

(1987) 01 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2964 of 1986

Syed Wasi Imam

APPELLANT

Vs

The Patna University and Others

RESPONDENT

Date of Decision : 19-01-1987

Acts Referred:

Citation : (1987) PLJR 609

Hon'ble Judges : S.B.Sanyal, J

Bench : Single Bench

Advocate : Shailendra Kumar Jha, Durga Nand Jha and Hemant Kumar Jha, for the Appellant; R. B. Mahto, A. G. and Harendra Prasad ., for the Respondent

Judgement

S. B. Sanyal, J.—This is an application for issuance of writ of mandamus on respondent, the Patna University, to publish the Ph. D result of the petitioner as enjoined under Regulations for the Ph. D decree in the faculties of Arts, Science, Commerce, Education and Law (hereinafter to be referred to as the Regulations) without any further delay. The petitioner, who is a lecturer in Chemistry in T.P.S. College, Patna, on his having applied for permission of the Patna University for registration of his name for the degree of Ph. D in the faculty of Science, was granted permission for the registration of his name on 6th June, 1983, for the degree of Ph. D in the faculty of Science for a dissertation study of "Elastic Scattering of Electrons". The petitioner worked under his guide, Dr. I. A. Khan Parvez. Reader in Chemistry, Science College, Patna. The Examination Board, which is an authority under Regulation, is required on submission of the Thesis for examination to a Board of three examiners out of five names submitted by the Supervisor through the Board of Moderators. Accordingly, Dr. P. K. Das, retired Professor of Chemistry, Utkal University, Cuttuck, Prof.

M. V. Ramanmurthy, Retired Professor of Chemistry, Banaras Hindu University and Dr. I.A. Khan Parvez, Reader in Chemistry, Science College, Patna, examined the Ph. D. thesis submitted by the petitioner and is said to have recommended the name of the petitioner for the award of Ph. D. degree. Under regulation (7)

of the Regulations the petitioner was required not only to submit his thesis but if the thesis is approved to sit for viva-voce examination, Pursuant thereto a notice was issued by the respondent-University on 3.5.1986 under the signature of Assistant Registrar No. 1 requiring the petitioner to appear at the Ph. D. viva-voce examination on 28th May, 1986 in the Department of Chemistry, Patna University, Patna, It is said that inspite of petitioner's appearance in the viva-voce examination on 28.5.1986 till date his result has not been published even though ordinarily results are published within fifteen days of the holding of the viva-voce examination. The apprehension of the petitioner stated to be the malice entertained by the Vice-Chancellor against the father of the petitioner who is the Controller of Examination, Patna University because of some conflicting stand taken by the University and the Controller of Examination who is party in a writ petition bearing number C.W.J.C. 2129 of 1986 pending in this Court for hearing. It is alleged that in the said writ petition there have been some evaluation of marks to advance the case of the Vice-Chancellor's son and inspite of the direction of the Vice-Chancellor to the father of the petitioner, namely, the Controller of Examination, he did not agree to file a counter-affidavit on behalf of the University. It is said that the Vice-Chancellor of the University, thus, entertained malice against the father of the petitioner which has been sought to be wrecked by withholding the result of his son, namely, the petitioner, of the Ph. D. result.

2. Counter-affidavit has been filed on behalf of the University denying all the allegations and the apprehensions entertained. It has also been alleged that through the manoeuvring of the Controller of Examination one of the External Examiners could not participate in the viva-voce examination. It has also been stated in paragraph no. 18 of the first counter-affidavit that certain complaints were received by the University about the irregularities committed which, on enquiry by the Vice-Chancellor, were confirmed and, therefore, for some deliberations in the matter there has been delay in the publication of the result. Further, under the Regulation there is no time limit prescribed for publishing the result. Therefore, the petitioner moving the Court for redressal of grievance is wholly pre-mature.

3. The petitioner replied to the counter-affidavit mainly denying the manipulations alleged against the father of the petitioner and reiterated that it is because of the ill-will and hatred towards the father of the petitioner that the results are held up. The complaints are also stated to be stage managed even though there is nothing adverse against the petitioner. It is also stated that the excuse put forward for delayed publication of the result is merely a lame excuse on the part of the University only to mislead the Court. Being provoked with the assertion of no irregularity but malice on the part of the Vice-Chancellor, the University has come out with the irregularities in their rejoinder sworn by the Assistant Registrar no. 1 on 5.9.1986 and filed in this Court on 30.9.1986. In paragraphs no. 5 to 10 of the said rejoinder large number of instances have been shown which is indicative of the fact that the petitioner has copied his thesis from

various books and journals word by word without acknowledging the source or putting them in quotations and/or any foot-note as being works of other authors. In paragraph no. 11 the relevant pages of the books and journals mentioned in paragraphs no. 6,7,8,9 and 10 were sought to be produced at the time of the hearing of this case. In short, the stand of the University appears to be that the thesis submitted is not the own work of the candidate and/or tending generally to the advancement of knowledge in the subject for the contribution rendered by the petitioner inasmuch as out of 113 pages of the thesis 37 pages partially and 20 pages verbatim have been incorporated in the Thesis of published works of other authors without acknowledgement and/or reference to those materials.

