(2008) 10 SC CK 0072

Supreme Court of India

Case No: Civil Appeal No. 6202 of 2008 (Arising out of SLP (C) No. 13424 of 2007) and Civil Appeal No''s. 6203, 6204, 6206-6211 and 6212 of 2008 (Arising out of SLP (C) No''s. 13525, 14281, 18798-18803 and 21051 of 2007)

Sahiti and Others		APPELLANT
	Vs	
The Chancellor, Dr. N.T.R. University of Health Sciences and Others		RESPONDENT

Date of Decision: Oct. 22, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- NTR University of Health Sciences Act, 1986 - Section 12(2), 12(3), 30

Citation: AIR 2009 SC 879 : (2009) 1 ALD 561 : (2009) 1 ALD 56 : (2010) 1 ALT 10 : (2008) 12 JT 91 : (2009) 2 RLW 1765 : (2008) 13 SCALE 464 : (2009) 1 SCC 599

Hon'ble Judges: K. G. Balakrishnan, C.J; P. Sathasivam, J; J. M. Panchal, J

Bench: Full Bench

Advocate: Gopal Subramanium, A.S.G., T.R. Andhyarujina, V. Kanagaraj, Altaf Ahmed, M.N. Rao, L.N. Rao, G.V.R. Choudhry, K. Shivraj Choudhury, Guntur Prabhakar, Altaf Fathima, M. Vijaya Bhaskar, Y. Raja Gopala Rao, D.V. Nagarjuna Babu, Y. Ramesh, Y. Vismai Rao, Shakil Ahmed Sayed, Manoj Saxena, Rajneesh Kr. Singh and Rahul Shukla, for T.V. George, for the Appellant;

Final Decision: Dismissed

Judgement

J.M. Panchal, J.
Leave granted in all the special leave petitions.

2. The instant appeals are directed against judgment dated July 20, 2007 rendered by the Division Bench of High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 402 of 2007 and other cognate appeals by which the common judgment dated May 1, 2007, rendered by the learned single Judge of the High

Court upholding action of the Vice-Chancellor of Dr. N.T.R. University of Health Sciences, Vijaywada (for short "the University") of re-verification/re-valuation/re-examination of answer scripts of 436 students, who had failed in first year MBBS examination during academic year 2006-07, is set aside and the decision of the Executive Council to cancel the result of re-verification of answer scripts and asking 294 students, who were declared passed on re-verification of answer scripts to reappear in examination of first year MBBS, is upheld.

3. The appellants, who are students, joined first year MBBS course for the academic year 2006-07 in different private medical colleges which are affiliated to the University, Vijaywada. They appeared in the first year M.B.B.S. examination held from September 5, 2006 to October 10, 2006. The results of the examination were declared on December 2, 2006. The record shows that in all 4076 students had appeared in examination out of whom 992 students were declared failed in different papers. In the results published by the university, it was specifically mentioned that such of those students who wanted to attend personal identification for re-totalling of their theory answer scripts should submit their applications on or before December 13, 2006. This personal identification was meant to enable the students to apply for re-totalling of their answer scripts. Out of the 992 students who had failed, 436 students applied for re-totalling of their respective answer scripts. When the process of re-totalling was going on, some representations were addressed to His Excellency, the Governor, who is Chancellor of the university, and the Hon''ble Minister for Medical and Health as well the Vice- Chancellor of the university on behalf of the students in the name of MBBS First Year Students'' Parents'' Association with complaints of improper and under valuation of answer scripts. In the complaints, it was stated that answer scripts of three papers i.e. Anatomy, Physiology and Bio-Chemistry were not properly valued and the valuation was harsh whereas some questions in Physiology were out of syllabus and because of all these factors, the percentage of students who had cleared the examination was low. It is the case of the students that, the Vice-Chancellor, after listening to their grievances, assured that he would verify the answer books and if necessary, get them re-examined. Having regard to the nature of complaints received, the Vice-Chancellor constituted a committee of three expert professors on January 3, 2007 for re-verification/re-valuation/re-examination of answer scripts. The Committee undertook re-verification of the answer scripts and recorded marks on printed slips of papers which were stapled at the top of answer scripts. On the basis of re- verification made by the Committee appointed by the Vice-Chancellor, the University declared revised results on February 2, 2007 and 294 students out of 436 students, who had applied for re-totalling, were declared "Pass". The action taken by the Vice-Chancellor of re-totalling and re-verification of the answer sheets of First Year M.B.B.S. examination held in September/October, 2006 was placed before Executive Council for its ratification. The matter was considered by Executive Council

