

(2014) 10 AHC CK 0112
In the Allahabad High Court
Case No : Misc. Single No. 2487 of 2014

Ram Janaki Mahavidyalaya	Vs	APPELLANT
Ram Manohar Lohia Avadh University		RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 ADJ 111 : (2015) 1 ALJ 147 : (2015) 1 ESC 410

Hon'ble Judges : Sudhir Kumar Saxena, J

Bench : Single Bench

Advocate : Amrendra Nath Tripathi and L.P. Misra, Advocate for the Appellant;
Manik Sinha and Shobhit Mohan Shukla, Advocate for the Respondent

Judgement

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Sudhir Kumar Saxena, J.—This writ petition filed under Article 226 of the Constitution of India is directed against the orders dated 10.04.2014 & 11.04.2014 passed by Examination Controller cancelling the examination held on 10.04.2014 and removing the Principal of college from the duty of Centre Superintendent.

2. I have heard Dr. L.P. Mishra, learned counsel for the petitioner and Sri Shobhit Mohan Shukla for respondents.

3. Briefly stated petitioner's case is that "Shri Ram Janki Mahavidyalaya, Ram Nagar, Amawa Sufi, Faizabad" is affiliated college of Dr. Ram Manohar Lohia, Awadh University, Faizabad ("College" & "University" in short respectively). College runs various courses and conducts examination and no complaint of any mass-copying from any section has been found by the University in past.

4. For the examination of year 2013-2014, a Scheme was notified by the University on 27.03.2014 and Principal of the College was notified as Centre Superintendent for conducting examination at the Centre. On 10.04.2014, an inspection was made and it was found by the Inspecting Team that unfair means

were used, as such, it recommended cancellation of exam, whereupon, Vice Chancellor on the same day cancelled the entire examination held on 10.04.2014 and removed the Principal of College from the position of Centre Superintendent. These very orders dated 10.04.2014 & 11.04.2014 have been impugned in this writ petition.

5. Submission of Dr. L.P. Mishra is that before cancelling the examination, no opportunity of hearing of any type was given to petitioner-college. No information about Inspection Team was given to the Centre Superintendent. Observers were not appointed by the Examination Committee which alone is authorized to appoint the observers. Moreover, decision to cancel the examination, taken by the Vice Chancellor who has no power to take such decision, could have been taken by the Examination Committee alone.

6. It is further submitted that there is no material to suggest that mass-copying was going on anywhere at the Centre on the fateful day.

7. It is also submitted by Dr. L.P. Mishra that University has ruined the career of three thousand students by cancelling the entire examination, although there was no material to suggest the use of unfair means or mass-copying in both the shifts. Observers have reported that employees were found putting guides and books in bags and answer books of first shift were packed at 4:45 p.m. In the absence of any other material, these circumstances alone, cannot lead to inference of using unfair means. It is also apparent that power has been used in arbitrary manner, spoiling the career of large number of students.

8. Counter affidavit has been filed by the Registrar of the University stating therein that under Section 51 of the U.P. State Universities Act, 1973 ("Act" in short), Ordinances of the University have been made. Ordinances provide for conducting examinations, conditions, mode of appointment and duty of examining body and examiners.

9. Accordingly, Ordinance has been made. Chapter X of the Ordinance embodies the provisions relating to conduct of examinations.

10. Ordinance 10.14 permits Examination Committee to appoint Observers in the Centre to inspect, check and promote fair examination.

11. It is further submitted that under the statute 2.02 of First statute, framed under the Act, Vice Chancellor can call for record and information in respect of any matter relating to teaching, examination, research etc.

12. In para 26 of the counter affidavit, a specific case has been taken that on 10.04.2014, a Team of Observers conducted sudden inspection of the examination of second shift and it was found that from different rooms where the examinees were taking their examinations, test books and guides were being thrown out and were being filled up in bags by the employees and it was further found that the answer books of the examination of first shift were being sealed at a highly belated stage at 4:45 p.m. Considering the fact that career of a large

number of students is at stake, instead of punishing examinees, their examinations of particular papers were cancelled for providing them an opportunity for appearing again without charging any fee.

13. In the rejoinder affidavit, allegations made in writ petition were reiterated and it was stated that Team of Observers/Flying Squad which conducted alleged sudden inspection had no authority to conduct inspection. It was also stated that Squad Team did not produce any authority letter or appointment letter issued by the Examination Committee of the University at the time of alleged inspection. Details of the material, which is said to have been found, are missing in the report and same has been given to malign the reputation of the petitioner-institute. It was further stated that Vice Chancellor had no authority to cancel the examination.

14. Before examining the controversy involved, it is necessary to mention brief developments of the writ petition.

15. Writ petition was filed on 23.04.2014 on which date counsel for the University was granted 24 hours time to seek instructions. On 25.04.2014, learned Single Judge passed a detailed order whereby he stayed the operation of the order dated 10th April, 2014 as well as order dated 11th April, 2014. Court observed in the order that there is no specific report of mass-copying of first shift examination. First shift examination has been cancelled on the ground that answer-books of first shift were being packed at 4:45 pm, much after the expiry of the examination. Learned Judge also observed that no specific material used by the examinees, has been pointed out in the report and there was no specific report of using unfair means by any student in any manner.

