 which says "applications for admission to University Examinations shall be made in the prescribed form and forwarded to the Registrar through the Principal of the College concerned.....". Under clause 2 (b) of Ordinance No. 19, the application has to be accompanied with a certificate by the Principal of the College that the candidate has attended a regular course of study for the prescribed number of academic years. This certificate is provisional and can be withdrawn at any time before the Examination if the applicant fails to attend the prescribed course of Lectures before the end of his College or University Terms.

The position, therefore, reduces itself to this: The application for admission to the B.A. Examination scheduled for 22-3-1965 had to reach the Registrar of the Saugar University eight weeks before the date of the Examination, i. e., on or before the 25th of January 1965. The petitioner had, therefore, to apply by the first or second week of January 1965, if the application was to be forwarded to the Registrar at the latest by 25th January 1965. It is reasonable to presume

that it must have been so forwarded because till that time no punishment had been awarded to the petitioner by the Principal of the College. Under the circumstances, the bare interested statement of the Principal (respondent No. 2) that he had not forwarded the application of the petitioner to the Registrar is difficult to believe. Now, as regards the statement of the Principal on affidavit that the petitioner had not complied with the provisions of clauses 4 and 5 of Ordinance No. 33 and that was the reason for not forwarding his application to the Registrar, a careful analysis of the circumstances shows that this could not be correct.

The petitioner was a student of a college affiliated to the University and, therefore, clause 4 *ibid* was satisfied. As regards sub-clause (a) of clause 5 *ibid*, even if a candidate had not prosecuted a regular course of study, the question whether this should debar him from appearing in the examination has to be decided by the Vice-Chancellor or the Executive Council, as the case may be, under clause 5-A of Ordinance No. 33. It does not entitle the Principal to withhold the application. Clause 5-A *ibid* says:

5-A Any deficiency in attendance at the course of study for the examination may be condoned in accordance with the following provisions:

(i) The Principal of the College or Dean of the Faculty concerned shall send to the Registrar a list of the students who have applied on the prescribed form for admission to the examination but have not prosecuted a regular course of study, stating clearly in the case of each student.

(a) the extent of his deficiency in attendance in each subject;

(b) his recommendation as to whether the deficiency should or should not be condoned; and

(c) the grounds on which recommendation is based.

(ii) The list shall be submitted to the Vice-Chancellor and in all those cases in which he is able to accept the recommendation of the Dean or Principal, the deficiency shall be condoned or its condonation refused, as the case may be, in accordance with the recommendation of the Principal or the Dean shall be referred to the Executive Council whose decision as to whether the deficiency should or should not be condoned in any such case shall be final.

(iii) Those cases in which the Vice-Chancellor is unable to accept the recommendation of the Principal or the Dean shall be referred to the Executive Council whose decision as to whether the deficiency should or should not be condoned in any such case shall be final

Now, it is not disputed that the petitioner had applied to the Registrar for admission, through the Principal of the College, as required by clause 5 (b) of Ordinance No. 33. Clause 5 (c) *ibid* enjoined on him to produce the following certificates from the Principal of the College submitting his name, namely,

certificates (a) of good conduct, (b) of fitness to present himself at the examination, and (c) of having prosecuted a regular course of study. As regards the petitioner having prosecuted a regular course of study, the requirements are contained in clause 5 (a) read with the explanation; but it has to be read with clause 5-A, quoted above. Again, clause 6 says:

On the report of the Principal or the Dean, the Executive Council may exclude any candidate from the examination, if it is satisfied that such candidate is not a fit person to be admitted thereto. The reason for such exclusion shall be recorded.

Every application for admission to the examination shall be in the form prescribed by the Academic Council and shall reach the Registrar at least eight weeks before the commencement of the examination, provided that in the case of an applicant who is not a student of a college, the application shall reach the Registrar five months before the commencement of the examination

The Ordinance thus leaves no option to the Principal to withhold any application for admission to an examination addressed to the Registrar, as the final arbiter of the question whether the petitioner should be excluded from an examination is the Executive Council.

It is, therefore, reasonable to presume that the Principal must have forwarded the application of the petitioner for admission to the B.A. examination to the University with such recommendation as he may have been advised in regard to the petitioner's having prosecuted a regular course of study, good conduct and fitness to present himself at the examination.

Under clause 5 (1) of Ordinance No. 19, every candidate whose application has been accepted by the University for admission to an examination shall be given an admission ticket showing the name of the candidate and the roll number assigned to him for admission to the Examination.

Bearing in mind that the Executive Council had not passed any order excluding the petitioner from the examination under clause 6 of Ordinance No. 33 but had, on the other hand, issued to him an admission ticket containing his name and roll number under clause 5 (1) of Ordinance No. 19, it is reasonable to presume that all official acts culminating in the petitioner being granted an admission ticket for the B.A. examination of 1965 must have been regularly performed and that if there was any default on the petitioner's part which came in the way of his being granted the admission ticket, it had been condoned by the Executive Council or other relevant authorities of the University.

