

(1962) 10 AHC CK 0007

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 2100 of 1962

Gyanandra Vir Singh

APPELLANT

Vs

The Vice Chancellor, University of
Allahabad and Others

RESPONDENT

Date of Decision: Oct. 31, 1962

Acts Referred:

- Allahabad University Act, 1921 - Section 12(7), 30, 33, 33(2)

Citation: AIR 1963 All 596

Hon'ble Judges: V.G. Oak, J

Bench: Single Bench

Advocate: Gopi Nath and Triloki Nath, for the Appellant; G.P. Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.G. Oak, J.

The question raised in this writ petition is whether the petitioner has passed a certain University examination.

2. The petitioner appeared at the LL. B. Previous Examination of Allahabad University in 1960, and was successful in that examination. He appeared for the LL. B. Final Examination in 1961, but failed in the examination. He appeared for the LL. B. Final . Examination again in 1962. The University authorities declared that he failed in the 1962 examination also. The petitioner's contention is that he has actually passed the LL. B. Final examination held in 1962. Hence this writ petition.

3. The Assistant Registrar of Allahabad University has filed counter affidavit on behalf of the respondent. According to the counter affidavit, the respondent's decision about the petitioner's failure in the LL. B. Examination is correct.

4. The petitioner had to appear for eight papers in his LL. B. Final Examination. The marks obtained by him in the previous papers have been detailed in para 22 of the counter affidavit. He obtained 32 marks out of 100 marks for the third paper on Jurisprudence. According to the respondent, the petitioner, was required to obtain at least 36 marks out of 100 marks for each paper. The respondents are, therefore, of the opinion that the petitioner failed in the paper on Jurisprudence.

5. A copy of the question paper on Jurisprudence has been filed by the petitioner. The head note to the paper ran thus :

"Maximum marks 100. Answer six questions. All questions carry equal marks. Four marks are reserved for general impression."

One of the points urged by Mr. Gopi Nath appearing for the petitioner is that, reservation of four marks for general impression was illegal. Reliance has been placed on Statute No, 190 dealing with the conduct of examination. According to Statute No. 190, all examinations whether written or oral or practical shall be held in the premises of the University. It was contended for the petitioner that the Statute contemplates examinations of three kinds written, oral or practical. The examination on Jurisprudence was neither, an oral examination nor a practical examination. It was a written examination. It was, therefore, contended that reservation of four marks for general impression in a written examination is illegal.

6. I agree with Mr. Gopi Nath that the marking of the paper on Jurisprudence had to be with reference to the answers furnished by a candidate on the questions set in the paper. Marks could not be reserved on some extraneous consideration. But I see no reason to suppose that the reservation of four marks was for any irrelevant consideration, such as the financial status of a candidate or his ability in sports. The general impression of the examiner is necessarily connected with the answers given by the candidate on the questions set in the paper. There is, therefore, no difficulty in treating the general impression as a part of the written examination.

Reserving four marks for general impression does not contravene Statute No. 190.

7. The University has prepared Ordinances regulating the conduct of examination. One, Ordinance has been quoted in para 2 of the petition. According to para 2 of the petition, each candidate was required to obtain a minimum of 30 per cent marks in each paper. Even in Jurisprudence the petitioner obtained more than 30 marks. The petitioner's contention, therefore, is that he has fulfilled the condition laid down in the paragraph of the petition.

8. It has been pointed out in the counter affidavit that, an old Ordinance has been quoted in para 2 of the petition. It is stated in the counter affidavit that the Ordinances of, the University governing the conduct of LL. B. Examination have been altered during recent years. These alterations were made in several stages. On 11-4-1959 the Executive Council passed two resolutions Nos. 120 and 122.

Resolution No. 120 related to the alteration of subjects prescribed for the LL. B., Previous and LL. B. Final Examinations. Resolution No. 122 raised the minimum passing marks. The minimum passing marks were raised from 30 to 36.

9. Mr. Gopi Nath contended that Resolution No. 122 passed by the Executive Council on 11-4-1959 was never enforced. In order to examine this contention, it is necessary to study the machinery for the framing of Ordinances under the Allahabad University Act (hereafter referred to as the Act).

10. Section 33 of the Act describes how ordinances are made. Sub-section (1) of Section 33 states :

"Save as otherwise provided in this section, Ordinances shall be made by the Executive Council."

It is further explained that an Ordinance affecting the conduct of an examination has to be framed in accordance with a proposal of the Board of the Faculty concerned upon a draft proposed by the Academic Council. Sub-section (2) of Section 33 states : --

"The Executive Council shall, not have power to amend any draft proposed by the Academic Council under Sub-section (1) but may reject it or return it to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest."

