

(2007) 09 AHC CK 0149
In the Allahabad High Court

Vishu Tyagi and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 19, 52

Citation : (2008) 5 AWC 4702

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioners, who are the students of M.J.P. Rohilkhand University, Bareilly, have filed present writ petition, questioning the validity of ordinance governing admission, courses of study, examination and other matters, relating to B. Tech. Programmes enforced by Executive Council of the University with effect from 26.12.2006 and for non-implementation of new policy of 70 marks for external examination and 30 marks of internal examination and declaration of result on the basis of earlier system i. e. 50 marks for external examination and 50 marks for internal examination.

2. Petitioners are students of 2006 batch and are being imparted instructions at the Institute of Engineering and Technology, M.J.P. Rohilkhand University, Bareilly. Earlier, the system which was being followed for awarding marks, was 50 : 50 ratio for external and internal examinations respectively. Petitioners have submitted that when they were accorded admission, they were under impression that they would be awarded marks at the ratio of 50 : 50 for external and internal examinations respectively, and even question paper supplied to them reflected the same situation. Petitioners have contended that Ordinance has been framed, and on the basis of the same result of the first semester examination of 2007 has to be declared on the basis of 70 marks for external examination and 30 marks for internal examination, which is unjustifiable. At this juncture present writ petition has been filed.

3. Counter affidavit has been filed, and therein it has been stated that previous system of 50 : 50 ratio between the end semester examination and internal assessment had revealed many anomalies and shortcomings and Same had existence of varied standards of evaluation and award of sessionals different departments. Two clear tendencies were noticed; under-evaluation resulting in large number of failures in different subjects, so called back papers and over-evaluation with the result that most of the students get 80% for more in sessionals. In this background, it has been stated that meeting of the Heads of the Departments and some senior teachers in the Institute of Engineering and Technology decided amongst other things to increase the weightage of end semester exam and suggested a ratio of 70:30. Thereafter, the scheme of 70:30 was placed before the Faculty Board of Faculty of Engineering and Technology on 30.10.2006 and the same was approved. Thereafter minutes of Faculty Board was approved by the Executive Council; on 26,12,2006 and the on the same day notification was issued by the Registrar of the University. It has been stated that amendments in the Ordinance were not made in the mid session, rather changes were implemented much before the start of examination process and before the start of internal assessment as well. Admission process was complete towards the end of November and the first semester examinations started from 16.01.2007. Qua the papers which were supplied to the incumbents i printing of 50 marks was described as printing mistake, and it has been stated that all the examinees were communicated of the said fact. It has been further stated that first semester examination was held from 16.01.2007 to 03.02.2007 and second semester examination started from 11.06.2007 to 27.06.2007. It has been stated that due to change in Ordinances, computer programme pertaining to Engineering, results had to be developed, which caused delay in declaration of results, however, non-declaration of first semester result has not posed any problem in the academic progress of first wear. since all the students are promoted to the 2nd semester irrespective of the result of first semester. This fact has been denied that examinations were held on the basis 50 : 50 marks for external and internal examinations, respectively. It has been reiterated that Registrar of the University had already notified on 26.12.2006 that internal assessment and sessionals shall be of 30 marks and end semester examination shall be of 70 marks, and in this background, it has been contended that writ petition is liable to be dismissed.

4. To this counter affidavit, rejoinder affidavit has been filed, and therein, it has been sought to be contended that in mid session Ordinances cannot be promulgated and the authorities have acted arbitrarily and illegally.

After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

5. Sri D.K. Singh, Advocate, appearing on behalf of petitioners, contended with vehemence that in the present case, Ordinance in question is unsustainable, firstly for the simple reason that at no point of time Academic Council had ever

sent proposal, whatsoever, and in the absence of any such proposal of Academic Council, Executive Council has no authority to promulgate Ordinances; consequently, it is void and is unsustainable, and secondly, during midst of the academic session Ordinances could not have been promulgated, and as such petitioners are entitled to be awarded marks on the basis of 50 : 50 ratio and not 70 :30 ratio.

6. Sri Vivek Verma, Advocate, representing the University, on the other hand, has contended that in the present case Ordinances have been validly framed in exercise of powers u/s 52 of the U.P. State Universities Act, 1973 after due recommendation was made by Faculty Board of Faculty of Engineering and Technology on 30.10.2006, which is Academic Council, otherwise and the same had been ratified by the Executive Council, which is the competent authority. In the present case, there is no question of mid session, as the petitioners are the students of 2006 batch and before commencement of the examinations, said Ordinances had been notified and it was in the knowledge of each and every student, and the Executive Council had full authority to fix the date of enforcement of the Ordinances, as such writ 1 petition deserves to be dismissed.