I may here usefully refer to the decision in *Purshottam Das Dulichand Zargar and Another Vs. Board of Secondary Education Wright Town and Others*, wherein it has been held that as under regulation 9 of Chapter XVI of Madhya Pradesh Secondary Education Board Regulations, 1959, a candidate cannot be allowed to sit for the examination unless the Secretary had satisfied himself that he has fulfilled all the requirements for admission to the examination, when a candidate

has been allowed to appear in the examination, it must be taken that he had fulfilled all the requirements for admission to the examination. Applying the principle enunciated in that case, it must be held that when the petitioner was given the admission ticket by the University, it must have been because he had fulfilled all the requirements for admission to the examination.

The last question is whether a writ could be issued under the circumstances of the case, even if the cancellation of the examination result of the petitioner by the Academic Council was wrong.

I have held that the Academic Council had no jurisdiction or authority to cancel the result of the petitioner which had been duly published by the Executive Council. I have also held that the grounds on which it had quashed the result were not valid. The Academic Council had thus purported to exercise a jurisdiction which it did not possess; and in so far as its resolution had deprived the petitioner of a legal right, namely, of the degree of Bachelor of Arts of the University of Saugar to which he was legally entitled, it was liable to be quashed.

It has been held by the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, that if a statutory authority has power to do an act which will prejudicially affect the subject, then, even where the contest is between the authority proposing to do the act and the subject opposing it, the final decision of the authority will yet be a judicial act, provided the authority is required by the Statute to act judicially, either expressly or by necessary implication. On the aforesaid principle it would appear that the impugned resolution or order of the Academic Council of the Saugar University, which I have held to be ultra vires and erroneous on the face of the record, could be quashed.

But even if a writ of certiorari or an order in the nature of certiorari could not be passed, because the liability to act judicially or quasi-judicially could not be attributed to the Academic Council either expressly or by necessary implication, the power of this Court under Article 226 of the Constitution to pass such orders as the justice of the case may require are not in any way fettered.

Even in England, where the Courts do not ordinarily interfere with the internal affairs of a University when there is a visitor, they have interfered where there is no visitor or where the visitor has refused to act, or where the existence of a visitor is left in doubt. This is for the reason that the Courts do not ordinarily invoke their extraordinary discretionary jurisdiction when there is an alternative remedy which is more efficacious and expedient than the remedy by writs and the recourse to the visitor, who is the forum domesticum, is more convenient and less expensive also.

Thus, in *R.V. University of Cambridge* 93 ER 698 a mandamus was issued to the Chancellor, Masters and Scholars of the University of Cambridge commanding them to restore Richard Bentley to the academical degrees in that University. In the words of the learned Chief Justice (pp. 702 and 703),

I think the return has fully justified us in sending the mandamus, as it shews the power of the Vice-Chancellor and the congregation is only to deprive for a reasonable cause; and as it is not pretended there is any visitor (1), or any other jurisdiction, to examine into the reasonableness of the deprivation, but that of this court.

It is the glory and happiness of our excellent constitution, that to prevent any injustice no man is to be concluded by the first judgment; but that if he apprehends himself to be aggrieved, he has another Court to which he can resort for relief; for this purpose the law furnishes him with appeals, with writs of error and false judgment: and lest in this particular case the party should be remediless, it has become absolutely necessary for this Court to require the university to lay the state of their proceedings before us; that if they have erred, the party may have right done him, or if they have acted according to the rules of law, that their acts may be confirmed.

The university ought not to think it any diminution of their honour, that their proceedings are examinable in a Superior Court. I am sure this Court, which is superior to the university, thinks it none; for my own part I can say, it is a consideration of great comfort to me, that if I do err my judgment is not conclusive to the party, but my mistake will be rectified, and so injustice not be done.

In India, in *In the matter of G.A. Natesan and K.B. Ramanathan* ILR 40 Med. 125, which was a pre-Constitution case governed by the provision of section 45, Specific Relief Act, 1877, Courts Trotter, J, dealing with an application for a mandamus against the University of Madras, said:

The Syndicate is a creature of statute with certain duties imposed upon it by statute and those duties are to be carried out for the benefit of the public at large (see the very wide words in the preamble to the Act of Incorporation), and especially for that portion of the public which desires to utilize the educational advantages of the University. It seems to me too plain for argument that, where a statute appoints a body of persons to carry out purposes of public benefit, the persons constituting such a body ipso facto become holders of a public office within the meaning of the section. It is not disputed that to hold otherwise would be to go contrary to a vast number of English decisions with regard to the writ of mandamus and that it would also give the go-bye to the principle which if not expressly enunciated is underlying numerous decisions of the High Courts both of Bombay and Calcutta. I am therefore of opinion that the Syndicate is a body amenable to the jurisdiction of section 45 of the Specific Relief Act, if the other conditions for that relief are present.

As pointed out by a Division Bench of the Assam High Court in *Himendra Chandra Das Vs. Gauhati University and Others*, Articles 226 of the Constitution is certainly much wider in its scope and amplitude than section 45 of the Specific Relief Act, and the above observations therefore apply with greater force to the

powers of this High Court under the Constitution.