4. A reply has been filed on behalf of the petitioner which has been styled as rejoinder to reply to the counter-affidavit during the course of argument even though it was sworn on 12.9.1986. The petitioner has asserted in paragraph no. 4. after referring to Regulation 9(c), that the borrowings are not against the aforesaid provision of the Regulation and almost all the research papers, without any exception, necessarily contain details of works of other workers in the relevant field. It has also been stated that the jurisdiction to evaluate the thesis is conferred on the Board of three Examiners and it is for the Board to report to the Examination Board whether they recommended the candidate for the conferment of the Diploma. Other details stated in the said affidavit are not very relevant for the decision of the writ application since they are more or less mud-slinging.

5. Mr. Shailendra Kumar Jha, appearing for the petitioner, drew my attention to Regulations 8(a),9,10,11 and 12 mainly to contend that the petitioner having been recommended by the majority of the Board of Examiners for grant of the degree the University could not have sat as a superior authority to evaluate the thesis and question the decision of the Board of Examiners. The satisfaction for the same is entirely that of the Board of Examiners and nonelse. Learned Counsel has further submitted that at page 114 of the thesis acknowledgement of the materials have been indicated which came to be consulted and observed while rendering the dissertation. According to the Learned Counsel it is not the practise to show in the foot notes in the body of the thesis their reference and/or to be the extract collected from the materials in page 114, in any quotation. Borrowings are clearly permissible under Regulation 9(c) of the Regulations. Learned Advocate General, appearing on behalf of the University, in reply to the argument of the Learned Counsel for the petitioner, contended that there is a verbatim incorporation of the works of other authors published in Journals and Books and by way of illustration and he took me to page 59 of the thesis to show that the heading "2.4. Elastic scattering of slow electrons by hydrogen atom, is word by word the research work of Satya Narain Banerjee, Rameshwar Jha and N.C. Sil published in Indian Journal of Physics, January, 1965. According to the learned Advocate General, it is true that at page 114 of the thesis a reference to that journal have been made but even though the petitioner has copiously copied from the book Quantum Mechanics by John L. Powell & Bernd Crasemann as

shown in paragraph no. 5 of the affidavit filed on 30.9.1986, there is no reference about the said book in the reference section at page 114 of the thesis. Similarly, there have been re-mention of the article written by Sri S.N. Banerjee, Sri R. Jha and Sri N. C. Sil published in the India Journal of Physics, January 1966 at page 489, but there has been no reference of the said article in the reference section of the thesis. The book entitled "the Theory of Atomic Collision" by M.F. Mott & H.S.W. Massey at page 419 have been copied with few changes here and there at page 78 of the thesis without any reference of the said book in the reference section. Learned Advocate General, further contended that the Board of Examiners were, thus, misled in arriving at their satisfaction for the grant of diploma to the petitioner. According to the learned Advocate General, under Regulation 12 of the Regulations the Board of Examiners have no absolute power for the grant of Ph. D. decree. It is the Examination Board who must be, on a consideration of the report of the Board of Examiners, otherwise satisfied that the candidate is worthy of the degree of Ph. D.

6. For the proper appreciation of the arguments of the Learned Counsel for the parties, I would like to extract regulations 8(a) to 12 of the Regulations which reads as follows:

8(a) Every candidate, on completion of his work, shall submit along with his application for permission to present the thesis the following:

(1) Three typewritten or printed copies of the thesis.

(2) A summary of his thesis not exceeding 300 words indicating in particular the nature and extent of his own contribution to the advancement of knowledge in his subject.

(3) A certificate from his supervisor, except where not necessary in the case of teacher of the University qualified to work without a supervisor, that the candidate has worked satisfactorily for the requisite number of terms under his supervision and that the thesis embodies the candidate's own work

(4) The prescribed fees:

No application shall be entertained unless testimony is given to the satisfaction of the Examination Board that, in habits and character, the candidate is a fit and proper person for the degree of Ph. D and unless it is made through the supervisor except in the case of a teacher not working under a supervisor.

9. A thesis for the degree of Ph D shall-

(a) be composed upon the subject stated in the candidates application for registration;

(b) embody the results of the candidate's research, and

(c) Show evidence of the candidate's own work, whether based on the discovery of new facts which the candidate has himself observed or of new relations of

facts observed by others, whether constituting an exhaustive study and criticism of the published works of others, or otherwise for forming a valuable contribution to the literature of the subject dealt with or tending generally to the advancement of knowledge.

10 The thesis submitted by the candidate shall be referred by the Examination Board to a Board of three Examiners who shall be appointed by the Examination Board out of a panel of five names to be submitted by the supervisor through the Board of Moderators for the Master's Examination in the subject concerned. In case of teachers where no supervisor has been appointed, the Board of Moderators for the Master's Examination in the subject concerned should suggest this panel to the Examination Board. The supervisor shall be one of the Examiners if not in eligible in the opinion of the Examination Board and two other examiners shall be from other Universities.

