

**(1989) 08 AHC CK 0057**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 17003 of 1989

Awdhesh Kumar Saxena

APPELLANT

Vs

Vice-Chancellor, Banaras Hindu  
University and Others

RESPONDENT

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**Date of Decision:** Aug. 8, 1989

**Acts Referred:**

- Banaras Hindu University Act, 1915 - Section 10, 10(1), 10(2), 11, 17
- Constitution of India, 1950 - Article 226

**Citation:** (1989) 2 AWC 1468

**Hon'ble Judges:** S.K. Dhaon, J; J.N. Dubey, J

**Bench:** Division Bench

**Advocate:** S.N. Singh and R.N. Singh, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

1. The resolution of the Executive Council of the Banaras Hindu University (hereinafter referred to as the University) cancelling the Pre-medical Test held on 4th June, 1989 for admission to First year M.B.B.S. course is being impugned in this petition by one of the candidates, who appeared in the said Test.

2. The material facts, which emerge from a perusal of the contents of the writ petition and the annexure thereto, are these. The Pre-medical Test is conducted by the University. A test was held on 4th June, 1989 for admitting 40 students to the First Year M.B.B.S. course. 23,000 students appeared. Reports of the leakage of the question paper reached the Vice-Chancellor. He constituted a one man inquiry omission. The commission made a recommendation. The relevant portion of its recommendation was, "Hence, prima-facie the question of canceling the whole question paper of Physics and Chemistry does not arise in any way. Due to shortage of time and also for not keeping the candidates in suspense it is recommended that two marks be awarded to all candidates for each of the above 10 Chemistry

questions which occur at the serial : Nos. 8, 14, 19, 22, 34, 41, 50, 70 and 71 of Chemistry paper of PMT, 1989". The Vice-Chancellor directed "in view of the above facts, the Vice-Chancellor, while agreeing with the recommendations, has further decided that 10 questions in Chemistry referred to above be deleted and equal marks be given to all candidates for these questions." A writ petition was preferred in this Court by one Shailendra Kumar Misra praying that the afore quoted order of the Vice-Chancellor may be quashed and he be directed to cancel the Test as a whole. A Division Bench of this court, on 28th July, 1989, dismissed the said writ petition. The relevant observations of this Court were : "...The satisfaction of the Vice-Chancellor, being of a prudent man who is the Administrator of the University, would be accepted as correct. It was not rightly done by the Vice-Chancellor to have cancelled the whole examination and start the same de novo. How many questions be deducted and marks spread over was within the powers and discretion of the Vice-Chancellor. In any view of the matter, the discretion has not been mala fide exercised. This Court cannot under Article 226 of the Constitution take a different view than that of the Vice-Chancellor and held his action as illegal.

3. The primary question to be decided is, whether the Executive Council had any jurisdiction to cancel the Pre-medical Test? It is an admitted position that the University conducted a competitive Entrance Examination. This examination is known as "Pre-medical Test" and the performance of a candidate at the Test was to be deemed to be the basis for admission to First Year M.B.BS. Course at the Institute of Medical Sciences of the University. Section 4-A of the Banaras Hindu University Act (hereinafter referred to as the Act) enumerated the powers of the University. Two such powers are to provide for instruction in such branches of learning as the University may think fit and to hold examinations and to grant diplomas and certificates, and confer degrees and other academic distinctions to and on persons who shall have pursued a course of study in the University and passed the examination or who shall have carried on research work in the manner prescribed by Ordinances. Sub-section (14) of Section 4-A empowers the University to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University. In Section 6 the Vice-Chancellor is described as one of the officers of the University. Sub-section (1) of Section 7-C, inter alia, provides that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of the University and give effect to the decisions of its authorities. In Section 8-A the Executive Council and the Academic Council are considered to be one of the authorities of the University. Sub-section (1) of Section 10 lays down that the Executive Council shall, subject to the control of the visitor, be the executive body of the University and shall have charge of the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University nor otherwise provided for. In Sub-section (2) the Executive

Council has been given additional powers, which may be conferred upon it by the Ordinance or the Statutes. Sections 17 and 18 respectively provide for the framing of the Statutes and the Ordinances. Statute 15 provides that subject to the provisions of the Act, the Statutes and the Ordinances, the Executive Council shall, in addition to any other powers vested in it, have certain powers enumerated therein. One of the powers so enumerated is to conduct all examinations in conformity with the Ordinances and the publication of the results thereof. It is not the case of the Petitioner that the University has framed any Ordinance which may have any bearing on the controversy in hand.

