
(2007) 10 AHC CK 0083

In the Allahabad High Court

Case No : Writ Petition Nos. 3401, 3010, 3060, 409, 2999, 1620, 3132, 2860, 1644, 2998, 3238, 3000, 3053, 3133 and 3043 (M/S) of 2007 and 5450, 5454 (M/S) of 2

Sharad Chaddaand Others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Citation : (2007) 10 AHC CK 0083

Hon'ble Judges : S.S.Chauhan, J

Final Decision : Disposed Of

Judgement

S.S. Chauhan, J.—These bunch of three categories of writ petitions have been filed by various students belonging to MBBS examination, BDS examination and MBBS supplementary examination.

2. The writ petitions, which pertain to the group of BDS examination, are Writ petition Nos. 5450 (MS) of 2006, 5454 (MS) of 2006, 2998 (MS) of 2007, 3010 (MS) of 2007, 2999 (MS) of 2007, 3060 (MS) of 2007, 2860 (MS) of 2007, 3132 (MS) of 2007, 3133 (MS) of 2007, 3000 (MS) of 2007 and 3043 (MS) of 2007. The other category of writ petitions pertaining to MBBS examination are 409 (MS) of 2007, 3238 (MS) of 2007, 3401 (MS) of 2007, 3053 (MS) of 2007, 1620 (MS) of 2007 and 1644 (MS) of 2007 of which the leading Writ Petition is 3010 (MS) of 2007; Attaullah Khan and others v. state of U.P. and others. Writ Petition No. 3053 (M/S) of 2007 pertains to supplementary examination of M.B.B.S. Course.

3. The petitioners of above noted writ petitions pertaining to MBBS and BDS examination challenge the power of the University to raise the standard of examination by revising the marking criteria whereas the students who are appearing in the supplementary examination of MBBS course allege that the same standard of marking should be applied in their case as according to the old rules their batch mates have passed out and because of the fact that they are

appearing in the supplementary examination therefore they are also entitled for the same criteria of marking.

4. The initial dispute arose before this Court when a writ petition No. 537 (MS) of 2006 was filed by the students of BDS course in this Court claiming that they are the students of BDS course in Sardar Patel Institute of Dental & Medical Sciences, affiliated to the Awadh University and they have appeared in the examination for the academic session 200506, which commenced on 18.9.2006 and the practical whereof were concluded on 5.10.2006 and therefore it was urged that the petitioners on the date when the examination commenced were governed by the Rules that were then in vogue and not which were proposed to be amended by the examination committee vide its resolution dated 5.10.2006. It was also urged that the University cannot apply new rules on the petitioners on the ground that the rules have been subsequently amended and approved by the academic council on 17.11.2006 and by the executive council on 18.11.2006.

5. The Court after hearing the parties came to a definite conclusion that the new rules could not have been applied in respect of those candidates who have appeared in the examination prior to amendment of the rules and therefore the writ petition was disposed of with a direction that the Coordinator on 9.10.2006 was having no authority in law to amend the aforesaid rules retrospectively even in respect of the examinations which had already commenced prior to the proposal dated 5.10.2006 relating to the academic session 200506. It was also found by the Court that retrospective operation of the new rules under the executive order of the Coordinator was not permissible in law. The University was also not justified in giving it retrospective operation as neither any rule nor the statutes empower the university for the time being in force to give retrospective effect to a decision in respect of such amendments, which has been undertaken in the present case and therefore the Court held that the declaration of result of the students of the said writ petition according to the amended rules as communicated through the order of the Coordinator is illegal.

6. After the allowance of the aforesaid writ petition, the result was declared according to the old rules. After the judgment passed in the case of Arti Garg (*supra*), the University declared the result of all those BDS students who have participated in the examination prior to 9.10.2006. It is from this stage that the litigation ensued in the university by various students as indicated above challenging the power of the University to make amendment in the rules and also contending that even if the rules are applied then with respect to one examination one set of rules will apply and different set of rules cannot be applied as has been done in the case of certain students of MBBS course appearing in the supplementary examination whose result is sought to be declared on the basis of amended rules.

