THE VICE-CHANCELLOR, UTKAL UNIVERSITY AND OTHERS

v.

S. K. GHOSH AND OTHERS.

1954

January 15.

[MEHR CHAND MAHAJAN. C.J., MUKHERJEA, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Constitution of India, art. 226—Mandamus *petition—High Court—Whether can constitute itself as court of appeal—Resolutions passed by University Syndicate—Validity of—Notice of meeting issued to all—Want of due notice waived—Substantial compliance with spirit of law.*

In the present case there were two meetings of the University Syndicate, consisting of twelve members. Proper notices of both meetings were issued to *all* the members but one member did not attend one meeting and another member did not attend the other meeting. The defect was that the subject matter of the present case was not included in the agenda of either meeting but one of the items in the agenda of both the notices was "other matters, if any." The subject matter consisted of leakage of examination papers and the cancellation of results. Those present passed the resolution on both occasions unanimously. The High Court held that want of notice in the two cases invalidated the resolutions

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and issued a *mandamus* directing the syndicate to take steps for the publication of the results :

Held, that want of due notice can be waived in given circumstances. In the present case the two absentees did in fact attend one or other of the meetings and expressed their views, not individually but as members of a meeting which was considering the matter and there was unanimity on both occasions. The substance is more important than the form and if there is substantial compliance with the spirit and substance of the law, an unessential defect in form should not be allowed to defeat what is otherwise a proper and valid resolution. As in the present case, there was actual appearance without objection at meetings properly convened and there was complete unanimity on both occasions the two resolutions were not invalid because whatever may be thought about each taken separately, the defects, if any, are cured when two are read together and regarded as a whole.

Held further, that in a *mandamus* petition the High Court cannot constitute itself into a court of appeal from the authority against which appeal is sought. It is not the function of courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

The present was not the sort of case in which a *mandamus* ought to issue.

Radha Kishan Jaikishan v. *Municipal Committee, Khandwa* (61 I.A. 125) and *Young* v. *Ladies Imperial Club* (89 L.J.K.B. 563) referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7 of 1952.

Appeal by special leave from the Judgment and Order, dated 9th and 17th August, 1951, of the High Court of Judicature at Orissa in Miscellaneous Judicial Case No. 80 of 1951, and Order dated the 20th August, 1951, in Supreme Court Appeal No. 15 of 1951, on the file of the said High Court.

Dr. Bakshi Tek Chand (*G. C. Mathur* and *H. Mohapatra,* with him) for the appellants.

N. C. Chatterjee (*V. S. Sawhney* and *R. Patnaik,* with him) for respondents Nos. 1-8, 10-16, 18-23 and 25-34.

1954. January 15. The Judgment of the Court was delivered by

BOSE J.—This appeal arises out of a petition made by certain students of the Utkal University of Orissa

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to the High Court of Orissa at Cuttack seeking a *mandamus* under article 226 of the Constitution against the Vice-Chancellor of the University and certain other persons connected with it.

In view of an undertaking given before us on behalf of the University, the questions at issue lose most of their practical importance and only two questions of principle remain. Because of this we do not intend to examine the matters which arise at any length.

The facts are as follows. The first M.B.B.S. Examination of the University included Anatomy as one of its subjects. This examination was divided into three parts. The theoretical portion, which was written, was fixed for the 9th and 10th of April, 1951. The practical was fixed for the 19th and the *viva voce* for the 20th.

At 7 o'clock on the morning of the 9th, before the examination began, a member of the Senate was told that there had been a leakage of the questions and he was given a paper which was entitled "hints". He at once contacted three other members of the Senate and handed over copies of these "hints" to them. The three members were Mr. Justice Jagannadhadas, Mr. Pradhan, the Director of Public Instruction in Orissa, and Mr. Lingaraj Misra, the Minister for Education. The Vice-Chancellor was not informed at the time and no further action was taken. The examination proceeded as scheduled on the dates fixed.

The Vice-Chancellor was informed on the 19th. He at once asked Lt. Col. Papatla, the Principal of the Medical College, to look into the matter. This was done and Lt. Col. Papatla submitted a report on the 20th. He compared the "hints" with the question paper and considered that the similarity between them justified the conclusion that there had been a leakage.

It so happened that an ordinary meeting of the University Syndicate had been called for the 21st to

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consider certain other matters. This question was not on the agenda but the last item was, "other matters, if any."

