

(1983) 09 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No"s. 502, 1267 and 4987 of 1983

Rohini Dattatraya Tare and etc.

APPELLANT

Vs

Nagpur University, Nagpur

RESPONDENT

Date of Decision : 29-09-1983

Acts Referred:

Nagpur University Act, 1974 — Section 64

Citation : AIR 1984 Bom 115

Hon'ble Judges : Shah, J; Mohta, J

Bench : Division Bench

Advocate : K.H. Deshpande and S.G. Aney, for the Appellant; S.K. Sanval, for the Respondent

Judgement

Shah, J.—These three writ petitions under Act. 226 of the Constitution can be conveniently disposed of by common judgment since the points involved are the same. In all these petitions. The petitioners have proved for a declaration that the result of the revaluation of their papers in the examination held in summer 1982 is null and void and also for quashing certain resolutions of the Academic Council and the Executive Council as being illegal and ultra vires S. 64. Nagpur University Act. 1974.

2. The facts are few and not in dispute. The three petitioners appeared for the examinations held in or about April 1982. The petitioner in Write Petition No. 498 of 1983. Miss Part-I examination in sanskrit. She was placed First Class First as she secured the highest number of marks in aggregate. In one of the papers namely. Paper I on Vedic Linguistics Etymology. She was declared to have secured only 36 marks. As she was not satisfied with the assessment of her performance in the said subject. She applied to the University for revaluation of the said paper in accordance with the rules prescribed by the University. In due course she was informed that on revaluation she was found to have secured only 16 marks in the said paper. Reduction of marks in the said paper. Though even with this reduction of marks she continued to top the list of successful candidates.

3. The petitioner in Write Petitioner No. 502 of 1983. Miss Hema Deshpande appeared for M.Sc. Part-I examination. As in First Class. In two of the papers namely. Papers II on Environmental Micro Biology. She had secured only 45 and 42 out of 75 marks. As she was not satisfied about valuation of marks from the University which showed that after the revaluation she was found to have received 32 and 29 marks respectively in the said papers. This resulting in a fall of 13 marks in both the papers.

4. The third petitioner in Write Petition No. 1267 of 1983. J.T. Gilda had appeared in LL.B. Part-II examination and was declared to have fetched 409 marks out of total 700 marks. In four of the papers. For which he appeared. Namely, Paper II on Hindu Law. Paper III Mahomedan and Partnership Law. Paper IV on Equity and Property Law and paper VI on Tendency Law. He had secured 67. 65. 51 and 48 marks out of 100 marks respectively. As the petition felt that the marks in these 4 Papers were less than what University for revaluation of marks as per the University Rules.

5. Thereafter the petitioner was furnished with the revised statement of marks. It shown that as a result of revaluation in the two papers on Equity and Property Law the marks were increased from 51 to 63. While the marks in the paper on Tenancy Law were maintained at 48 and the marks in paper on Hindu Law were reduced from 67 to 61 and in Mahomedan and Partnership Law reduced from 65 to 59.

6. It is the contention of the petitioners that the procedure followed by the University for appointments of examiners for revaluation of all the papers is invalid because the appointment of examiners was in total violation of the statutory provision of S. 64. Nagpur University Act. 1974 (hereinafter referred to as the Act) as also Ordinance No. 159 which specifically provides for appointment of examiners by following the procedure prescribed in S. 64. In order to appreciate the contentions urged before us. It would be necessary to refer to the relevant provisions of the Act.

7. Section 4 of the Act deals with the powers of the University. These powers are subject to such conditions as may be prescribed by or under the provisions of the Act. Sub-sec. (14) (a) refers to the powers of the University to hold examinations and confer degrees. Section 24 deals with the powers and duties of the Executive Council. The powers and duties mentioned therein are to be exercised by the Executive Council subject to or under the Act sub-sec. (1) cl. (xxxii) inter alia confers powers on the Executive council to appoint examiners and publication of the results of the University examinations. Powers and duties of the Academic Council are incorporated in S. 26. As sub-sec. (2) thereof lays down these powers are to be exercised subject to such conditions as are prescribed by or under the Act. Statutes sec. (2) vests the Academic Council with the power to make regulations for the University and the conditions on which the students shall be admitted to such examinations. Similarly sub-clause (x) of sub-sec. (2) inter alia empowers the Academic Council to supervise the conduct of

the University . As stated above. These powers are subject to such conditions as are prescribed by or under the Act.