11. The Board of Examiners shall report to the Examination Board the result of the examination of the thesis of the Written and practical examination, if held, and of the viva-voce examination. The candidate shall be eligible for the award of the degree on the recommendation of the majority of examiners in the Board.

12. If the Examination Board after considering the report of the Board of Examiners are otherwise satisfied that the candidate is worthy of degree, of Ph. D., he shall be declared to have passed the examination and they shall cause his name to be published with the subject of his thesis.

7. From a conjoint reading of Regulations 8 (a) and 9. I am of the opinion that a candidate is required to give a summary of his thesis indicating in particular the nature and extent of his own contribution to the advancement of knowledge in the subject and the Supervisor is required to give his certificate that the thesis embodies the candidate's own work. This thesis must manifest evidence of the candidate's own work which may be based on discovery of new facts which the candidate came to observe in course of his research or new relations of fact observed by others or reference to exhaustive study and criticism of published work of others which tend to the advancement of knowledge. It nowhere provides that on ultimate analysis the thesis should be a replica of others research. It is desirable that whenever there is some reference, which have been incorporated in the thesis, it must manifest the source and ought to be in the form of a quotation so that it may be indicative to the Examiner that this is not the own work of the candidate. The power of the Board of Examiners also, to my mind, appear to be not absolute. The Regulation reserves the power for the Examination Board who "after considering the report of the Board of Examiners are otherwise satisfied that the candidate is worthy of a degree of Ph. D. whereupon only a candidate would be declared to have passed the examination and the Examination Board will cause his name to be published with the subject of his thesis.

8. Mr. Jha, however, is correct in his submission that the Court should be

extremely reluctant to substitute its own view or to verify the correctness of the evaluation made by the Examiners (See A. I. R. 1984 Supreme Court 1543). There could be no quarrel with the said principle as that would be usurping the functions bestowed on the Examiner. It is also true, as contended by Mr. Jha, that the petitioner has statutory right to be communicated of the result of the examination. But the submission of the Learned Counsel that since Board of Examiners have recommended the case of the petitioner as such the Examination Board is bound to confer the degree or diploma do not appear to be a correct proposition of law.

9. The University in its first counter-affidavit has only indicated that the delay in publication of the result is because of some irregularities which has come to be noticed by them and is being enquired into which, however, was branded as a mala-fide act of the Vice-Chancellor. It was asserted that there could be nothing against the petitioner except the malice and mala-fide of Vice-Chancellor in detaining the result. The University came forward to contend that the thesis presented does not appear to be the original work of the petitioner. The materials disclosed from paragraphs no. 5 to 11 in the affidavit dated 5.9.1986 cannot be easily ignored. There may be every chance for the Board of Examiners to have been misled, as Contended by the Advocate General, in arriving at their satisfaction in the matter. The Court is not bestowed with the expertise possessed by the Board of Examiners to hold whether the thesis could be treated as the own work of the candidate and such copying from written work of other authors are at all permissible without acknowledging the source and/or indicating the material so incorporated in the foot note of the thesis. In my opinion it will, therefore, be just and fair to refer the thesis back to the Board of Examiners for reconsideration in the light of the affidavit sworn by the University on 5.9.1986 and a reply thereto by the petitioner sworn on 12.9.1986 along with a copy of the judgment to record their satisfaction in accordance with law. The Board of Examiners must record a finding while arriving at their satisfaction that the thesis submitted "show evidence of candidate's own work" as envisaged under Regulation 9 (c) which have been quoted in extenso in the body of the judgment. Upon receipt of the reconsidered decision of the Board of Examiners the Examination Board should publish the result within three weeks therefrom as required in law.

10. I must, however, observe that the delay in publication of the result of the petitioner do not appear to have been actuated by any malafide on the part of the Vice-Chancellor. Merely because there have been some differences between the Vice-Chancellor and the Controller of Examination, one cannot come to the conclusion that the delay in publication of the result was because of the said alleged cause. The seriousness of the allegations demand proof of high order of credibility (See Orissa Cement Ltd. Vrs. Their Workmen; 1960 (2) L. L. J. 191, and E. P. Royappa Vrs. State of Tamil Nadu; A. I. R. 1974 Supreme Court 555). There appears to be genuine cause for the delay in the publication of the result. It is, therefore, directed that the thesis with the affidavit of Assistant Registrar

No. (sic)1 sworn on 5.9.1986 and reply thereto by the petitioner in the affidavit sworn on 12.9.1986 along with the books and the materials referred to in the affidavit of the University from paragraphs no. 5 to 12 along with a copy of this judgment and the Regulations be forwarded to all the two external Examiners within one week from today. The Court desire that the two external Examiners, on their part, should preferably render their reconsidered opinion within three weeks from the receipt of all the papers, documents, books, referred to above, whereafter the Examination Board, on receipt of the reconsidered opinion, should publish the result within three weeks therefrom. The writ application partly succeeds with the direction and observation, referred to above. There shall be no order as to costs.