Thus, writs have been issued to the University bodies in *S.K. Ghosh and Others Vs. Vice-Chancellor, Utkal University and Others*, *Samarendra Prosad Chakravarty and Another Vs. The University of Calcutta*, *Tapendra Nath Roy Vs. University of Calcutta and Others*, *Himendra Chandra Das v. Gauhati University*, *Kamala Banerjee Vs. University of Calcutta and Others*, and *University of Calcutta Vs. Dipa Pal*, when their orders of resolutions were ultra vires their powers or in utter disregard of the statutory rules or regulations governing them. In the last mentioned case, the Syndicate of the Calcutta University had cancelled the examination of the petitioner on the ground that she was guilty of unfair or dishonest practice in the examination. While issuing a writ of mandamus to the appellant University directing it to forbear from giving effect to the re-resolution of the Syndicate, the learned Chief Justice said:

In the first place, the Syndicate is not empowered to consider questions of malpractices and breaches of discipline. That is a matter for the Examination Board. Further this sub-committee which made its report was a sub-committee appointed by the Examination Board and not by the Syndicate. The sub-committee having made its report to the Syndicate the latter body accepted it as a report of a committee appointed by itself and acting upon that report the Syndicate cancelled the examination.

It appears to me that this resolution of the Syndicate cancelling the examination was clearly contrary to the rules of the University. *Sm. Dipa Pal* could only be found guilty of a breach of discipline by the Examination Board. That body could have modified the results and cancelled her examination and reported the matter to the Syndicate. That latter body could have confirmed the decision of the Examination Board or if they disagreed with it the decision could have been referred back for reconsideration. The rules nowhere provide that the Syndicate on its own initiative is entitled to decide this question or to appoint any sub-committee to go into the matter. In fact, as I have already said, it did not appoint a sub-committee but treated the sub-committee appointed by the Examination Board as its own sub-committee and acting upon its report cancelled the examination without any finding or report whatsoever from the Examination Board itself. The proceedings were wholly unwarranted by the rules and regulations of the University and the question arises whether the resolution of the Syndicate is in accordance with law.

It appears to me that when a person is accepted as a student of the Calcutta University he or she agrees to be bound by the rules and regulations of the University. Similarly the University agree to deal with the student whom they have accepted in accordance with their rules and regulations. The rules and regulations of the University provide the machinery for deciding whether a student has or has not been guilty of malpractices at an examination. If a student is found guilty in accordance with these rules, then apart from the wider question as to whether the student has a right to appear, the decision of the

University could not be questioned. However, if the decision is not arrived at in accordance with the rules then it appears to me to be clear that the decision is not in accordance with law and has no binding effect. It has always been the view of Courts in England and in India that if by agreement, powers such as powers of expulsion are given to a body then an order of expulsion can only be valid if all the provisions relating to the exercise of such power have been strictly complied with. The question has frequently arisen in connection with membership of clubs, where rules provide for the expulsion of a member who is found to be undesirable. The courts have invariably held that unless all the rules relating to proceedings for expulsion have been strictly complied with, an order expelling a member is of no effect.

x x x x

So far from there being mere technical breaches of the rules and regulations the order in this case was made by a body which had no power to make it and it acted contrary to the rules laid down for dealing with such matters. That being so, the resolution of the committee cannot have any legal effect and cannot be enforced.

The power to issue writ was also recognised in *Pyarelal v. University of Sagar* 1961 MPLJ 828 and *Prakash Yadeo Rao Govardhan Vs. The Principal, Sheo Bhagwan Rameshwar Prasad Arts College and Others*, . In the latter case, a Division Bench of this Court said:

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 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.

I am, therefore, of opinion that an appropriate writ, direction or order can be issued to the University of Saugar. Either a writ in the nature of certiorari can be issued quashing the resolution of the Academic Council dated 2-2-1966 or, in any case, a writ in the nature of mandamus can be issued forbearing the University to give effect to the impugned resolution of the Academic Council aforesaid and directing it to admit the petitioner to the degree of Bachelor of Arts.

I, therefore, answer the questions referred to me as under:

(i)

Whether the Academic Council was
competent to quash the Petitioner's examination result ?

No, it was not competent.

(ii)

Whether the grounds on which the result was quashed were valid ?

No, they were not valid.

(iii)

Even if the cancellation is wrong, can a writ be issued as prayed ?

Yes, it can be issued.

The case shall now go back to the Division Bench for being further dealt with in
accordance with law.

FINAL ORDER

In view of the opinion expressed by Naik, J. who heard the case on a difference
of opinion between us, this petition is allowed. The resolution of the Academic
Council cancelling the result of the petitioner is hereby quashed. A writ in the
nature of mandamus is issued forbearing the University to give effect to that
resolution and directing it to admit the petitioner to the degree of Bachelor of
Arts. There shall be no order as to costs of this petition. The amount of security
shall be refunded to the petitioner.