16. This order was challenged in Special Appeal before Division Bench which confirmed the interim order of Single Judge and dismissed Special Appeal on 08.07.2014 with a request to decide the writ petition expeditiously.

17. It appears that University on 05.05.2014 withdrew the order dated 10.04.2014 and 11.04.2014 in pursuance to the interim order of this court passed on 25.04.2014. Since impugned orders were withdrawn by the Examination Controller, learned Single Judge disposed of the writ petition holding that nothing survived for adjudication. Operative portion of the order dated 04.08.2014 passed by Hon"ble S.N. Shukla, J. is being reproduced below:

"A bare perusal of the record of the writ petition shows that these orders are under challenge in the writ petition. Therefore, I am of the view that after revocation of these orders nothing survives for adjudication and thus the dispute has lost its significance. Therefore, the writ petition is disposed of finally with the direction to the respondents to declare the result in question forthwith."

18. This order dated 04.08.2014 was again challenged in Special Appeal No. 496 of 2014 by the University. Division Bench was of the view that petitioner had not prayed for any relief for declaration of the result of the examination in question,

therefore, Single Judge was not justified in directing University to declare the result. Division Bench, further observed that mere withdrawal made by the authorities, does not mean that controversy involved in the case has been set at rest and dispute has lost its significance. Division Bench further observed that:

".....in the instant case, the dispute with regards to declaration of result is still intact and the learned Single Judge erred in directing the appellant to declare the result of the examination in question."

19. Special Appeal was allowed on 03.09.2014 with a request to learned Single Judge to consider and decide the writ petition on merits. This is how writ petition has come before this Court.

20. It is true that relief no. (i) is limited to quashment of orders dated 10.04.2014 & 11.04.2014. Division Bench has found that dispute with regard to the declaration of result was still intact, as such this Court proposes to examine the controversy involved in writ petition keeping in mind the ultimate relief which can be granted to petitioner. Moreover, relief no. (ii) is for issuance of suitable order or direction which court may deem fit, just and proper under the circumstances of the case.

21. Furthermore, if orders dated 10.04.2014 & 11.04.2014 are quashed, the consequential orders will have to be passed for effective and complete adjudication of the controversy.

22. It is relevant to reproduce the report of Controller of examination, which is as under:-

23. Uttar Pradesh State Universities Act, 1973 was enacted with a view to streamline higher education in the State. Section 7 of the Act states that University will have power to hold examination and confer degrees.

24. Chapter IV of the Act deals with officers of the University and according to Section 9, Chancellor, Vice Chancellor, Pro-Vice-Chancellor, Registrar, Controller of Examinations etc. are officers of the University.

25. Section 12 of the Act describes that Vice Chancellor shall be whole-time salaried officer of the University and Section 13 of the Act provides for powers and duties of the Vice Chancellor. Section 13(1) of the Act says that Vice Chancellor shall be the principal executive and academic officer of the University. Sub Section 3(1)(b) makes it incumbent upon him to "give effect to the decisions of the authorities of the University".

26. Sub Section 13(6) enables Vice Chancellor to take action as he may deem fit in any urgent matter requiring immediate action, however said action shall have to be forthwith reported to the Chancellor and to the authority which would have dealt with the matter. There is proviso to Sub Section 13(6) which says that no action shall be taken by the Vice Chancellor without approval of Chancellor if it involved a deviation from the provisions of the Statutes or the Ordinances.

27. Section 16-A of the Act mentions the duty of Controller of Examination who shall conduct examinations and make all other arrangements, therefor, subject to the Superintendence of the Examinations Committee [Section 16-A(6)].

28. Chapter V of the Act deals with the authorities of the Universities. Authorities have been specified under Section 19 of the Act which are the Executive Council, the Court, the Academic Council, the Finance Committee, the Boards of Faculties, the Selection Committees for appointment of teachers of the University, the Admissions Committee, the Examinations Committee etc.

29. Section 29 of the Act says that there shall be an Examination Committee in the University, the constitution of which shall be as may be provided for in the Ordinances.

30. Section 29(3) enables Examinations Committee to delegate power to deal with and decide cases relating to the use of unfair means to any one or more persons or sub-committees.

31. From the above scheme, it is apparent that Vice Chancellor is principal executive officer of the University while Examination Committee is an authority of the University. Power to deal examination is given to Examination Committee which can delegate its power to deal with the cases relating to use of unfair means to some person or Committee. In urgent situation Vice Chancellor can take action but he has to report it forthwith to the Chancellor.

32. Act has clearly demarcated areas within which Officers and Authorities of the Universities have to act and one cannot encroach over the areas earmarked for the other functionary.