4. An Entrance Test is held not for the purpose of granting diplomas or certificates or conferring degrees and other academic distinctions, but for facilitating the University to provide for instructions in various branches of learning. The Pre-medical Test, therefore, is strictly speaking not an examination in the sense contemplated in the aforementioned provisions of the Act and the Statutes. The Test is held not for the mere purpose of separating the grain from the chaff but also with avowed object to selecting the best grain available. This is so as the seats for admission to the M.B.B.S. First Year course are limited. Such an activity of the University falls in the administrative domain. The Executive Council, in Section 10, having been constituted as the executive body of the University and having been charged with the conduct of all administrative affairs of the University not "Otherwise provided for, is clearly authorised to have a say in the Pre-medical Test. The words "conduct of all administrative affairs of the University" are wide enough to empower the Executive Council to conduct the Pre-medical Test. If that be so, it has the implied power of canceling that Test, at any rate before the declaration of the results thereof. We have already adverted to the relevant provisions of the Act and the Statutes and we have not been able to find any provision in them which may in any manner diminish or curtail the powers of the Executive Council in connection with the cancellation of a Pre-medical Test. On the contrary in Sub-section (14) of Section 4-A, the University has been clothed with sufficient powers to do all such other acts and things, even though not incidental to the powers already conferred, as may be requisite in order to further the object of the University. It is nobody's case, nor can it be, that the University has no power to hold a Pre-medical Test. Once such power is conceded, the power to cancel such a Test is incidental to the power of holding a Test. Independently of the incidental powers the University will have the jurisdiction to cancel the Pre-medical Test as it will be doing so in furtherance of the objects of the University. The Executive Council, therefore, in its capacity as the executive body had the full jurisdiction to cancel the Pre-medical Test.

5. It is the Petitioner's own case that the Vice-Chancellor set up a one man commission to enquire into the allegations of leakage of the papers of the Pre-medical Test and he also accepted the recommendations of that commission and passed an order giving effect to the same. The Vice-Chancellor did so as in

Section 7-C he has been made the Principal Executive Officer of the University and has been empowered to exercise general supervision and control over the affairs of the University. If the Vice-Chancellor could interfere with the Pre-medical Test, surely the Executive Council could do so. The Vice-Chancellor is under an obligation, in Section 7-C, to give effect to the decisions of the authorities and as already indicated the Executive Council is one of the authorities of the University. Even this Court in the aforementioned writ petition of Shailendra Kumar Misra has upheld the exercise of the power by the Vice-Chancellor. Therefore, the submission made on behalf of the Petitioner that the Executive Council had no jurisdiction at all to cancel the Test must be repelled.

6. At a second string to the bow, the argument advanced on behalf of the Petitioner is that the Executive Council could not take a decision without consulting the Academic Council. We have gone through the petition more than once. There is not even a whisper that the Executive Council resolved to cancel the Test without obtaining the opinion of the Academic Council. The only averment made is that it is the requirement of the law that the Academic Council should be consulted. In the absence of any averment that the Academic Council had not been consulted, it should be presumed that the Executive Council acted in accordance with law and, therefore, the contention advanced should be rejected outright on this score. However, we have examined the merits of the argument and we find no substance in the same. Section 11, inter alia, provides that the Academic Council shall be the academic body of the University and shall have charge of the organization of study and research in the University and Colleges, the courses of study and the examination of students and conferment of ordinary and honorary degrees and shall exercise such other duties as may be conferred or imposed on it by Statutes and Ordinances, and shall have the right to advise the Executive Council on all academic matters. We have already taken the view that a Pre-medical Test, the purpose of which is to enable a student: to unlock the doors so as to gain entry into the temple of learning, is distinct and separate from an examination held by the University for the purpose of conferment of diploma and degrees. We have, therefore, no hesitation in taking the view that a Pre-medical Test cannot be termed as an academic matter within the meaning of Section 11. We have already held above that such a Test falls in the realm of administration. Statute 18 provides for the powers, duties and actions of the Academic Council. Reliance is placed by the learned Counsel on Statute 18 (xvii). Before reading the same, we may also consider (xvi) which empowers the Academic Council to conduct the examinations in conformity with the Ordinances and to fix the date for holding them. We have already held that it is nobody's case that any Ordinances have been framed by the University for conducting the Pre-medical Test. We may now extract statute 18 (xvii), which reads--

To declare the results of the various University examinations, or to appoint committees or officers to do so, and to make recommendations regarding the

conferment or grant of degrees, honours, diplomas, certificates, titles and marks of hours.

Before commenting on the said statute we may also refer to Statute 15 (xvii) on which reliance has been placed by the learned Counsel for the Petitioner. This Statute empowers the Executive Council to direct the conduct of the examinations in conformity with the Ordinances and the publication of the results thereof. So far as Statute 15 (xvii) is concerned, it cannot have any application to a Pre-medical Test as admittedly the Test has not been held in conformity with the Ordinances. Therefore, it is obvious that the examination referred to in the Statute and the publication of the results thereof are referable to the examinations of the University for the purpose of conferment of diplomas and degrees. Reverting to Statute 18, we immediately find, that it talks of the declaration of the results of the various University examinations. These examinations are conducted by the University for the purpose of conferring degrees and diplomas. The Entrance Examinations are not embraced in the term examination used in the Statute under reference. The conclusion, therefore, is inevitable that the Academic Council does not come into picture at all when the Executive Council resolves to cancel a Pre-medical Test.