7. All the Colleges in which the students are studying are affiliated to Ram Manohar Lohia Avadh University (in short hereinafter referred to as the University). The facts, which are not in dispute, are that the petitioners of writ

petition No. 3401 (MS) of 2007 and 3053 (M/S) of 2007 appeared in their supplementary examination of second professional examination. The rest of the writ petitions pertain to the batch of MBBS as well as BDS final year students who contend that the new rules cannot be applied on them and their result should be declared according to the old rules and also the amendment made in rules is ultra vires. The examinations were going on smoothly when the University in its wisdom thought it proper to raise the standard of examination and the Examination Committee passed a resolution on 5.10.2006 exercising power under Section 29(2)(c) of the Uttar Pradesh State Universities Act, 1973 (for short hereinafter referred to as the Act). The matter was placed before the Academic Council on 17.11.2006, who approved the said resolution passed by the Examination Committee. The Executive Council approved the said decision on 18.11.2006 and thereafter as stated above, the amended rules have been applied with retrospective effect, which was not approved by this Court. Thereafter, the present writ petitions have been filed challenging the implementation of the new rules and also the power to amend the rules by the Examination Committee. The learned Counsel appearing on behalf of the petitioners has submitted that the Examination Committee can deal with the improvement of the examination system as contemplated under Section 29 (2) (c) of the Act and cannot travel beyond the scope and ambit of the expression examination system. The examination system may include various forms of systems like semester system, annual examination system or other systems of examination, which are recommended by the Medical Council of India or Dental Council of India or by the University Grants Commission. To adhere to one system of examination or other systems of examination lies within "the domain of the Examination Committee. It is submitted that so far the standard of examination is concerned it is altogether a different field and system of examination does not embrace in itself the standard of examination. To buttress his argument the learned Counsel has relied upon Section 51(2)(m) of the Act, which deals with the conduct of examinations and then Section 52 (3) proviso (b) has been relied upon to argue that the conduct and standard of examinations can only be changed in accordance with the proposal of the faculty or faculties concerned and a draft to this effect has to be proposed to the academic council. The argument in sum and substance is that the University does not possess any power to raise the standard of examination on the basis of resolution issued by the Examination Committee but in fact it has to be done by way of ordinance as provided under Section 50 and 52 of the Act. Various dictionary meanings have been relied upon to emphasize the term "system of examination" and "standard of examination". It has also been submitted that the power in the Dentists Act, 1948 does not empower the University to raise standard of examination by way of enhancing the requirement of marks, as the Dentists Act does not contain any such provision. It has also been submitted that the aid sought to be taken by the Counsel for the opposite parties from the aims and object cannot be relied upon for the purpose of empowering the University to enhance the standard of examination. The criteria laid down by the Dental Council of India will prevail

over the University and the University has got no right to enhance the criteria in contrast to the criteria laid down by the Dental Council of India. The other set of the petitioners have also argued on identical lines except that there is specific provision under Section 19A(1) of the Indian Medical Council Act, 1956 (in short hereinafter referred to as the Act of 1956), which empowers the Council to prescribe the minimum standard of medical education required for granting recognized medical qualifications by Universities and Medical institutions in India. It is also submitted by one of the batch of the students that they cannot be subjected to new rules as according to the old rules the result of the students of their batch has been declared and therefore the new rules cannot be applied with respect to the same batch as it will violate the provisions of Article 14 of the Constitution of India.

8. Learned Counsel for the petitioner has placed reliance on the cases reported in 1993 Supp. (3) SCC 99, Council of Homeopathic System of Medicine, Punjab and others v. Suchintan and others; 2005(5) SCC 420, Prof. Yashpal v. state of Chhattisgarh, 1983 ALJ 889, Young Doctors Association v. State of U. P. 2002 (1) SCC 633, Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala, AIR1956SC35, Member, Board of Revenue v. Arthur Paul Benthall; 2005 (6) SCC 404, ICICI Sank v. Municipal Corporation; and 2002 (2) SCC 318, state of Maharashtra v. Marwanjee F. Desai and others.