and the Council had approved the action taken by the Vice-Chancellor. The revised results were sent to the Principals of medical colleges. Subsequent to the declaration of the results, after re-valuation His Excellency, the Governor of the State, as well as the Minister for Medical, Health and Family Welfare and Vice-Chancellor of the University received communications and complaints stating that irregularities were committed in the process of re-verification. Because of the controversy generated in the media, His Excellency the Governor forwarded the complaints received by him to the Executive Council of the University for appropriate action. A meeting of the Executive Council of the University was convened to consider the action of re-totalling and re-verification of answer scripts relating to First Year M.B.B.S. examination held in September/October, 2006. The Executive Council resolved to ask the Government of Andhra Pradesh to constitute a high level committee to go into the circumstances under which re-verification of answer sheets was undertaken and find out whether any irregularities had taken place. The Executive Council further resolved to withhold declaration of the revised results of First Year M.B.B.S. course till the enquiry report was submitted and give intimation of the same to the Principals of medical colleges concerned. Accordingly, by letter dated February 2, 2007 the Principals of medical colleges were informed not to give effect to the results obtained on re-verification of answer scripts of First Year M.B.B.S. examination. In pursuance to the resolution of Executive Council, the University twice requested the Andhra Pradesh Government to constitute a high level committee but the Government did not oblige the University. Meanwhile, petitions were filed in High Court by the beneficiaries of the re-valuation of answer scripts seeking a direction to permit them to attend the second year M.B.B.S. course. The request made by the Registrar to the Government to constitute a high level committee to examine the whole issue was not acceded to but the Government referred the matter to the Law Department and Medical Department of the State. The Medical Department did not agree with the action of the Vice-Chancellor. Ultimately the Chief Secretary sought the opinion of the learned Advocate General of the State in the matter who, by his letter dated 29-03-07, opined that the decision of Vice-Chancellor permitting revaluation of answer scripts was not in accordance with the provisions of law/procedure. According to the learned Advocate General, merely because certain representations/complaints were received from the students/parents of the students, the Vice-Chancellor ought not to have ordered re-correction of answer scripts, more particularly, when there is no provision to do so in the Act. The learned Advocate General expressed the opinion that the University, being an autonomous body, there was no necessity for referring the matter to Government for the purpose of enquiring into the whole issue and, therefore, the very reference/request made by the University asking the Government to probe into the matter was not in accordance with the proviso to Section 12(3) of the N.T.R. University of Health Sciences Act 1986 (''the Act'' for short).

In view of the opinion of the learned Advocate General, the meeting of the Executive Council was convened on April 2, 2007. The Vice-Chancellor informed other members of Executive Council that revaluation of answer scripts was ordered because of the pressure from the students who had failed and their parents. Having regard to the facts of the case, the Executive Council agreed with the opinion of learned Advocate General and unanimously cancelled the whole process of re-valuation. The Executive Council was of the opinion that opportunity should be given to the failed students to re-appear in the examination and, therefore, it directed the students who had failed in September/October 2006 examination to reappear in the examination which was scheduled to take place on April 25, 2007.

4. The students and their parents were of the opinion that the Executive Council was not justified in cancelling the whole process of re-valuation, which was undertaken pursuant to the order of the Vice-Chancellor nor the Executive Council was justified in asking the students to re-appear in first year MBBS examination, which was scheduled to be held on April 25, 2007. Therefore, they invoked extraordinary jurisdiction of the High Court under Article 226 of the Constitution by filing Writ Petition No. 8658 of 2007 and other batch of petitions.

5. The learned single Judge of the High Court was of the opinion that the Vice-Chancellor had power u/s 12(2) of the Act, to appoint committee for re-verification of the answer scripts of the students and in the absence of any express power conferred on the Executive Council or the Academic Council, the Executive Council was not justified in cancelling the whole process undertaken for re-verification at the behest of the Vice-Chancellor. In view of above mentioned findings, the learned single Judge allowed the writ petitions filed by the students vide judgment dated May 1,2007.

6. Feeling aggrieved, the Registrar of the University filed Writ Appeal No. 402 of 2007 and other cognate appeals. The Division Bench of the High Court took the view that the Vice-Chancellor of the University had no jurisdiction u/s 12(2) of the Act to order re-verification of the answer scripts of the students and, therefore, the Executive Council was justified in cancelling the whole process of re-valuation as well as directing the students to re-appear in first year MBBS examination, which was scheduled to take place on April 25, 2007. In view of these conclusions, the Division Bench of the High Court allowed the writ appeals filed by the Registrar of the University giving rise to the instant appeals.

7. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also taken into consideration the documents forming part of the appeals.