The Vice-Chancellor presided and he told the members present what had happened. He had already prepared a note about this on the 21st before the meeting began. After setting out the facts the note concluded—

"I request the syndicate to discuss the matter as it is an important and urgent one before taking up the publication of the M.B.B.S. results which are also ready, though the subject is not in the agenda."

The report of the Board of Examiners setting out the results of the examination was received on the morning of the 21st some time before the meeting. It showed that thirty seven students had appeared for the examination in question. Of these, twenty seven passed and ten failed in the written examination and the same ten, plus one other (making eleven), failed in the practical and *viva voce* tests. In the result, eleven of the thirty seven failed and twenty six passed. The petition for *mandamus* was made by the twenty six who had passed and eight who failed: thirty four in all.

The syndicate heard Lt. Col. Papatla at length and also examined three other persons, namely, Mr. Bhairab Chandra Mahanty, who first gave the information, Dr. R. K. Mahanty, the internal examiner for the M.B.B.S. and Dr. S. M. Banerjee, President of the Board of Examiners. (Two members of the syndicate were experts in Anatomy, namely Lt. Col. Papatla and Dr. S. N. Acharya, the Civil Surgeon). After carefully considering the question for some six hours, the members present passed the following resolution :

"That after enquiry, the syndicate is satisfied that there has been leakage of questions in Anatomy and that the result in Anatomy examination be cancelled and that another examination in the subject be held commencing from the 7th May, 1951."

The syndicate consists of twelve members. Of these, all but one Mr. Pradhan, the Director of Public Instruction, were present at the meeting. Those present passed the resolution unanimously. It is admitted that Mr. Pradhan was not told that this was one of the matters which would be considered at the meeting. This is one of the grounds on which the validity of this resolution is attacked.

The successful candidates entered a protest against the resolution and asked the syndicate to reconsider its decision. This was on the 26th. The Vice-Chancellor had already called another meeting of the syndicate for the 28th to consider other matters. Once again, this was not placed on the agenda but the Vice-Chancellor brought it up *suo moto* as before. Again, eleven of the twelve were present but this time the absentee was Dr. M. Mansinha who had approved of the previous resolution. The former absentee, Mr. Pradhan, was present at this meeting. For a second time the decision was unanimous and all eleven refused to review the former resolution. It is admitted that Dr. Mansinha who was not there did not know that this question would be considered again.

The learned High Court Judges held that the want of notice in the two cases invalidated the resolutions. They examined the facts for themselves and concluded that even if the evidence is sufficient to indicate a possibility of some leakage, there was "no justification for the syndicate to pass such a drastic resolution in the absence of proof of the quantum and the amplitude of leakage." They held that the syndicate had acted unreasonably and without due case. They therefore issued a *mandamus* directing the syndicate to take steps for the publication of the results.

The Vice-Chancellor and the others appeal.

The right of the syndicate to control the examinations, to scrutinise the results, to invalidate an examination for proper reasons and to order a re-examination, when necessary, was not disputed. In view of the undertaking given the only points argued were the

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two which the High Court decided against the University.

Several English authorities were cited about the effect of an omission to give notice to even one member of a body entitled to receive it, in particular a decision of the Privy Council in *Radha Krishan Jaikishan* v. *Municipal Committee, Khandwa*(1). We do not think it necessary to examine the general principle at any length because, in our opinion, this case is governed by its own facts. It may well be that when there is a statutory requirement about notice the provisions of the statute cannot be evaded or ignored. It may also be, though we do not stop to enquire whether it is that when the constitution of a non-statutory body requires notice to be given, then also there cannot be any relaxation of the rule.

The reason for the stricter rule laid down in the cases cited before us is that though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member *in these circumstances* would invalidate the meeting and that in turn would invalidate resolutions which purport to have been passed at it. But this is only when such inflexible rigidity is imposed by the incorporating constitution. The position is different when, either by custom or by the nature of the body or by its constitution and rules, greater latitude and flexibility are permissible. Each

(1) 61 I.A. 125.

case must be governed by its own facts and no universal rule can be laid down; also it may well be that in the same body certain things, such as routine matters, can be disposed of more easily and with less formality than others. It all depends on the nature of the body and its rules.