7. After respective arguments have been advanced, relevant provisions of the U.P. State Universities Act, 1973 are to be looked into. Section 19 of the said Act provides for the authorities of the University; they are like this:

- (a) the Executive Council;
- (b) the Court;
- (c) the Academic Council;
- (d) the Finance Committee;
- (e) the Boards of Faculties;
- (f) the Selection Committee for appointment of teachers of the University
- (g) the Admission Committee
- (h) the Examinations Committee
- (i) such other authorities as may be declared by the Statutes to be authorities of the University

8. Section 20 deals with the constitution of the Executive Council; Section 21 deals with the powers and duties of the Executive Council and amongst other authority provided for, Executive Council, under Clause (iii) of Sub-section (1) of Section 21 has the authority to make, amend, repeal Statute and Ordinances; Section 25 deals with the Academic Council and specially mentions that Academic Council shall be the Principal Academic Body of the University, and subject to the provisions of the Act, Statutes and Ordinances (a) shall have the control and general regulation of, and be responsible for the i maintenance of Standard of instructions, education and research carried on or Imparted in the University (b)

may advise the Executive Council on all academic matters including matters relating to examinations conducted by University (c) shall have such powers and duties as may be conferred or imposed upon it by the Statute; Section 27 deals with the Faculties and provides that Universities shall have such Faculties as may be prescribed. Each faculty shall comprise such departments of teaching as may be prescribed and each department shall have such subjects of study as may be assigned to it by the Ordinance. There has to be Board of each Faculty, the constitution, power and duties of which has to be such, as may be prescribed. There has to be Dean of Faculty, and the manner in which Dean is to be appointed. Sections 51 and 52 of the said Act being more relevant in reference to present case are being quoted below:

51. Ordinances.- (1) Subject to the provisions of this Act and the Statutes the Ordinances may provide for any matter which by this act or the state is to be or may be provided for by the Ordinances.

(2) Without prejudice to the generality of the provisions of Sub-section (1), the Ordinance shall provide for the following matters, namely:

(a) admission of students to the University and their enrolment and continuance as such;

(b) the courses of study to be laid down for all degrees, diploma and other academic distinctions of the University;

(c) the conditions under which students shall be admitted to the examinations, degrees and diploma of the University shall be eligible for the award of such degrees and diploma;

(d) the conditions of the award of scholarships, fellowships, studentships, bursaries, medals and prizes;

(e) the conditions of residence of students at the University and the management of halls and hostels maintained by the University;

(f) the recognition and management of halls and hostels not maintained by the University;

(g) the maintenance of discipline among the students of the University;

(h) all matters relating to correspondence courses and private candidates;

(i) the formation of parent-teachers association;

(j) the fees which may be charged by the University or by an affiliated or associated College for any purpose;

(k) the conditions subject to which persons may recognized as qualified to give instructions in halls and hostels;

(l) the conditions and mode of appointment and the duties of examining bodies,

examiners, moderators, invigilators and tabulators;

(m) the conduct of examinations;

(n) the remuneration and allowances including travelling any daily allowances to be paid to persons employed on the business of the University;

(o) all other matters which this Act or the Statute are to be or may be provided for by the Ordinances.

(52) Ordinance how made.- (1) The first Ordinances of each existing University shall be the Ordinances as in force immediately before the commencement of this Act in so far as they are not inconsistent with the provisions of this Act: Provided that for the purpose of bringing the provisions of any such Ordinances into accord with the provisions of this Act and the Statutes, the Chancellor may by order make such adaptations and modifications of the Ordinances whether by way of repeal, amendment or addition as may be necessary or expedient and, provide that the Ordinances shall as from such date as may be specified in the order have effect subject to the adaptations and modification so made by any such adaptation or modification shall not be called in question.

(2) The First Ordinances of the Universities of Kumaun and Garhwal and of any other University to be established after the commencement of this Act shall be made by the State Government by notification in the Gazette;.

(2-A) Until the The first Ordinances of the Purvanchal University are made under Sub-section (2), the Ordinances of the University of Gorakhpur, as in force immediately before the establishment of the said University, shall apply to it subject to such adaptations and modifications as the State Government may, by notification provide.