9. The learned Counsel for the opposite parties Sri V.K. Singh, Senior Advocate, assisted by Sri Manik Sinha, learned Counsel for the University, submits that it is in the domain of the University to raise the minimum standard as and when it is felt that the students of excellence and efficiency are not coming out from the institutions and also on account of some on going mischief it was thought proper to check the said mischief. It is stated on behalf of the parties that some of the students who have not passed the theory examination have been able to get through on the basis of practical marks and internal assessment marks. The University thought it proper that all students should necessarily obtain 50% marks in theory examination so that inefficient students may not be produced by the institutions and with that view the present amendment has been implemented so that the students of high standard and proficiency should occupy the field after passing out and they serve the society in a better manner. It has also been submitted that there is no obligation to apply the rules retrospectively with respect to the students who are appearing in supplementary examination and the rules prevailing at the time of the examination shall apply. It has also been submitted that the University is competent to make amendment in the criteria and said power is vested with the University and no fault can be attributed in the decision making process as well and that the standard of examination can always be enhanced by the University as held by the Supreme Court in Preeti Srivastava's case. It is urged that when it came to the knowledge of the University that the students up to the mark were not passing out and were not being produced by the said colleges and looking to the fact that various students were securing less marks in theory even then they have been declared

pass on the basis of marks obtained in the practical examination. The University with a view to have the efficient doctors changed the criteria of marking and thus, no illegality has been committed by the University.

10. I have heard the learned Counsel for the parties and gone through the record.

11. The dispute came into existence when the Examination Committee passed a resolution dated 5.10.2006 changing the marking criteria and making amendment in the rules which was approved by the Academic Council on 17.11.2006 as contemplated under Section 29 of the Act and thereafter the same was approved by the Executive Council. The said amended rules were applicable with respect to the session 200607 and according to that the result of the said session was declared which was impugned in the writ petition No. 5374 (MS) of 2006 wherein this Court came to the conclusion that the rules cannot be applied retrospectively and held that the examination which has commenced prior to the amendment on 18.11.2006, its result was to be declared according to the old rules. The said judgment has not been challenged in any higher forum and the University acted upon the said judgment. The problem arose when the rules came to be applied in respect of the session 200607 in respect of the students who have come forward challenging the said amendment of the standard. This Court has to consider the question as propounded before it as to whether it was within the domain of the University to have amended the rules and raise the standard of examination by enhancing the minimum marks to be obtained by each student as contemplated under Sections 51 and 52 of the Act or the University was competent to raise the standard of examination as contemplated under Section 29 of the Act. Section 29 (2)(c) of the Act reads as under:

"to make recommendations to the Academic Council for the improvement of the examination system."

12. It is under the above provision that the Examination Committee exercising power for improvement of examination system has passed the resolution for making change in the standard of examination. No doubt Section 29 (2) of the Act lays down that the Examination Committee shall supervise generally all examinations of the University, including moderation and tabulation and shall also perform other functions one of which is enumerated in clause (c) of the aforesaid Act. Section 51 of the Act deals with the subject of Ordinances. It provides that subject to the provisions of the Act and Statutes the Ordinances may provide for any matter which by this Act or the Statutes is to be or may be provided for by the Ordinances. Clause (m) of Section 51 (2) deals with the phrase "conduct of examinations" and Section 52(3) proviso "b" is quoted as under:

"(b) effecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations or any course of study except in accordance with a proposal of the Faculty or Faculties concerned and unless a

draft of such Ordinances has been proposed by the Academic Council."

13. The emphasis has been laid on the words "conduct or standard of examination". The phrase used in Section 51 (2)(m) of the Act is the "conduct of examinations" and the words used in Section 52 of the Act are "conduct or standard of examinations". The question under scrutiny is as to whether the power exercised by the University under Section 29(2)(c) of the Act was valid and legal for raising the standard of examination. It is also to be considered as to whether the examination system will include the standard of examination or examination system of various types as decided by the University to be implemented. For example, semester system, annual examination system or any other system which may be applied by the University in the interest of the society and to the interest of the education system. For understanding the import and meaning of the system, the Act itself has to be looked into but so far the Act is concerned, the same does not define system or system of examination. If the Act does not define the system of examination then aid from the dictionary may have to be taken to ascertain the exact meaning of the system. This view is being adopted in view of law laid down by the Apex Court in 1985 Supp. SCO 280 : state of Orissa v. Titaghur Paper Mills Co. Ltd. The Apex Court held as under:

"In view of this state of record we must seek to ascertain the meaning of these two terms in common parlance with such aid as is available to the Court. It is now well settled that the dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the Court may take the aid of dictionaries to ascertain the meaning of a word in common parlance. In doing so the Court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the Court would, therefore, have to select the particular meaning which would be relevant to the context in which it has to be interpreted that word."