In the present case, there were not one but two meetings. Proper notices of both meetings were issued to *all* the members including the two absentees. The only defect is that the matter we are concerned with was not included in the agenda of either meeting. We need not decide here whether this must always be done—there are English cases which indicate that that is not always necessary, see for example *The King* v. *Pulsford*(1), *La Compagnie De Mayville* v. *Whitley*(2) and *Parker and Cooper Ltd.* v. *Reading*(3); also, in the present case one of the items in the agenda of both notices was "other matters, if any." But it is not necessary to go into that because in this case these members did in fact attend one or other of the meetings and expressed their views, not individually, but as members of a meeting which was considering the matter; and there was unanimity on both occasions. Even on the stricter view taken in the cases relied on by counsel it is pointed out that want of due notice can be waived in given circumstances. Thus, if a person who was not noticed appears at the meeting and waives the irregularity, the defect is cured; so also when a person is too far away to be reached in time to enable him to communicate with the Committee before the meeting: the sending of a notice is then excused. See *Radha Kishan Jaikishan* v. *Municipal Committee, Khandwa*(4) and *Young* v. *Ladies Imperial Club, Lim.*(5). The substance is more important than the form and if there is substantial compliance with the spirit and substance of the law, we are not prepared to let an unessential defect in form defeat what is otherwise a proper and valid resolution. We, however, confine our

(1) 108 E.R. 1073.
(2) [1896] 1 Ch. 788.
(3) [1926] 1 Ch. 975.
(4) 61 I.A. 125.
(5) 89 L.J.K.B. 563.

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remarks to the facts of this case where there was actual appearance without objection at meetings properly convened and where there was complete unanimity on both occasions. Whether it would be proper to reach the same conclusion when there is a dissentient voice we are not prepared to say. In our opinion, the High Court was wrong in holding that the two resolutions were invalid. Whatever may be thought about each taken separately, the defects, if any, are, in our judgment, cured when the two are read together and regarded as a whole.

We also think the High Court was wrong on the second point. The learned Judges rightly hold that in a *mandamus* petition the High Court cannot constitute itself into a court of appeal from the authority against which the appeal is sought, but having said that they went on to do just what they said they could not. The learned Judges appeared to consider that it is not enough to have facts established from which a leakage can legitimately be inferred by reasonable minds but that there must in addition be proof of its quantum and amplitude though they do not indicate what the yard-stick of measurement should be. That is a proposition to which we are not able to assent.

We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts for ourselves as a court of appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the syndicate we are compelled to observe that we do not feel they are justified. The question was one of urgency and the Vice-Chancellor and the members of the syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judges indicate, but it is not the function of courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the Law. The University authorities acted honestly as reasonable and responsible

men confronted with an urgent situation are entitled to act. They had experts of their own on their body. They examined others who in their opinion might throw light on the incident. They themselves compared the two papers and, after a deliberation of some six hours, arrived at an unanimous decision and then they reviewed the matter afresh at a second meeting with the assistance of one of their number who was not present on the first occasion. It is inaccurate to describe that as haste and unjust to characterise their action as unreasonable and lacking due care. This is decidedly not the sort of case in which a *mandamus* ought to issue. We accordingly set aside the order of the High Court.

We now come to the undertaking given on behalf of the Vice-Chancellor. As we have observed, the syndicate reached the conclusion that there had been a leakage and so cancelled the examinations and ordered fresh ones. Had the High Court not stepped in, those examinations would have been held nearly two and a half years ago and it is possible that all the students who were successful then would have passed again, or at any rate many of them would. But because of the High Court's order the examinations could not be held and the University was virtually directed to regard the examinations already held and the results already declared as good. The result has been that the students who passed have been studying and sitting for examinations in the higher classes for some two and a half years. If the *status quo* which would result from our setting aside of the High Court's order were to be resumed it would mean that those students would be put back to where they were two and a half years ago and would be compelled to do the courses which they have already covered all over again. In order to avoid such injustice we were told at the outset by counsel on behalf of the Vice-Chancellor that the University did not want to penalise them and so gave us the following undertaking drafted by the appellants' counsel :

"The students who are declared to have passed the first M. B. B. S. Examination of the Utkal University

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held in April, 1951, shall be deemed to have duly passed that examination and shall not be required to appear again in Anatomy."

The appeal is allowed. The High Court's order is set aside and the petition for *mandamus* filed before it is dismissed, but without costs. There will be no order about costs in this court either.

Appeal allowed.

Agent for the appellants: *Rajinder Narain.*

Agent for the respondents Nos. 1-8, 10-16, 18-23 and 25-34: *S. P. Varma.*