8. The Executive Council is also inversed with the power to make Ordinances. The provisions in that behalf are found in S. 39: but as the section clearly provides the powers to make Ordinances in the matters mentioned in S. 39 can be exercised by it only subject to the conditions prescribed by or under the Act. Clauses (v) of S. 39 show that the Executive Council is empowered to make ordinances as regards the conditions governing the appointment and duties of examiners as well as the conduct of examinations and other tests. And the manner in which the candidates may be assessed or examined by the examiners. Section 40 prescribes the procedure and the manner in which the Executive Council can make. Amend or repeal Ordinances. Sub-section (2) of concerning the matters referred to incls. (I) to (vi) and (ix) of S. 39 or any other matter connected with the maintenance of the standards of teaching and examinations in the University shall be made by the Executive Council unless a draft thereof has been proposed by the Academic Council. Then under sub-sec. (3) it is provided that the Executive Council under sub-sec. (2) but may reject or return it to the Academic Council for reconsideration. In part or in whole. Together with any amendments which the Executive Council may suggest. Under sub-sec (4) Ordinances made by the Executive Council shall have effect from such date as it may direct. But every Ordinance so made shall be submitted to the Chancellor within two weeks and the Chancellor has the power to direct the Executive Council within four weeks of the receipt of the Ordinance to suspend its operation. And he has as soon as possible to inform the Executive Council the Chancellor is given the power either to withdraw the order suspending the Ordinance or disallow the Ordinance and his decision is stated to be final.

9. The procedure for appointment of examiners is provided in S. 64 Since this provision has a direct relevance to the question raised before us. It would be proper to reproduce the provisions of S. 64 in extenso. Section 64 runs thus:"64 (1) A committee shall be constituted every year for each faculty for the purpose of preparing lists of persons for appointment as University Examiners and the Committee shall consist of the Vice-Chancellor-ex-officio Chairman.

10. The Dean of the Faculty concerned :

Two members nominated by the Executive Council:

Two members nominated by the Academic Council :and

The Chairman of the Board of Studies in the particular subject.

(2) The committee shall prepare the lists from amongst persons included in panels to be prepared by the Board of Studies. And shall submit them for approval to the Executive Council which shall then appoint the examiners:

Provided that no change in the list shall be suggested or made by the Executive Council except by passing a resolution stating the specific ground on which each

change suggested or made is based.

If for any reason any examiner is fresh appointment cannot be made untimely by the Executive Council. The Vice Chancellor shall appoint another examiner and report such appointment to the Executive Council.

10. No member of the Executive Council or of the Committee shall be appointed as examiner except by a resolution of the Executive council passed by two thirds of the members present.

11. The scheme for appointment of examiners. Therefore, in the first instance is that the Board of Studies has to prepare panels for appointment as University examiners. This Board of studies is constituted under S. 29 of the Act. Which inter alia provides that there shall be a Board of Studies for every subject or group of subject as prescribed by the Statutes. Section 29 (2) says that the Board shall have as its members (1) the Head of the University Department concerned. (2) not more than ten Heads of Departments in Colleges and recognised Institutions teaching the subjects at the special Principle or major level. Too be elected from amongst themselves as prescribed by the Statutes. (3) three persons to be co-opted by the Board who have specialised knowledge in the subjects and are not teachers in this University or in any college and (4) two persons to be co-opted by the Board from amongst the teachers who are not Heads of Departments. The panels of the examiners. The lists of examiners so prepared by the Executive has to be approved by the Executive Council. Which appoints the examiners.

12. Ordinance No. 159 framed by the Executive Council prescribes rules for revaluation of answer books of examinees at the University Examinations. It is not necessary to refer to the elaborate procedure in the matter of revaluation of answer books. So far as the present case is concerned. R. 4 is the only relevant provision. Rule 4 inter-alia provides.

"4. (I) Appointment of examiners for revaluation shall ve made by the Executive. Council in accordance with the provisions shown in S. 64 of the Act.