14. In *Dr. Rasmi Srivastava v. Vikram University and others*, 1995 (3) SCC 653 their Lordships of Apex Court held that the University cannot frame rules contrary to the University Act and if it is so, it is ultra vires. It was held relying upon the ratio laid down in *Dr. Bal Krishna Agarwal v. state of UP. and others*, 1995(1) SCC 614, that unless and until there was amendment in the Act the seniority cannot be awarded to a person although promoted under the particular scheme. In para 38, it has been laid down as under:

"In appeal pursuant to leave granted by this Court, S.C. Agarwal, J. speaking for the Division Bench took the view that the appellant was entitled to be treated as senior to the promotee Professor as Section 31 A was not on the statute book when Respondents 4 and 5 were promoted and therefore their promotions could be treated as valid from 21.2.1985 when Section 31 A was enforced. Before that date the appellant had already entered the cadre of Professors on 11.11.1984 and therefore he had to be treated as senior to Respondents 4 and 5. In para 13

of the report the following observations were made in this connection : (SCC pp. 62122)

"We are of the opinion that in view of the provisions contained in Section 31A and Section 2(14) of the Act there is no escape from the conclusion that Respondents 4 and 5 could not be given promotion under the Personal Promotion Scheme till the necessary provisions prescribing the length of service and the qualifications for such promotion were made in the Statutes and since this was done by Notification dated 21.2.1985, promotion under the Personal Promotion Scheme could not be made prior to 21.2.1985. The Executive Council in its resolution No. 198 dated 8.11.1984 had accepted the recommendations of the Selection Committee for promotion of respondents 4 and 5 on the basis of Government Orders dated 12.12.1983 and 25.2.1984. At that time Section 31 of the Act provided for appointment of teachers by direct recruitment and did not envisage promotion from a lower teaching post to a higher teaching post. The orders of the Government aforementioned could not be given effect till necessary amendment was made in the Act making provision for personal promotion. This was done by introducing Section 31A by U.P. Act No. 9 of 1985 with effect from 10.10.1984. But Section 31A could be given effect only after the necessary provision was made in the Statutes prescribing the length of service and qualifications for personal promotion. This was done by the Notification dated 21.2.1985. The promotion of respondents 4 and 5 to the grade of Professor under the Personal Promotion Scheme could, therefore, not be made prior to 21.2.1985 and it has to be treated to have been made with effect from 21.2.1985. The inter se seniority of the appellant and respondents 4 and 5 has to be determined on that basis."

In our view the aforesaid decision of this Court is squarely applicable to the facts of the present case. As seen above in the Uttar Pradesh Act there is already an amendment by insertion of Section 31A which provided for a distinct source of promotion. In the Vikram University Act with which we are concerned, there is no such provision. It is therefore to be held that till appropriate amendments are effected in the Universities Act concerned on the same lines as Section 31A of the Uttar Pradesh Act there would be no occasion for considering the merit promotees to have entered the cadre of Reader or Professor as the case may be, and consequently there would arise no occasion for consideration of the further question affixation of inter se seniority of such ex cadre promotees and the directly recruited Readers or Professors who form the cadre concerned."

15. As is evident from the law laid down in the case of Titaghur Paper Mills Co. Ltd. (supra), it would be necessary to look into the dictionary meaning of the words "system" and "standard" in the context, which have been used in the Statute to ascertain the true and correct meaning of these two words.

16. The Chamber's Dictionary defines the word "standard" as an established or accepted model; a principle of behavior or morality; a definite level of excellence or adequacy required, aimed at, or possible; an overall level achieved.

17. In Webster's Third New International Dictionary, "standard" has been defined to be criterion, gauge, yardstick, touchstone, can designate, any measure by which one judges a thing as authentic, good, or adequate or the degree to which it is authentic.

18. In Stroud's Judicial Dictionary, the meaning of "standard" has been given as; as applied to goods, is a common English word with no very precise or definite meaning, but it is generally intended to convey the notion that the goods in connection with which it is used are of high class, or superior quality or acknowledged merit.

