

University of Allahabad and Others

Vs

Amrit Chand Tripathi and Others

Civil Appeal No. 2987 of 1986 in Special Leave Petition (Civil) No. 8329 of 1986

(O. Chinnappa Reddy, M. M. Dutt JJ)

02.09.1986

ORDER

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. This appeal by special leave is directed against a judgment of the Allahabad High Court quashing a resolution dated May 6, 1986 by which it was proposed to hold an Entrance Test for admission to the degree courses in Arts, Science and Commerce of the Allahabad University, while at the same time recording a finding that 'the entrance test for admission to degree course of Arts, Science and Commerce of the University cannot be characterised as arbitrary, illegal or irrational in view of the fact that the standard of students passing Intermediate Examination or equivalent examinations thereto is deteriorating now-a days'. The principal ground on which the High Court struck down the resolution was that there was no emergency to justify the Vice-Chancellor having recourse to the provisions of Section 13(6) of the Uttar Pradesh State Universities Act, 1973 for the action taken by him; the legitimate thing to do was to constitute an Admissions Committee as contemplated by Section 28 of the Act to consider the matter and to give an opportunity to the Academic Council to approve or disapprove the new policy. It is now practically conceded that the resolution dated May 6, 1986 was that of the Admissions Committee, whether properly constituted or not, and not that of the Vice-Chancellor and that there was therefore, no question of the Vice-Chancellor taking recourse to the provisions of Section 13(6) of the Act. However Shri Srivastava, learned counsel for the Student Federation of India and Shri Tarkunde, learned counsel for some of the members of the Academic Council supported the conclusion of the High Court on several grounds which we shall presently consider. Shri Shanti Bhushan and Shri Gupta, learned counsel for the University assailed the judgment of the High Court.

3. We may now state a few relevant facts. The Uttar Pradesh State Universities Act was enacted in 1973. Section 12 of the Act prescribes the mode of appointment and the conditions of service of the Vice-Chancellor and Section 13 prescribes his powers and duties. In particular Section 13(6) enables the Vice-Chancellor to take such action as he may deem fit if any matter is of an urgent nature requiring immediate action and the same cannot immediately be dealt with by any officer or authority or other body of the University empowered by or under the Act to deal with it. The Vice-Chancellor, however, is required to forthwith report the action taken by him to the Chancellor and also to the officer, authority or other body who would have dealt with the matter in the ordinary course. Section 19 designates the authorities of the University among whom are the Executive Council, the Academic Council and the Admissions Committee. Section 20 provides for the constitution of the Executive Council and Section 21 prescribes the powers and duties of the

Executive council. Section 21(1)(iii) enables the Executive Council to make, amend or repeal statutes and ordinances. Section 25 provides for the constitution and the powers and duties of the Academic Council, who is to be the principal academic body of the University. It is expressly provided that it shall have the control and general regulation of, and be responsible for the maintenance of standard of instruction, education and research carried on or imparted in the University and that it may advise the Executive Council on all academic matters including matters relating to examinations conducted by the University. Section 28 provides for the constitution of the Admissions Committee and its powers and duties. The constitution of the Admissions Committee is to be such as may be provided for in the ordinances. Subject to the superintendence of the Academic council, the Admissions Committee is required by Section 28(3) "to lay down the principles or norms governing the policy of admission to various courses of studies in the University". Section 28(4) also enables the Committee to issue directions "as respects criteria or methods of admission (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges" and prescribes that such directions shall be binding on such colleges. Section 45 deals with 'admission of students' and prescribes

No student shall be eligible for admission to the course of study for a degree unless -

(a) he has passed -

(i) the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or of any University or Board incorporated by any law for the time being in force;

(ii) any examination, or any degree conferred by any other University, being an examination or degree recognized by the University, as equivalent to the Intermediate Examination or to a degree of the University; and

(b) he possesses such further qualifications, if any, as may be specified in the ordinances :

Provided that the University may prescribe by ordinances any lower qualifications for admission to a degree in Fine Arts.

Section 51(2) stipulates that an ordinance shall provide for, among other things, 'the admission of students of the University and their enrolment and continuance as such'. Section 52 enables the Executive Council to make, from time to time, 'new or additional ordinances' or 'amend or repeal' the first ordinances of existing Universities. Proviso (a) to Section 52(3) prescribes that no ordinance 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, unless a draft of the same has been proposed by the Academic Council.