From the "record of the case it is evident that in all, 4076 students had appeared in first year MBBS examination, which was held between September 5, 2006 and October 10, 2006. The results of the examination were declared on December 2,

2006 and 992 students were declared failed in different papers. Out of 992 students, who were declared failed, 436 students had applied for re-totalling of the marks assigned by the examiners in three different papers. When this process of re-totalling was going on, some representations were submitted to the University and Vice-Chancellor on behalf of the students in the name of MBBS First Year Students'' Parent''s Association with complaints of improper and under valuation of answer scripts. The record shows that Vice-Chancellor directed re-verification of the answer scripts. On January 3, 2007 the Vice-Chancellor constituted a committee of three professors for re-verification of answer scripts. The Committee undertook re-verification and recorded marks on the printed slips of papers stapled at the top of the answer scripts. On the basis of the re-verification undertaken by the Committee constituted by the Vice-Chancellor, the University declared revised results on February 2, 2007 by which 294 students out of 436 students, who had applied for re-totalling, were declared "Pass". Subsequently, highest authorities of the University received communications and complaints that irregularities were committed in the process of re-verification. In the backdrop of the complaints, the matter was placed before the Executive Council for considering the question whether the action taken for the re-verification of the answer scripts by the Vice-Chancellor of the University was valid. The Vice-chancellor agreed before the Executive Council that he had ordered re-verification under pressure and coercion from the students and their parents. Having regard to the facts of the case, the Executive Council did not approve the action of the Vice-Chancellor directing re-verification of the answer scripts and cancelled the whole process of re-verification. The Executive Council was further of the opinion that opportunity should be given to the failed students to re-appear in examination and, therefore, it directed the students, who had failed, to reappear in the first year MBBS examination, which was scheduled to be held on April 25, 2007.

8. The Division Bench of the High Court has set aside the judgment of the learned single Judge on the ground that the Vice-chancellor of the University had no power to order re-verification of the answer scripts. Section 12(2) of the Act reads as under:

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 all the authorities of the University.

Sub-section (3) of Section 12 provides that the Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under the Act and shall report to such authority the action taken by him on such matter. The proviso to Sub-section (3) stipulates that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Chancellor whose decision thereon shall be final.

9. A conjoint and meaningful reading of the provisions of Section 12(2) of the Act with Section 12(3) of the Act makes it evident that the Vice-Chancellor has power to take appropriate action relating to the affairs of the University, which includes conduct of examination also. The Vice-Chancellor is the conscious keeper of the University. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. Section 30 of the Act confers power on the Executive Council to make statutes. In exercise of that power, the Executive Council has framed the Statutes of University. Clause 1 of the Statutes deals with the status of the Vice-Chancellor and his powers and duties. Sub-clause (3) of Clause 1 of the Statues provides that it shall be the duty of the Vice-Chancellor to see that the provisions of this Act, the Statues, Ordinances and Regulations are duly observed and he may exercise all powers necessary for this purpose. Thus the express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. The wordings of Sub-clause (3) of Clause 1 of the Statute shows that a residuary power which is required to be exercised, in order to see that the provisions of the Act, the Statutes, Ordinances and Regulations are duly observed, is vested in the Vice-Chancellor. The Vice-Chancellor has right to regulate the work and conduct of officers and other employees of the University. He has also emergency powers to deal with any untoward situation. The power conferred u/s 12(2) and 12(3) is indeed significant. If the Vice-Chancellor '' believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. However, he must report to the concerned authority or body, who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him certain implied powers. It is the magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil he has to act firmly and promptly to put down indiscipline and malpractice. As per the Statutes of university, the Vice-Chancellor is whole-time Officer of the university and by virtue of his office, is a Member and Chairman of the Executive Council and of the Academic Council. He has power to convene meetings of the Executive Council and the Academic Council.

The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the Judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due

regard to the opinion expressed by the authority. In Board of Secondary Education v. Pravas Ranjan Panda and Anr. (2004) 13 SCC 383, the respondent No. 1, i.e., Pravas Ranjan Panda appeared in the High School Certificate Examination, 2003 as a regular candidate. He passed the said examination securing about 90% marks. He filed a Writ Petition under Article 226 of the Constitution alleging that he had answered all the questions correctly without committing any mistake and, therefore, deserved full marks in each paper, but due to carelessness and negligence of the Board in appointing inexperienced and unqualified examiners in certain papers, low marks had been awarded to him due to which he lost his chance of being within the first ten examinees in the HSC Examination, 2003. A prayer was made for re-evaluation of his answer book. The High Court disposed of the petition with a direction to the Board to scrutinize and recheck the answer scripts of examinees securing 90% and above marks in aggregate in HSC Examination 2003 and if there was any change or variation in the marks the petitioner should be informed accordingly. The candidates secured less than 90% of marks in aggregate who had applied for rechecking. and re addition of marks in certain answer papers had to be considered in accordance with the resolution of Board for rechecking of marks.