7. The next submission is that, in any view of the matter, the Executive Council could not pass the impugned resolution without taking the Controller of Examinations into confidence. Statute 5-A declares the Controller of Examinations as an officer of the University for the purposes of Section 6(j) of the Act. In Statute 5-A(3)(b) it is provided that he shall control the conduct of examinations and all other arrangements necessary there for and the execution of all process connected therewith. Earlier, in the same Statute, the Controller of Examinations is enjoined to issue, under the direction of the Vice-Chancellor, all notices convening meetings of the Board of Examiners, and to the committees appointed in connection with the examinations by the authorities of the University and maintain the minutes of all such meetings. Heading the two provisions together, it is clear to us that the Controller of Examinations performs a mere ministerial act. He does not come into the picture at all when a decision is taken as to whether an examination should be held or not. He is only concerned with the conduct of the examinations such a situation will arise only after a decision has been taken to hold such an examination. He is not clothed with any power to interfere with the results of any examination. He only plays a role when the actual process of examination commences. He may also play a role in the matter of fixation of dates etc. of the examination. He has no role to play in a policy decision. That matter falls exclusively in the domain of either the Executive or the Academic Council. Therefore, no infirmity can be attached to the impugned resolution of the Executive Council on the mere ground that the Controller of Examinations was not consulted by it.

8. It is next urged that there was no material before the Executive Council to enable it to come to the conclusion that the Test as a whole should be cancelled. To

buttress this argument, it is vehemently urged that, this Court having upheld the action of the Vice-Chancellor, the Executive Council acted arbitrarily and without jurisdiction in taking a decision different from the one taken by the Vice-Chancellor. We may at once read the resolution of the Executive Council. Material portion of the resolution is with a view to maintaining credibility and sanctity in the matter of examination and also to alley all doubts, the PMT held on 4 June 1989 be cancelled." The Executive Council further authorised the Vice-Chancellor to constitute a High Power Committee to enquire into all aspects of the Test held in June, 1989. We have already referred to the relevant provisions. The Executive Council is not subservient to the Vice-Chancellor. On the contrary, the Vice-Chancellor is enjoined to carry out the directions of the Executive Council. We have already indicated that 23,000 candidates had appeared and only 40 had to be selected. If the Executive Council opined that there was a possibility of the Test having not been held fairly and the possibility of the leakage of the papers had not been completely ruled out, it could take a decision for the cancellation of the Test as a whole. The Executive Council acted as a body. It cannot be said that it acted arbitrarily in arriving at the decision contained in the impugned resolution.

9. We may also advert to the allegations made in Paragraph 9 of the representation dated 2nd August, 1989 made by the Petitioner and some other candidates to the Vice-Chancellor. A true copy of the said representation has been filed as Annexure 4-A to this writ petition. It appears from the averments made in the said paragraph that the University had received some communication from the Medical Council of India. It also appears from the tenor of the averments that the Medical Council of India had also recommended the cancellation of the Test. This is so, as in the said paragraph it is averred: "...the Executive Council entirely endorsed this letter without recognising the motivating forces behind this letter". This Court in the writ petition of Shailendra Kumar Misra had not in any manner, fettered the powers or jurisdiction of the Executive Council. This Court did not record any finding that no case had been made out for cancellation of the Pre-medical Test. This Court merely upheld the decision of the Vice-Chancellor, by taking the view that the court could not act as an expert and could not interfere with the internal affairs of the University. We are, therefore, satisfied that the Executive Council did not either disregard the decision of this Court or showed any disrespect to it.

10. Shri Dinesh Kakkar, who has put in appearance on behalf of the University informs us that he has instructions to state that now a high level CBI inquiry has been ordered to go into the question of leakage of the Papers of the Premedical test held on 4th June 1989.

11. The Executive Council resolved that the fresh Pre-medical Test shall be confined to the candidates who were admitted to the Test held on 4th June, 198. No fresh applications were to be invited. The candidates re-appearing in the Test were not required to pay any fee. In our opinion, the Executive Council acted very fairly with

the candidates who appeared in the Test. It had to strike a balance between the reputation of the University and the interest of the really meritorious students on the one hand and the interest of a body of 23,000 students on the other. In our opinion, it maintained an even balance. It did substantial justice to all concerned. Therefore, merits apart, we do not consider it a fit case for interference in the exercise of jurisdiction under Article 226 of the Constitution.

12. The petition is dismissed summarily.