19. The Shorter Oxford English Dictionary on Historical Principles Vol. 2 defines the word "standard" to mean as an authoritative or recognized exemplar or correctness, perfection, or some definite degree of any quality, a definite level of excellence, attainment, wealth, or the like, or a definite degree of any quality, viewed as a prescribed object of endeavour or as the measure of what is adequate for some purpose.

20. Similarly, the word "system" has been defined in Words and Phrases Permanent Edition Vol. 40 Aas ; the word "system" imports a unity of purpose as well as an entirety of operation. The system is defined as orderly combination or arrangement, as of particulars, parts, or elements into a whole; especially such combination according to some rational principle; any methodic arrangement of parts. (State v. Kistler, 227 N.W. 319, 320, 119 Neb. 89.)

21. A "system" is an organized or methodically arranged set of ideas; a complete exhibition of principles or facts, arranged in a rational dependence or connection (Associated Index. Corp. v. O/7 Well Drilling Co., Tex. Civ. App., 258 S.W.2d 523, 529).

22. Among the recognized synonyms of "system" are method, manner, and mode. None of these words, when discriminately used, means precisely the same as "system, " yet the meanings are near enough alike so that the employment of "system" as a substitute for any of them is quite natural, where entire accuracy is not expected (Fosche v. Union Traction Co., 196 P. 423, 424, 108 Kan. 585).

23. Various headings have been incorporated in the form as system of Bookkeeping, system of common schools, system of county and town Governments, system of doing business, system of experience rating, system of Government, system of sewerage, system of transportation, system of treatment, system of code of laws and various other headings.

24. The Webster's Third New International Dictionary also define "system" to mean, to bring together, combine, a complex unity formed of many often diverse parts subject to a common plan or serving a common purpose, an orderly working totality, a coherent unification.

25. The Shorter Oxford English Dictionary defines "system" as a set of principles,

etc.; a scheme, method. The set of correlated principles, ideas, or statements belonging to some department of knowledge or belief, a comprehensive body of doctrines, conclusions, speculations, or thesis, an organized scheme or plan of action; an orderly or regular method of procedure.

26. In Stroud's Judicial Dictionary, the word "system" has been defined to mean, "system of working the mine". These words relate to the method of mining the coal, and not to the actual machinery and plant being used (*Lister v. National Coal Board*, (1970) 1 Q.B. 228).

27. If the dictionary meaning as indicated above is taken into consideration then the meaning of the word standard can be linked with the excellence, improvement and raising of standard.

28. Whereas, if we look upon the dictionary meaning of the word system then it will be clear that any form of exercise for improving the examination system is in consonance of the provision of Section 29 (2)(c) of the Act. The system of examination includes various forms of examinations like semester system, annual system or other systems adopted by various Universities from time to time. Recently University Grants Commission has also decided to adopt semester system. The University can change the system of examination as contemplated under Section 29(2)(c) of the Act. But, if the University wants to change the standard of examination then the University has to resort the provisions contained in Sections 51 and 52 of the Act. Section 51 (2)(m) specifically deals with the phrase "conduct of examinations" and when we consider the provisions of Section 51 of the Act then it is clear that subject to the provisions of the Act and Statutes the ordinances can provide any matter which by this Act or Statute is provided to be done by the Ordinances. Section 29 does not provide for issue of any Ordinance whereas Section 52 of the Act, which deals with the subject of conduct or standard of examination provides that any change which has to be brought into in regard to the standard of examination has to be brought by Ordinance and more precisely by Section 52 of the Act which embraces within itself more elaborately the conduct and standard of examination as contemplated in subsection (3) proviso (b) of Section 52. The conduct or standard of examination, if it is to be changed then it has to be done by way of Ordinance as contemplated under Sections 51 and 52 of the Act. The system of examination, which is within the power of the Examination Committee can only be touched and affected as indicated above. The system of examination is quite different from the standard of examination. Indian Medical Council Act, 1956, has also used the word "minimum standard of examination of medical education" and in pursuance there of the Medical Council of India has framed regulation and thereby fixed the minimum standard of marks to be obtained by the students for passing a particular examination. The minimum standard in the context of Section 19A and the statement and object of the Dentists Act, which also deals with the minimum standard of training, empowered the Indian Dental Council to lay down minimum standards of training. Section 20 (1)(h) of the Dentists Act, 1948 also empowers

the Dental Council of India to make regulations not inconsistent with the provisions of the Act to carry out the purpose of this Chapter. The Council may notify regulations in the official Gazette with the approval of the Central Government. Clause (h) of Section 20(1) of the Dentists Act, 1948 provides as under:

"prescribe the standards of examinations and other requirements to be satisfied to secure for the qualifications recognised under this Act."