(3) Save as otherwise provided in this section, the Executive Council may, from time to time, make new or additional Ordinances or may amend or repeal the Ordinances referred to in Sub-sections (1) and (2):

Provided that no Ordinance shall be made-

(a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in Sub-section (1) of Section 45 for admission to the degree courses of the University, unless a draft of the same has been proposed by the Academic council; or

(b) effecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations of 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:

(c) effecting the number, qualifications and emoluments of teachers of the University or the income or expenditure of the University, unless a draft of the

same has been approved by the State Government.

(4) The Executive Council shall not have power to amend any draft proposed by the Academic Council under Sub-section (3) but may reject it or return to the Academic council for reconsideration either In whole or part together with any amendments which the Executive Council may suggest.

(5) All Ordinances made by the Executive council shall have effect from such date as it may direct and shall be submitted as soon as may be to the Chancellor.

(6) The Chancellor may, at any time signify to the Executive Council his disallowance of such Ordinances other than those referred to in clause Scheme of Administration (c) of the proviso to Sub-section (3) and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall become void.

(7) The Chancellor may direct that the operation of any Ordinance other than those referred to in clause Scheme of Administration (c) of the proviso to Sub-section (3) shall be suspended until he has an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order.

9. Section 51 provides for the matter qua which Ordinances could be framed and Section 51 (2) (c) and (m) of the U.P. State Universities Act, 1973 in particular prescribes conditions under which students shall be admitted to the examinations, degrees and diploma of the University shall be eligible for the award of such degrees and diploma and the conduct of examination. Sub-section (3) of Section 52 of the said Act provides that save as otherwise provided in this section, Executive Council may, from time to time, make new or additional Ordinances or may amend or repeal the Ordinances referred to in Sub-sections (1) and (2). The authority of Executive Council to frame new or additional Ordinances or amend or repeal Ordinances referred to in Sub-section (1) or (2) is not unfettered, as Sub-section (3) of Section 52 starts with save as otherwise provided in this section". Said opening sentences, provides for exception to the exercise of authority by the Executive Council, in certain matters prescribed for framing ordinances. Proviso attached to Sub-section (3) of Section 52 restricts the authority of the Executive Council to frame Ordinances, on the subject matters provided for in Clause (a) to (c), except after due procedure prescribed therein is adhered to. As per Clause (a) of the proviso attached to Sub-section (3) of Section 52 "affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in Sub-section (1) of Section 45 for admission to the degree courses of the University, unless a draft of the same has been proposed by the Academic council. Similarly as per Clause (b) of the proviso to Sub-section (3) of Section 52 "effecting the conditions and mode of appointment and duties of examiners and the conduct of standard of examinations of 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. As per Clause (c) of the proviso to Sub-section (3) of Section 52 "effecting the number, qualifications and emoluments of teachers of the University or the income or expenditure of the University, unless a draft of the same has been approved by the State Government". The scheme of the aforesaid Section makes it abundantly clear that entire functions and duties are statutory prescribed. Sub-section (4) of Section 52 provides that Executive Council shall not have power to amend any draft proposed by the Academic Council under Sub-section (3) but may reject it or return to the Academic council for reconsideration either in whole or part together with any amendments which the Executive Council may suggest. Sub-section (5) provides that all Ordinances made by the Executive council shall have effect from such date as it may direct and shall be submitted as soon as may be to the Chancellor. Thus, there is self contained procedure for making Ordinances and there is a special prohibition that no Ordinances shall be made affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in Sub-section (1) of Section 45 for admission to the degree courses of the University, or matters effecting conduct or standard of examinations or any course of study unless a draft of the same has been proposed by the Academic council.

10. In terms of the above provisions, now facts of the present case are to be looked into. In the present case, Ordinance in question has been promulgated by Executive Council in exercise of authority vested u/s 52 of the UP. State Universities Act, 1973, and by means of the said ordinance, it has been provided that same shall govern course of study, examinations and other matters relating to these programmes for students admitted to Part I-IV session onwards, and each of the above programmes, and such other program under the Faculty of Engineering and Technology. which may be started later, and be of four parts and eight semesters. Counter affidavit filed on behalf of the University clearly shows that some Heads of the Departments and some senior teachers in the Institute of Engineering and Technology decided amongst other things to increase the weightage of end semester exam and suggested a ratio of 70:30. Thereafter, the scheme of 70:30 was placed before the Faculty Board of Faculty of Engineering and Technology on 30.10.2006 and the same was approved. Thereafter minutes of Faculty Board was approved by the Executive Council on 26.12.2006. Boards of Faculties is one of the authorities prescribed under Clause (e) of Section 19 of the U.P. State Universities Act. Clause (a) of Section 19 provides for Executive Council; Clause (c) provides for Academic Council; and thus, each one has altogether different status and different role to play under the provisions of the Act and the Statutes framed thereunder.