Section 72(1) requires the authorities of the Universities to be constituted as soon as may be after the commencement of the Act and prescribes that every person holding office as member of such authority immediately before the commencement of the Act shall cease to be such member on the commencement of the Act. Section 72(2) enables the State Government to direct who may discharge what powers, duties and functions under the Act until the constitution of new authorities.

4. For some time after the enactment of the Uttar Pradesh State Universities Act most of the

University Bodies were not constituted though an Administrative Committee had been appointed by the Government under Section 67 of the Ordinance which preceded the Act. As there was no Executive Council and since, it was not possible to call a meeting of the Administrative Committee, the Vice-Chancellor proceeded to act under Section 13(6) of the Act to constitute an Admissions Committee consisting of the Vice-Chancellor, all the Heads of the Departments, the Dean, Students Welfare, the University Proctor and the Registrar. This was done on July 12, 1973. Some time thereafter, the Executive Council was constituted and on September 3, 1973 the Executive Council by a resolution approved the action of the Vice-Chancellor in constituting an Admissions Committee consisting of the Vice-Chancellor, the Pro-Vice-Chancellor, the Deans of the faculties of Arts, Science and Commerce and law, all the Heads of Departments, the Dean, Student Welfare, the University Proctor and the Registrar. It will be seen that the members of the Admissions Committee are all educationists who hold their membership ex-officio. The Admissions Committee which was constituted in 1973 has been functioning ever since, without question.

5. The Admissions Committee at its meeting held on May 6, 1986 resolved to introduce an Entrance Test for admission to the degree courses in Arts, Science and Commerce and adopted a detailed scheme for that purpose. We are told that pursuant to the Resolution of the Admissions Committee, an entrance test has been held and the results have been tabulated but not yet published. Meanwhile the Student Federation of India and some students filed a writ petition challenging the introduction of the Entrance Test on the ground that the Resolution dated May 6, 1986 had no authority in law. The High Court held that the Resolution was without authority of law and therefore, quashed the same.

6. As already mentioned by us at the outset the primary ground on which the Resolution was quashed by the High Court was that there was no emergency such as that contemplated by Section 13(6) to justify the Vice-Chancellor passing the Resolution dated May 6, 1986. We have already pointed out that the Resolution dated May, 6, 1986 was that of the Admissions Committee and not that of the Vice-Chancellor. However, the Resolution has been attacked on several other grounds which we shall now proceed to consider.

7. It was argued that the Admissions Committee was not legally constituted as there was no emergency such as that contemplated by Section 13(6) to enable the Vice-Chancellor to constitute the Admissions Committee. The very order constituting the Admissions Committee recites that it had become necessary for the Vice-Chancellor to have recourse to Section 13(6) as there was no Executive Council in existence and as it was not possible to call the Administrative Committee. Those were good enough reasons for the action of the Vice-Chancellor and we do not think that anyone can be permitted to question the constitution of the Admissions Committee at this stage after the Committee as constituted in 1973 had been functioning for over a dozen years. It was next argued that the Vice-Chancellor was competent to invoke the power under Section 13(6) if an authority of the University was in existence but was unable to discharge its duties but not if such authority was not in existence at all. It was said that the existence of the authority and its inability to act were the conditions precedent to action by the Vice-Chancellor under Section 13(6). This argument has only to be stated to be rejected. Under Section 13(6) the condition precedent to the Vice-Chancellor's action is the necessity for action and the failure to take such action by the authority competent to take action. It does not mean that if the failure to take action is the result of the non-existence of the authority, the Vice-Chancellor cannot have recourse to Section 13(6). Another submission was that the Admissions Committee which took the present decision was not same as that constituted originally. This argument was sought to be spelt out from the circumstance that notice of the meeting of the Admissions Committee was given to several persons who were not

members of the committee as originally constituted. The circumstance that many others were invited to be present at meeting does not mean that they were invited as members of the Admissions Committee. They do not become members of the Admissions Committee by the mere fact of being invited to attend a meeting of the Committee. They appear to have been invited to assist the Committee in its deliberations. It was suggested that they were invited to provide support to the Vice-Chancellor in large numbers. We do not attach any importance to this suggestion. It was also commented that only six members of the Admissions Committee attended the meeting on May 6, 1986 and that all the others who attended the meeting were not members. But notice of the meeting was given to all the members and if some of them, for their own reasons, refrained from attending the meeting, their failure to attend the meeting cannot invalidate the deliberations of the Committee.