29. The Dental Council of India while exercising power under Section 20 of the Act framed regulations known as "Dental Council of India BDS Course Regulations 1996" and while laying down the minimum standard has provided the marks to be obtained by a student in the theory as well as practical/clinical examinations. The word "standard of examination" prescribed in clause (h) and "internal minimum skill and clear concepts of the fundamentals" if read together lead to only one inevitable conclusion that the standard of examination is intertwined and connected with the award of marks and not with the system of examination.

30. Section 19A of the Indian Medical Council Act, 1956 also uses the word "minimum standards of medical education" to be prescribed by the Council required for the purpose of grant of recognized medical qualifications by the Universities or medical institutions. Section 33 of the Indian Medical Council Act, 1956 empowers the Council to make regulations which provides that the Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purpose of this Act and clause (h) of Section 33 also deals with the subjects of examination and the standards of proficiency therein to be obtained. The Indian Medical Council has also framed the regulations with the approval of the Central Government known as "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and the regulations also provide the obtaining of minimum marks by the students. The provisions under the Medical Council Act also go to indicate the laying down of standard of examination including the fixation of marks.

31. Considering the words used in the Dentists Act and the Indian Medical Council Act, the word standard of examination embraces within itself the raising of marks and the system of examination in both the Acts i.e. Dentists Act and the Indian Medical Council Act does not include aforesaid action. The University when wanted to excel the standard of examination by increasing the minimum marks to be obtained by the students it was having no other option except to resort the provisions contained in Section 51 and 52 of the Act. This also finds support from the law laid down in Dr. Rasmi Srivastava's case (supra). In this regard it is to be noted that it is settled law that when a statute requires a thing to be done in a particular manner then it should be done in that manner only and not otherwise. Reference in this regard can be made to the decisions reported in 2001 (4) SCC 9, Dhananjaya Reddy v. State of Karnataka, 2002 (1) SCC 633, Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala.

32. Relevant paragraphs from the case of Dhananjaya Reddy (supra) are reproduced as under:

"23. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in State of U.P. v. Singhara Singh, (AIR p. 361, para 8) held :

"A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.".....

26. Relying upon Nazir Ahmad case and applying the principles laid down in Taylor v. Taylor this Court in Singhara Singh case held : (AIR p. 361, para 8)

"The rule adopted in Taylor v. Taylor, is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

33. Whereas, the relevant paragraph from the case of Anjum M.H. Ghaswala (supra) is reproduced as under:

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasijudicial power of arriving at a settlement under Section 245D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119 (2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in subsection (2) of Section 119."

34. To the same effect the cases reported in AIR 1936 PC 253, Nazir Ahmad v. KingEmperor; AIR 1961 SC633, Saibal Kumar Gupta and others v. B.K. Sen and another; AIR 1975 SC 915, Ramchandra KeshavAdke (dead) byLrsv. Govind Joti Chavare and others; and 1996 (14) LCD 516; Baburam Verma v. Sub Divisional Officer, Akbarpur, District Faizabad and others, have also been referred.