(ii) Answer books shall be revalued versity area (other than the one who initially valued it)

It was urged by Mr. Deshpande. Learned counsel appearing for the petitioners that the papers of the petitioners that the revaluation of the instant case was entrusted to examiners not appointed under S. 64 and consequently the revaluation of papers by examiners who were not appointed according to law is invalid. In support of his contention. He relied on the University to make appointment of examiners as provided in S. 64 of the Act.

13. Now it is not disputed by the respondent that the revaluation of papers was not disputed by the respondent that the revaluation of papers was not done by examiners appointed by following the procedure prescribed under S. 64 What has been done in this case is that the Vice-Chancellor of the Nagpur University.

He contacted the Vice-Chancellor of the Poona University to get the answer books revalued through the concerned teachers. Accordingly as per the directions of the Vice-Chancellor of the Poona University. The clerk who had carried the answer books contacted The teachers in the institutions situated in Poona and it is these teachers who revalued the papers in question . It was said that the papers in question. It was said that the previous experience had shown that by following the procedure prescribed under S. 64 considerable delay of several months was being caused in the declaration of the final results and, therefore. Both the Academic Council as well as the Executive Council had authorised the Vice-Chancellor. Nagpur University to contact the Vice-Chancellor of the ther University. Namely, Poona University to get the revaluation done by concerned teachers of that University so as to expedite the matter. Now this new procedure is sought to be supported by certain resolution of the Academic Council and the Executive Council. It appears that a Draft Ordinance called the Draft Ordinance No. 18 of 1981 for amending ordinance No. 159 was considered by the Academic Council in its resolution No. 89 dated 22/23-1-1981. While approving this draft Ordinance the Academic Council in the said resolution as under

"1. Answer books for re-valuation may be carried to the place of examiner either by the place of examiner or they can be despatched through the registered and insured post.

2. The vice-chancellor of this University may contact the Vice-Chancellor of another University in the State of Maharashtra for getting there valuation done Universities so as to expedite the revaluation.

The answer books for revaluation can be referred even to the examiners of the neighbouring universities out of the State if it is deemed convenient.

14. In the Draft Ordinance, the limit of 14 days for submission of the application by the candidate for revaluation be extended to 30 days.

15. The resolution also recommended that the above suggestions in the Draft Ordinance No.18 of 1981 amending Ordinance 159 should be brought into force from summer of 1981 examinations.

16. The above mentioned Resolution of the Academic Council was considered by the Executive Council on April 25, 1981. The Executive Council resolved that the recommendation of the Academic Council be accepted and the Draft Amending Ordinance No. 18 of 1981 amending the Ordinance No. 18 of 1981 amending the Ordinance No. 159 should be brought into force with immediate effect with the suggestions of the Academic Council in its resolution.

17. It is not disputed that the Draft Ordinance No.18 of 1981 by itself did not touch Rule 4 (1) of Ordinance 159 in any manner. It is equally apparent that the resolution of the Academic Council, which has been endorsed by the Executive Council, in terms does not at all refer to R 4 (10 of Ordinance 159, nor does it suggest any procedure which is contrary to the one provided in the said R. 4 (1).

Further in the return it is admitted that the suggestions recorded in the resolution of the Academic Council which were accepted by the Executive Council were not incorporated in Ordinance 159 because they are not in the form of amendment to Ordinance 18 of 1981 and were to be observed merely as administrative directions. That apart under sub-sec. (4) of S. 40 of the Act all the ordinance made by the Executive Council have to be submitted to the executive Council to suspend it so operation and also suggest amendments. He can even disallow the Ordinance. It is not disputed that the aforesaid suggestions made by the Academic Council and accepted by the Executive Council were not sent to the Chancellor as an amendment to the Ordinance. Though in fairness. It must be stated that it has been pointed out by Sanyal that the proceedings will the original Draft No.18, of 1981 were forwarded to the chancellor. . But the fact remains the suggestions were not at all intended to be nor were in fact made of Ordinance 169.

18. In this connection, it may be pointed out that even in the official publication brought out subsequently original Ordinance 159 containing R. 4 (1) continues as before and only a foot - note mentioning the aforesaid resolution of the Academic Council has been added. It is needless to state that this explanation by way of foot - note cannot and does not form part of the Ordinance as admitted in the return filed by the respondent.