11. Under the democratic structure of University, Executive Council is the Principal Executive Body of the University, and has to perform variety of functions, provided for in Clauses (i) to (xvii) of Sub-section (1) of Section 21. Executive Council, subject to any condition laid down in the Statutes, has

authority to (delegate its authority, to any officer or any other authority appointed by the University, or to the Committee appointed by it. Academic Council, on the other hand, is the Principal Academic Body of University, and is responsible for maintenance of standard of instruction, education and research carried on or imparted in the University and to advise Executive Council, on all academic matters relating to examinations, conducted by the University. There is no provision of delegating authority of Academic Council, to any officer, authority or committee appointed by it. Board of Faculty will have to function, exercise its authority and discharge its duties as will be prescribed by Statutes. Precise question was put to Sri Vivek Verma, Advocate, representing the University in question as to whether matter had been placed before the Academic Council or not, then it was stated by him that Faculty Board of Faculty of Engineering and Technology is at par with Academic Council. The submission made is totally vague, evasive and incorrect on the face of it, inasmuch as Faculty Board of Faculty of Engineering and Technology cannot be at par with the Academic Council. Academic Council has got its separate identity under the provisions of Section 19 (c) and Section 25 of the Act, whereas Faculty Board of Faculty of Engineering and Technology owes its existence to the provisions as contained u/s 19 (e) read with Sub-section (3) of Section 27.

12. question is can authority of Academic Council be bypassed in framing Ordinances. Hon'ble Apex Court in the case of V.C., Banaras Hindu University and Others Vs. Shrikant, , qua University in question has mentioned that University is creation of Statute, it can make statutes and ordinances, by way of subordinate legislation to deal with subjects enumerated therein. There cannot be any doubt, whatsoever, that a statute/ordinances could be made in the manner laid down under the Act. The Executive Council, the Vice Chancellor or any other authority, who are creatures of Statute must act within the four corners of thereof. Any modification/substitution/amendment is required to be carried out strictly in the manner laid thereunder.

13. Hon'ble Apex Court, in the case of Govardhandas Narasinghdas Daga and Others Vs. Union of India (UOI) and Others, while construing same provisions of U. P. State Universities Act, 1973, has taken the view that Executive Council of its own motion, cannot frame Ordinances, and it can be, done on the proposal of Academic Council. Ordinances, a copy of which has been supplied by Sri Vivek Verma, Advocate, clearly shows that it shall govern course of study, examinations and other matters relating to these programmes for students admitted to Part I-IV session onwards, and each of the above programmes and such other programme under the Faculty of Engineering and Technology, which may be started later, be of four parts and eight semesters. The Ordinances which have been framed on 26.12.2006 clearly falls within the scope and ambit of Clause (b) of Sub-section (3) of Section 52 of the Act, as it introduces new system of assessment of marks, in place of earlier system of assessment or marks. Proposal from Academic Council will give an opportunity to Executive Council to frame the Ordinances, where Ordinances in question would be

affecting the admission of students or effecting the conduct or standard of examinations, or courses of study. Affecting implicits in itself change. "To affect" is to "influence". "Affect" is word of wide import and same is construed to mean "touch" or "relate to" or "concern". "Effecting", on the other hand is to bring out or to accomplish. Clause (a) of the proviso to Sub-section (3) of Section 52 deals with affecting the admission of students, whereas Clause (b) of the proviso to Sub-section (3) of Section 52 deals with effecting the conduct or standard of examination or course of study. Earlier in respect of Examination. Ordinances provided for as follows:

11.6 Examination:

11.6.1 For each subject there shall be one written End Semester Examination (of not less than 3 hrs. duration for subjects having credits 3 or more and of only 2 hours duration for subjects having credits 2). For sessionals, there shall be at least two mid sem written tests (of not less than 1 hour duration each) in addition to quizzes, home assignments, etc. For each practical subject, there shall be sessional work including practical reports submission, quizzes and one End-Semester practical examination. 11.6.2 The relative weightage of different elements of evaluation shall be as follows:

(a) Theory Subjects. (i) Sessional marks 50% (ii) End Sem Examination 50%
Total 100%

Sessional marks shall be awarded according to the following scheme:

(i) Attendance 20% of the sessional marks. (ii) Quiz assignments, viva etc. 20% -do- (iii) I mid sem test based on first 30% -do- 30-40% of the syllabus (iv) II mid sem test based on next 30% -do- 30-40% of the syllabus Total 100%

If a student fails to appear in one or both mid sem test he/she can appear in a make up test

The weightage of make up test shall be only 20% of the total sessional marks. Reduced weightage is to curb the misuse of the make up test. Syllabus of the make up test shall be combined syllabus of both mid semester tests.