33. It is not the case of University that Examination Committee had delegated or authorized Vice Chancellor to pass impugned order. It is also not the case of University that Vice Chancellor has reported the matter to Chancellor or sought his prior approval; and it is also not the case of University that Examination committee had ratified the action taken by the Vice Chancellor subsequently. It was not an emergency as examination was already going on and impugned decision could have been taken later on. Vice Chancellor being one of the member of the Examination Committee, could not have arrogated to himself the functions which were within the exclusive domain of the Examination Committee.

34. Ordinance 10.02 provides for constitution of the Examination Committee which is to consist of Vice Chancellor (Ex-officio) who shall be the chairman of the Committee.

35. Ordinance 10.03 provides that the Registrar/Controller will be responsible for conducting University Examination through centre Superintendents at various examination centres.

36. Ordinance 10.05 provides that Examination Centres shall be made subject to inspection by some person or persons appointed by Examination Committee. The

inspector shall advise the superintendent of the centre and send his report of inspection for consideration of Examination Committee.

37. Ordinance 10.14 is also relevant which enables Examination Committee to send Flying Squads/Observers. Ordinance 10.14 is being reproduced below:

"The Examination Committee may send Flying Squads and Observers to the centre to inspect, check and promote fair examination. Flying Squads shall also be authorized to take search to any examinee and may report the cases of unfair means if any to the University Examination Committee for its consideration and decision."

38. Similarly, Ordinance 10.09 provides that a person appointed by the University shall be known as "Superintendent of a Centre". He/she shall be responsible for successful and fair conduction of examination at the centre as per guidelines and instructions of the University.

39. This also shows that University can appoint any person as Centre Superintendent. This power can be exercised by the Vice Chancellor as mentioned above.

40. From the above, it is apparent that Examination Committee will appoint Flying Squad or Observers who are authorized to make inspection. They will also report the cases of unfair means to the University Examination Committee which will consider and decide. Power to take decision on report submitted by the Flying Squad has been given to the University Examination Committee and to none else. Vice Chancellor is only one of the member of the Committee. Once the authority is given to a particular person or body to take decision in some matter, said power cannot be used by anyone else unless specifically provided under the statute.

41. Under the statute 2.02, Vice Chancellor can call for an information or record but decision has to be taken by the authority which is authorized under the law. If statute requires decision to be taken by the Committee having more than one person, then decision taken by one person would be contrary to law and non est.

42. Similarly, if a statute requires a decision to be taken by a collective body, a member let alone Chairman cannot take the decision and in the absence of any contrary provision or post ratification, decision making process being vitiated, decision is rendered non est.

43. It is settled law that once a mode is prescribed to do a thing in a particular manner, thing has to be done in that manner or not at all.

44. In the instant case, Controller of Examination recommends Vice Chancellor to cancel the examination in anticipation of approval from the Examination Committee. If action of Vice Chancellor had been ratified, subsequently, an argument could have been made for justifying the decision, but even post-facto approval was not taken from the Examination Committee. In these

circumstances, Court has no option but to hold that decision taken by the Vice Chancellor cancelling the examination of both the shifts on 10.04.2014 was illegal.

45. It is true that Vice Chancellor is the principal Officer of the University and he has to make certain decisions for ensuring smooth functioning of the University and conducting fair examination in accordance with law. If law provides committee to take a decision in such matters, to that extent Vice Chancellor stands denuded of that power.

46. Since order has been found to be illegal and unauthorized, Court is not examining the contention challenging the validity of the report on the ground of inadequacy or inaccuracy.

47. For the same reasons, submission that decision to cancel the examination of first shift, merely because answer-books of first shift were being packed at 4:45 p.m., in the absence of any material of using unfair means, is illegal or the contention that students carry guides and notebooks to revise the answers till the commencement of the examination at the centre, as such, mere presence of this material cannot lead to use of unfair means are not being examined.

48. In view of above discussion, order dated 10.04.2014 canceling examination of both shifts on 10.04.2014 cannot be sustained.

49. So far as order dated 11.04.2014 is concerned, it is apparent from the Ordinance 10.09 read with instructions issued by the University that Centre Superintendent is to be appointed by the Vice Chancellor. Ordinarily, it would be the Principal of College. But, some senior-most teacher can be proposed however, final decision is to be taken by Vice Chancellor. Paragraph 1 of the letter issued by Examination Controller to Centre Superintendent is being reproduced below:

50. It is, thus, clear that power to appoint Centre Superintendent rests with the Vice Chancellor. Vice Chancellor has taken a decision to remove Principal of the petitioner-college from the responsibility of Centre Superintendent, as such order dated 11.04.2014 is justified and Court does not find any error in the said order.

51. In view of discussion made above, this writ petition is partly allowed. Order dated 10.04.2014 (Annexure no. 1 to the writ petition) is quashed. Respondent-University is directed to declare the result of examination held on 10.04.2014 forthwith.