Sub-section (3) of Section 33 states :

"All Ordinances made by the Executive Council shall have effect from such date as it may direct, but every Ordinance so made shall be submitted, as soon as may be, to the Chancellor"

11. It will be seen that under Sub-section (3) of Section 33 of the Act, an Ordinance framed by the Executive Council can take effect from a date to be fixed by the Executive Council itself. There is no indication in the counter affidavit that the Executive Council ever fixed any date for the enforcement of Resolution No. 122 passed by it on 11-4-1959. On this point, it is stated in para g of the counter affidavit that the Vice Chancellor in exercise of his emergency powers, directed that the above change be given effect to in the LL. B. Previous-course from July 1959. Mr. Gopi Nath contended that, under the emergency powers of the Vice-Chancellor, it was not possible to fix a date under Sub-section (3) of Section 33 of the Act.

12. In order to see whether the Vice-Chancellor could exercise any powers u/s 33 (3) of the Act, it is necessary to examine the question whether fixing a date u/s 33 (3) is a legislative function or an administrative act.

13. " [Ram Kishan Vs. State](#), is a Full Bench decision of this Court. On page 194 Wali Ullah, J. observed that, there is no real analogy between "conditional legislation" which authorizes a non-legislative authority to determine the commencement or

termination of an Act and an Act done in exercise of a power to determine the life of an enactment itself.

14. "In Re Article 143 of the Constitution of India etc AIR 1951 S. C. 332, Kania, C. J. observed on page 345 :

". . . . It may further provide that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage."

In "[Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India \(UOI\) and Others](#)", the distinction between conditional legislation and delegated legislation was explained. In conditional legislation the delegates' power is that of determining when a legislative declared rule of conduct shall become effective, and delegated legislation involves delegation of rule-making power which, constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words, by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect, as also the determination of the area to which it is to extend. When the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is a conditional legislation.

15. In "Maxwell on Interpretation of Statutes", eleventh edition, we find the following; observation on page 396 :

". The Acts of Parliament (Commencement) Act, 1793, enacted that the clerk of Parliament should endorse on every Act, immediately after its title, the date of its passing and receiving the Royal assent. This endorsement is part of the Act and is the date of its commencement when no other time is provided."

In India the practice described above is not in force. So the principle explained there has no application in our present case.

16. The functions of the Executive Council have been described in Section 20 of the Allahabad University Act. The Executive Council shall be the executive body of the University. It will be noticed that the Executive Council is essentially an executive body. It is not a legislative body. Yet Section 33 of the Ad has conferred on the Executive Council the power to frame Ordinances. The function of the Executive

Council under Sub-section (1) of Section 33 is legislative- in character. Sub-section (3) of Section 33 lays down that having made an Ordinance under Sub-section (1) of Section 33, the Executive Council has also to give a direction about the date of commencement of the Ordinance. Both the elements of delegated legislation and conditional legislation are involved in the plan of framing Ordinances u/s 33 of the Act. Although the function of the Executive Council under Sub-section (1) is legislative in character, it does not follow that the mere act of fixing a date for commencement of an Ordinance is also legislative in character. It is the general practice of legislatures to authorise some executive authority to fix a date for the commencement of an Act, The provision of Sub-section (3) of Section 33 is of that character. We have seen that the Executive Council is essentially an executive body. There should, therefore, be no difficulty in treating the fixation of date under Sub-section (3) of Section 33 as an administrative act by an authority, which is essentially an executive body.

17. Sub-section (7) of Section 12 of the Act deals with emergency powers of the Vice-Chancellor. I agree with Mr. Gopi Nath that emergency powers under Sub-section (7) of Section 12 do not extend to legislation. But, as already explained, mere fixing a date for commencement of an Ordinance does not constitute legislation. It is an administrative act. Such an administrative act to be performed normally by the Executive Council itself may be performed by the Vice-Chancellor under special circumstances. Such a matter is covered by the emergency provisions under Sub-section (7) of Section 12 of the Act. If the Executive Council failed to notify the date of the commencement of the Ordinance framed on 11-4-1959, the Vice Chancellor could intervene, and fix a date under his emergency powers. It is stated in para 9 of the counter-affidavit that the direction was for giving effect to the LL. B. Previous course from July, 1959. It was suggested that the direction was with reference to the LL, B. Previous course only. The text of the Vice-chancellor's order is not before me. I am not, therefore, in a position to know the exact scope of that order. Ground No. 5 in the writ petition made a general charge that there has been no substantial change in the old Ordinance or Rule so far as the petitioner is concerned. No specific defect in the framing of the new Ordinances has been pointed out in the writ petition. It is not, therefore, possible to give further consideration to the contention that the Vice-Chancellor's order referred to in para 9 of the counter affidavit did not cover LL. B. Final Examination also. The Vice Chancellor having fixed a date for commencement of the Ordinance, resolution No. 122 passed on 11-4-1959 took effect from the date so notified. Obviously that date was long before 1962. So that resolution was in force in 1962.