8. The principal submission on behalf of the respondents was that any proposal for entrance examination should originate from the Academic council and thereafter take the form of an ordinance by the Executive Council. It was argued that this was the net effect of Section 45(1)(b), Section 51(2)(a) and Proviso (a) to Section 52(3). It was said that Section 28 did not enable the Admissions Committee to prescribe any Entrance Test for admission to the degree courses. We are unable to agree with the submissions of the learned counsel for the respondents. We do not see why the expression "the principles of norms governing the policy of admission to various courses of studies in the University" should be interpreted in so narrow a fashion as to exclude the prescription of an Entrance Test. Sub-section (4) of Section 28 enables the Admissions Committee to issue directions regarding 'the criteria or methods of admission (including the number of students to be admitted) to constituent colleges maintained by the State Government and affiliated or associated colleges'. This provision which enables the Admissions Committee to issue directions to constituent colleges, affiliated or associated colleges in the matter of criteria or methods of admission also indicates that the principles or norms governing the policy of admission to various courses of studies in the University must necessarily include the criteria or methods of admission. We are of the view that Section 28(3) empowers the Admissions Committee to provide for an Entrance Test for admission to the University degree courses. It was suggested that such an interpretation would bring it in conflict with Sections 45, 51, and 52 of the Act and that there will be duality of authority in the matter of regulating admission to University degree courses. As we shall presently point out there is no conflict between Section 28 and the other sections nor are there dual authorities under the Act. These provisions have to be construed harmoniously so as to eliminate any conflict, without rendering any provision of the Act or any authority created by the Act, superfluous. Section 45(1) lays down the rules of eligibility for admission to a course of study in the University. Clause (a) prescribes the passing of the Intermediate or equivalent examination or a degree of a University as the basic qualification for admission and clause (b) enables the prescription of further qualifications by ordinance. Section 51(2)(a) authorises the making of ordinances to provide for "the admission of students to the University and their enrolment and continuance as such". But any ordinance that may be made for the purpose of Section 45(1)(b) or for that matter any ordinance affecting the admission of students shall not be made unless the draft of the same has been proposed by the Academic Council. It is so provided by the proviso to Section 52(3). What must be noticed here is that the Executive Council, of its own motion, cannot make an ordinance affecting the admission of students to the University. It can only be done at the instance of the Academic Council by its proposal. We have already seen that under Section 28(3), the Academic Council has the power of superintendence over the power of the Admissions Committee to lay down the principles or norms governing the policy of admission to various courses of study in the University. The scheme of the Act in regard to admissions to the degree courses of the University, therefore, appears to be like this : The Admissions Committee prescribes the principles or norms governing the policy of admission to the

various courses of study. This is subject to the superintendence of the Academic Council. The Academic Council may exercise its powers of superintendence, among other ways, by proposing an ordinance which may have the effect of reversing or modifying the action of the Admissions Committee. Thereafter the Executive Council may make an ordinance if it so thinks fit. Once an ordinance is made, it will not naturally be open to any of the university bodies, including the Admissions Committee to act contrary to it. This appears to be the scheme of the Act insofar as it relates to admissions. It follows that the Admissions Committee has the power to prescribe an Entrance Test. The Academic Council has the power to overrule the decision of the Admissions Committee in exercise of its power of superintendence. The Executive Council as such has no power to overrule the decision of the Admissions Committee except by making an ordinance on a proposal made by the Academic Council. The learned counsel for the respondents submitted that the scheme for the proposed entrance test ought to have been brought before the Academic Council so as to enable the Academic Council to exercise its power of superintendence by approving or disapproving the scheme. We do not think that there is any statutory requirement that any action taken by the Admissions Committee under Section 28 is not to be effected until the Academic Council is provided with an opportunity to exercise its power of superintendence. It is up to the Academic Council to exercise its power of superintendence. If as is claimed the Vice-Chancellor does not take the initiative to call a meeting of the Academic Council, the members of the Academic Council desiring to call a meeting of the Academic Council are free to take recourse to the provisions of the Act, the ordinances and the statutes to requisition a meeting. We are, therefore, unable to hold that the Resolution of the Admissions Committee dated May 6, 1986 is tainted by any illegality. We set aside the judgment of the High Court, dismiss the writ petition filed in the High Court, and further direct the University to forthwith announce the names of the candidates selected for admission to the various courses. We leave it up to the Academic Council to take such action as it may think fit in regard to the future years., We do not also express any opinion regarding the soundness of the scheme of the Entrance Test. There will be no order as to costs.

</html