A review petition was subsequently filed by the Board wherein it was submitted that the Board shall face immense difficulties in scrutinizing and examining all answer sheets after publication of the results. It was also stated that 217 examinees had secured 90% and above marks in the examination and 27 examiners of the status of Chief Examiner would be required for re-examination of the answer books and some more examiners would be necessary to examine the subject of third language. However, the review petition was dismissed. In appeals the Supreme Court noticed that the High Court, though observed that the writ petitioner who had taken the examination was hardly a competent person to assess his own merit and on that basis claim re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in the marks. It was admitted before the Supreme Court that the regulation of the Board of Secondary education, Orissa did not make any provision of re-evaluation of answer books of the students. The Supreme Court was of the opinion that the question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer books was examined by the Supreme Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission (2004) 6 SCC 714. It was noticed by the Supreme Court that in the said decision it was held that in absence of rules providing for re-evaluation of answer books no direction should be issued because a direction for re-evaluation of the answer books would throw many problems and in the larger public interest such a direction must be avoided. Therefore, the Supreme Court expressed the opinion that the order of the High Court directing re-evaluation of the answer books of all the examinees securing 90% or above marks was clearly unsustainable in law and set aside the same. The above decision deals with the right of the student or candidate to claim

re-examination/re-evaluation of his answer sheet and the power of the High Court to order revaluation of answer sheets. It does not deal with the power of the Board to order re-evaluation of answer books if factual scenario so demands. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts re-evaluation may be found necessary. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters. Under the circumstances the plea advanced on behalf of the respondents that Vice-Chancellor of the N.T.R. University of Health, Sciences had no authority to order re-evaluation of the answer scripts, cannot be upheld. Therefore, this Court does not agree with the finding recorded by the Division Bench of the High Court that the Vice-Chancellor of the University had no power or jurisdiction to order the re-verification of answer scripts.

However, the facts indicate that the Vice-Chancellor had exercised power to order re-verification of answer scripts under pressure and coercion from the students and their parents and not independently on merits. As noticed earlier, 436 students had merely demanded re-totalling of marks. If the Vice-Chancellor was of the opinion that revaluation of answer scripts was necessary, he should have directed revaluation of answer scripts of all 992 students who had failed and revaluation of answer scripts could not have been confined only to 436 students who had never applied for re-valuation of their answer script, but had applied only for re-totalling of their marks recorded on the answer scripts. From the record, it is evident that the University authorities including the Vice-Chancellor, did not at all go into the merits of the allegations made in the complaints/representations submitted by the parent''s association for re-verification to find out whether there was any grain of truth in them. The record produced by the University does not give any indication of methodology adopted by the Committee for re-valuation. Moreover, the Members of the Committee appointed by the Vice-Chancellor for re-valuation of answer scripts had undertaken re-verification of 1082 answer scripts and completed re-verification in two days which itself indicates that the said re-valuation was not properly done and no credence could be given to the same. It is worth noticing that the decision of the Executive Council to cancel the result of the students on the basis of re-verification and giving an opportunity to the failed students to re-appear in the first year MBBS examination was approved by the Vice-Chancellor himself. Therefore, this Court is of the opinion that the Division Bench of the High Court was justified in upholding the decision of the Executive Council to cancel the result

obtained on re-, verification of answer scripts.

10. Mr. Gopal Subramanium, learned Additional Solicitor General appearing for the respondents, has stated at the Bar that the University is inclined to hold supplementary examination of the students, who have yet to clear first year MBBS examination. Therefore, NTR University of Health Sciences is hereby directed to hold supplementary examination of all students who have yet not cleared the examination of First Year M.B.B.S. held in September /October 2006. Pursuant to interim orders, 294 students were permitted to prosecute studies in Second Year M.B.B.S. If any student/students fails/fail in supplementary examination of First Year M.B.B.S. examination, the declaration of the results of such candidate/candidates who appear for Second Year M.B.B.S be withheld or their further course of study be decided based on the Rules and Regulations of University applicable to such students. It is clarified that the abovementioned direction would apply only to those students who had appeared and failed in the first year M.B.B.S. examination held between September 5, 2006 and October 10, 2006. Subject to the direction given above, this Court finds that no ground is made out by the appellants to interfere with the ultimate conclusion reached by the Division Bench and, therefore, the appeals are disposed of accordingly. There shall be no order as to costs.