18. The counter affidavit has given an account about further changes in the relevant Ordinances. On 21-12-1960 the Academic Council passed resolution No. 96. That resolution was redrafted by the Dean of the Faculty of Law. The resolution as re-drafted was passed by the Executive Council on 28-5-1961,

19. Mr. Gopi Nath points out that, neither the Executive Council nor the Dean was competent to introduce changes in the drafts proposed by the Academic Council. It is laid down under Sub-section (2) of Section 33 that, if the Executive Council has to suggest any changes, the draft has to be returned to the Academic Council for re-consideration. Such a step does not appear to have been taken by the Executive Council in the instant case. The Executive Council proceeded to pass the Ordinance as re-drafted by the Dean. I agree with Mr. Gopi Nath that the procedure was against the provision of Sub-section (2) of Section 33 of the Act.

20. The Ordinance as framed by the Executive Council on 28-5-1961 has been reproduced as Annexure "A" to the affidavit. I have compared Annexure "A" to the affidavit with Resolution No. 96 passed by the Academic Council on 21-12-1960. There is substantial agreement between the Ordinance passed by the Executive Council and Resolution No. 96 passed by the Academic Council on 21-12-1960. The main point for consideration in the present case is whether the petitioner was required to obtain 36 per cent marks in each paper. On this point, there is agreement between the Ordinance framed by the Executive Council and the Resolution of the Academic Council. So, to the extent at least, the ordinance framed by the Executive Council is valid.

21. According to Ordinance No. 6 of Annexure "A", certain students were entitled to certain concessions. Under those provisions, the petitioner was permitted to appear for subjects prescribed in the old course. It is stated in para 29 of the counter-affidavit that the Registrar's Office was doubtful whether candidates of this type were required to obtain 30 per cent marks or 36 per cent marks in each paper. Mr. Gopi Nath stated, that certain students have been declared to have passed the LL. B. Examination on the footing that they were required to obtain only 30 per cent marks in each paper. Assuming that some mistake was committed with reference to other candidates the petitioner is not entitled for a repetition of that mistake. The respondents are entitled to dispose of the petitioner's case in the light of the relevant Ordinances.

22. As early as 1959 it was decided that the passing marks should be raised from 30 to 36. The same decision was reiterated by the Academic Council and the Executive Council in 1960 and 1961. So, whether the present case is disposed of in the light of the resolution of the Executive Council dated 11-4-1959 or in the light of the resolution of the Executive Council dated 25-8-1961, the position is the same. The petitioner was required to obtain at least 36 per cent marks in each paper in his LL. B. Final Examination.

23. According to Mr. G. P. Singh appearing for the respondents, there were two reasons for holding that the petitioner failed in his examination. Firstly, he obtained only 32 marks in Jurisprudence as against the minimum of 36 marks. Secondly, he obtained 397 marks out of a grand total of 800 marks. Mr. G. P. Singh contended that it was necessary for the petitioner to obtain at least 400 marks out of a total of

800 marks in LL. B. Final Examination.

24. On this point, I notice a difference in the resolution of the Academic Council dated 21-12-1960 and the Ordinance as framed by the Executive Council on 28-5-1961 (Annexure "A" to the affidavit). According to the resolution of the Academic Council, a candidate had to obtain 50 per cent marks in order to be placed in the Second Class. The marks of the LL. B. Previous and LL. B. Final Examinations had to be added for determining the class for the LL. B. Final Examination. The question whether a candidate obtained 50 per cent marks in a particular examination had no direct bearing on the question whether he passed, the examination at all. But the plan in Annexure "A" to the affidavit is different. According to Clause 8 of Annexure "A", a candidate has to obtain at least 50 per cent of the aggregate marks assigned to each examination. Since this is a material departure from the plan of the resolution of the Academic Council, the charge contravenes Sub-section (2) of Section 33 of the Act, To this extent, the Ordinance appears to be invalid. It is, therefore, doubtful whether the mere fact that the petitioner failed to secure 400 marks out of 800 marks in the LL. B. Final Examination was by itself a sufficient reason for supposing that he failed in the examination.

25. The petitioner, however, cannot get away from the fact that he obtained only 32 marks out of 100 marks in Jurisprudence. He failed to obtain the minimum of 36 marks in this paper. The respondents were, therefore, right in taking the view that the petitioner failed in the LL. B. Examination.

26. It was also suggested for the petitioner that he was entitled to appear in the supplementary examination. The rules on this point are to be found on page 15 of the prospectus of the University for Faculty of Laws for 1962. Mr. Gopi Nath relied upon Sub-clause (ii) of Clause (h) printed on page 15. According to Sub-clause (ii) of Clause (h), any candidate, who has failed at the LL. B. Final Examination and has passed in all papers but has failed in the aggregate by not more than six marks, is entitled to appear in the supplementary examination. In order to qualify under this provision, a candidate has to pass in all the papers. But the petitioner failed in the paper on Jurisprudence. So, he cannot claim the benefit of Sub-clause (ii) of Clause (h). The petitioner was not entitled to appear for the supplementary examination.

27. The petition is dismissed with costs. The stay order dated 26-7-1962 is vacated.