19. Once we hold that notwithstanding the resolutions of the Academic Council and Executive Council R. 4. (1) of Ordinance 159 continuous to be in force, it is patently clear that the University was bound to follow the procedure laid down in R. 4 (1) for revaluation of the , Rule 4 (1) specifically provides for revaluation of papers by examiners (appointed) under S. 64. Which admittedly has not been done in this case. Even if the University were to amend Ordinance 159 which continued to be in the field was observed in breach in this case. Even if the University were to amend Ordinance 159 by deleting R. 4 (I) by following the prescribed procedure under S. 40, it would not have made any difference for the simple reason that Ordinance-making power is subject to the statutory provisions of the Act and so long as S. 64 is on the statute book, it would not be open to the University to devise a procedure which would violate the mandate of S. 64.

20. We may also observe that looking to the suggestions recorded in the resolutions of the Academic Council, it is even doubtful that the Academic Council even intended to achieve the result of giving a go-bye to the procedure prescribed in R.4 (I) of Ordinance 159 the physical despatch of answer books to the examiner concerned which may either be done by personally carrying the answer books by a representative of the University or sending the same by registered post. The second suggestion merely states that the Vice Chancellor of the University should contact the Vice - Chancellor of the other University for getting the revaluation done by the concerned teachers" of those Universities so as to accept the revaluation. It is quite possible that the expression "concerned teachers" only refers to the examiners appointed under S.

64 and does not mean that any teacher of the choice of the Vice - Chancellor of the other University. If this was not the intention, the resolution could have specifically stated so. We are, therefore, unable to read into this resolution the intention to amend R.4 (I) or to change the procedure laid down under S. 64 by amending the Ordinance.

21. It was also urged that there is difference between the examination of papers and revaluation of papers and therefore, the provisions of S. 64 do not apply to revaluation of papers. There is no substance in this contention. Revaluation is a part of examination. The declaration of results would be incomplete without revaluation if and when demanded or applied for by the examinee. It would therefore, be futile to contend that the provisions regarding appointment of examiners under @. 64 will not apply to the appointment of examiners for the purposes of revaluation and that it would be open to the University to follow any procedure which it considers reasonable.

22. It was contended by Mr.Sanval that the new procedure was in the interest of the examinees and because of the new procedure evolved it was possible to get the papers revalued within a very short time. In the first place, it is not open to the University to devise a procedure which is contrary to law. Moreover, we fail to see how a delay is caused on account of getting papers examined by examiners appointed under S. 64. The panel of examiners can be prepared in good time and it is only a question of forwarding the answer books to the concerned examiners in the said panel.

23. The conclusion that emerge from the above discussion are summed up as Section 64 is a mandatory provision and examiners have to be appointed as provided therein. The aforesaid resolutions of the Academic Council and the Executive Council do not have the effect of amending Ordinance 159 so far as R. 4 (I) is concerned. Rule 4 (I) remains untouched by the said resolutions. Admittedly there was no intention of amending Ordinance 159 and therefore the administrative directions issued in accordance with the suggestions in the said resolutions cannot override R. 4 (I) of Ordinance 159. The suggestions themselves also do not seem to have the effect of amending R.4 (I) of the Ordinance. In the event, the Ordinance or administrative directions cannot be in derogation of the statutory provisions since the powers can be exercised only in accordance with the provisions of the Act.

24. In the result, the revaluation of the papers and the declaration of results based on such revaluation, are invalid and must be quashed. All the three petitions are allowed. The results of revaluation of the papers of the petitioners are quashed. Mr. Deshpande, however, states that in view of the time-lag and the process of revaluation being time consuming, the petitioners in Writ Petitions Nos. 498 and 502 of 1983, do not desire to press their applications for revaluation by competent examiners. In view of the peculiar circumstances, we direct that the results of the said two petitioners as declared prior to the applications for revaluation shall stand.

25. Shri Aney appearing for the petitioner in Writ Petition No. 1267 of 1983 stated that the petitioner still desires that his papers should be revalued by competent examiners. In view of the setting aside of the result of revaluation of papers of this petitioner, we direct that the University shall get his papers revalued by competent examiners appointed under S.64 of the Act. Having regard to the fact that considerable time has already elapsed. We direct that the revaluation of marks of this petitioner should be undertaken and results declared as expeditiously as possible. In the circumstances of the case, we direct that the parties shall bear their respective costs.

26. Petitions allowed.