35. Going by above dictum of ratio laid down by the Apex Court the University was required to adopt the process as contemplated under Sections 51 and 52 of the Act instead of resorting to the provisions contained in Section 29(2)(c) of the Act which has conferred power in different context. The system of examination cannot be equated in any manner with the standard of examination. Reliance placed by the learned Counsel for the University on the case reported in AIR 1982 All. 359, Km. Darsha Ahuja v. University of Agra, also goes to indicate that in the said case an Ordinance was framed by the University. The facts in the said case were that the petitioners were declared failed in the third and final professional examination of MBBS course held by the Agra University. The petitioners were all students of Sarojini Nayudu Medical College, Agra, which is affiliated to Agra University. The relief claimed in the said writ petition was that the result of the petitioners in so far as the subjects in which they have been declared failed be quashed and a writ of mandamus be issued to the respondents commanding them to declare the petitioners as passed in the said examination. In the said case the Executive Council issued Ordinance in the meeting dated 18.11.1973. The Court came to the conclusion that the University was empowered to raise the standard of examination and there was nothing illegal in the same. It was held that the impugned Ordinance does not prescribe standard, which may be said to be lower than the prescribed standard. The University by means of Ordinance raised the standard of examination. The reliance placed on Apex Court judgment reported in (1999) 7 SCC 120, Dr. Preeti Srivastava and another V. State of M.R and others, also does not come to the rescue of the University for raising the standard in the admission examination as it relates with the admission process before admission. The relevant paragraph from the aforesaid judgment is reproduced as under:

"While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower

studentteacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses."

36. The learned Counsel for the University has placed reliance on another case of Punjab University v. Subash Chandler and another, (1984) 3 SCC 603, and the Punjab University, in the said case made an amendment in May 1970 in the existing rules. Unamended regulation required 50% of marks to be passed in each subject but later on amendment was made by the University in Rule 7.1 providing therein that a student will be entitled to be given grace marks up to one per cent on total aggregate marks instead of one mark in each subject. The University in the said case also resorted to a proper procedure as prescribed under law whereas the opposite parties have not been able to justify their action while exercising power under Section 29(2)(c) of the Act. The raising of standard of examination is to be made on the basis of objective assessment as is argued by the learned Counsel for the petitioner that none of the Members belonging to medical faculty were associated as specified under Section 52 of the Act prescribing the mode and method of making Ordinances specifically provided in Section 3 proviso (b) that the proposal is to be made by the Faculty or Faculties concerned. This necessarily implies all the necessary expertise, which is required for raising the standard of examination, is to be made on the basis of an objective criterion by considering various factors. The Faculty Members in the wisdom of the Government were the proper persons. A Faculty or Faculties were the proper bodies who could recommend in this regard. The proper exercise in the form of various factors which need consideration could only be taken into consideration by the Faculty or Faculties concerned as has been held in the case reported in 2005(5) SCC 420, Prof. Yashpal v. State of Chhattisgarh. To quote:

"32.....The standard of education in an institution depends on various factors like (i) the calibre of teaching staff; (ii) a proper syllabus designed to achieve a high level of education in a given span of time; (iii) the studentteacher ratio; (iv) equipment and laboratory facilities; (v) calibre of the students admitted; (vi) adequate accommodation in the institution; (vii) the standard of examinations held including the manner in which the papers are set and examined; and (viii) the evaluation of practical examinations done. It was pointed out that education involves a continuous interaction between the teachers and the students. The base of teaching, the level to which teaching can rise and the benefit which the students ultimately receive depends as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities.

33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education

being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained."

37. Considering the above principles enunciated by the Apex Court in Prof. Yashpal's case (supra) it is evident that Faculty or Faculties are required to keep in mind all these factors while recommending for raising the standard of examination. Raising the standard of examination is not subjective but in fact it is dependant upon various factors, which are necessary and are intrinsically attached with the standard of examination. The standard of examination is not the question of subjective satisfaction. It has to be borne in mind as to what quality of education is being taught or what is the facility with regard to the practical and so on. The decision of the Examination Committee to enhance the standard of examination by raising the minimum fixation of marks apparently seems to be without jurisdiction and has not been exercised in proper manner as required under law. The power exercised under Section 29(2)(c) of the Act for raising the standard of examination is altogether not contemplated under law and is, therefore, ultra vires.

38. In view of discussions made hereinabove, the resolution passed by the Executive Council on 18.11.2006 raising the marks to be achieved by each student in the examination cannot be legally sustained and the same is liable to be quashed,

39. The writ petitions are accordingly allowed and a writ in the nature of certiorari is issued quashing the resolution dated 18.11.2006 and consequential amendment made thereof. The University is directed to declare the result of the students within a week from the date a certified copy of this judgment and order is produced before the Registrar of the University. However, it will not debar the University to proceed in accordance with law.

40. There shall be no order as to costs.