(a) Practical Subjects. (i) Sessional marks 50% (ii) End Sem Examination 50%
Total 100%

After amendment Ordinance, provides for as follows:

11.6 Examination

11.6.1 For each subject there shall be one written End Semester Examination (of not less than 3 hrs. duration for subjects having credits 3 or more and of only 2 hours duration for subjects having credits 2). For sessionals, there shall be three mid Semester written tests (of 1 hour duration) of 15 marks each, out of which best two shall be counted for the final score of sessionals.

11. The weightage of different elements shall be as follows:

(a) Theory Subjects. (i) Sessional marks 50% (ii) End Sem Examination 50% Total 100%

sessional shall be awarded according to following scheme:

(i) I Mid Semester Test based on 30-35% of the syllabus and of 15% marks

(ii) II Mid Semester Test based on 30-35% of the syllabus and of 15% marks

(iii) III Mid Semester Test based on 30-40% of the syllabus and of 15% marks
Out of these three Mid Semester Tests best two scores shall be counted for the final award of 30% Sessionals.

(a) Practical Subjects. 1. Sessional marks 70% 2. End Sem Examination 30% Total 100%

Sessional shall be awarded according to following scheme

(i) Attendance 20% of the sessional marks. (ii) Lab performance 20% -do- (iii) Lab record 20% -do- (iv) Viva-voce and/ 40% -do or Quiz"

14. By means of amendment, sessionals (internal assessment) has been reduced from 50 marks to 30 marks in each subject/paper. Rest 70 marks to be awarded on the basis of End Semester Examination, i. e. ratio of End Semester Exams and Sessional Marks was made 70:30, whereas earlier it was in the ratio of 50:50. For awarding sessionals of 30 marks, there shall be mid semester test each of 15 marks, out of which two best tests have to be counted for awarding sessionals. This change in Ordinances was clearly effecting conduct of examination, and could have been made, only on the proposal of the Faculty concerned, with said proposal further proposed by the Academic Council. Such Ordinances could have been made only on the proposal of the Faculty Board concerned and therefore, such Ordinances have to be proposed by Academic council. In the present case no proposal has ever been placed before the Academic Council, so without its proposal Ordinances could not have been framed. Proviso to Section 52 (3) is clear and categorical that no Ordinance shall be made unless a draft of the same has been proposed by the Academic Council, inasmuch as Academic Council; 18 the highest Academic Body of the University and is responsible foil-maintenance of standard of instruction, education and research carried on or imparted in the University, and it may advise the Executive Council on all academic matters, including matters relating to examinations conducted by the University. The authority of the Academic council in the present case has been completely bypassed, as at no point of time Academic Council had ever proposed any such draft Ordinance. It is settled in law that if Statute provides a particular act to be done in a particular manner, then the said manner has to be adhered to. In the matter of framing ordinances, proposal of draft in the scheme of things is mandatory condition and when proposal shall be made by Academic Council only then Executive Council will have authority and jurisdiction to consider the matter. Executive Council cannot be permitted to by pass the authority of Academic Council by acting on the

proposal of Faculty Board of Faculty of Engineering and Technology. Copy of resolution of Executive Council dated 26.12.2006, merely shows proposal by Faculty of Engineering and Technology and there is no reference of proposal by Academic Council. Power of the Executive Council in the scheme of things is also curtailed, inasmuch as Executive Council has no power to amend any draft proposed by the Academic Council under Sub-section (3) of Section 52 of the Act, rather it has been vested with the authority to reject it or return it to the Academic Council for reconsideration either in whole or part together with any amendments which the Executive Council may suggest. Thus, key role has to be played by Academic Council in such matters. In the present case, it is established fact that authority of Academic Council has been bypassed and without proposal of the Academic Council, no Ordinance effecting conduct of examinations or standard of examination could have been framed. As the Ordinances have been framed in breach of the mandatory provisions as provided under Clause (b) of Sub-section (3) of Section 52 of the Act, as such Same is unsustainable.

15. Consequently, in view of the discussions made above, writ petition is allowed. The Ordinances introduced by M.J.P. Rohilkhand University, Bareilly on 26.12.2006 are quashed. However, passing of this judgment will not prevent the respondents from framing Ordinances, but strictly in consonance with the provisions as contained under the U.P. State Universities Act, 1973.