

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2383 OF 2001

Pallavi d/o. Arun Gokhale, .. Petitioner
Age-22 years, Occu-STudent,
R/o.N-4,F-80,Cidco,
Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
2. Dr. Babasaheb Ambedkar
Marathwada University, through
Registrar, University Campus,
Aurangabad.
3. The Controller of Examination,
Dr. Babasaheb Ambedkar
Marathwada University
Aurangabad.
4. The Dean, Govt. Dental College,
at Aurangabad

Mr.M.V.Deshpande, Advocate for the petitioner.
Mr.S.P.Daund, A.G.P. for Respondent Nos. 1&4.
Mr.S.S.Bora, Advocate for Respondent Nos.2&3.

**CORAM : A.V. NIRGUDE &
A.I.S. CHEEMA, JJ.**
RESERVED ON : 12.09.2014
PRONOUNCED ON : 07.01.2015

J U D G M E N T [A.V.NIRGUDE,J.] :-

1. This petition challenges legality of Ordinance No.105(iv) framed by the Marathwada University being ultra-vires and for further consequential reliefs.

2. The facts of the litigation are as under:-

3. In the year 1996-1997 the petitioner was admitted to the course of Bachelor of Dental Surgery. The petitioner secured IInd rank in the order of merit in the University examination which was held in the month of May/June,2000. In the merit list the petitioner was shown to have scored 460 marks out of 800. In one subject, she could not score passing total of 50 out of 100. So, she was awarded two marks as "Grace Marks". Despite this, the petitioner stood II in rank and did not get Gold medal. Someone else who scored 469 marks, was awarded Gold medal.

. The petitioner applied for revaluation and it was found that she scored 60 marks in the subject in which she was awarded "Grace Marks". The total marks of the petitioner thus came to 470. So, she stood Ist in the examination. The petitioner thought that she was entitled to gold medal as she stood first in rank in order of merit. She sent a letter to the University

demanding correction in the result and gold medal. On 06.01.2001 the University informed her that, she is not entitled to gold medal because ordinance No.165(iv) of the University provided that a candidate should not be eligible for merit, medal for any other award as a result of revaluation. The petitioner challenged as said above the vires of the ordinance.

4. The respondent-university did not file any reply to the petition but opposed the petition on merits. The learned counsel for the petitioner asserted that the revaluation is a part of examination and so declaration of results should reflect changes if occurred after revaluation. He also submitted that the revaluation disclosed a gross error on the part of the examiner and so the university cannot be allowed to take advantage of the same. The Learned Counsel for the petitioner placed reliance on the judgment of Manojkumar Jindal Vs Ravishankar University, Raipur, AIR 1989 MP 1. The facts of this case were similar. The petitioner in that case also applied for revaluation within the prescribed limit and after revaluation the marks were increased. He too applied to the University to amend the merit list and place him in first position. The University refused to do so. The Division Bench of the High Court held as under:-

"13. x x x x x x x x x x x x x There is no reason why after revaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind revaluation is that every man should get his due which he deserves. That is the rule of law and also equity. This appears to be a case where the position in the Merit-List entails consequential benefits also. Generally the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so. it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the fault of the University. There is no question of any legal injury to the other two respondents just because under the rules relating to revaluation, they would be relegated from their positions Nos, 1 and 2, to positions Nos. 2 and 3. If the relegated No. 3 had any grievance, he could have availed of the provisions regarding revaluation within 30 days. It is not correct to say that amendment in the impugned Merit List would not be in the interest of public at large.

. As regards the discretion & power under section 226 & 227 of the Constitution of India the Court quoted following paragraphs.

'A University is amenable to a direction or writ issued by the High Court in appropriate cases. As however, it has been constituted to exercise some highly specialized functions, acting through officers and subordinate authorities appointed or constituted by itself in exercise of powers given by statute, there should be very good reason for the High Court interfering in this manner. The basic requirements for this are that (1) there

should be a patent and undoubted violation of a provision in the statute or regulation or Ordinance, governing the particular subject; (2) this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University; and (3) the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large, disproportionate to the injustice or inconvenience that is sought to be remedied.....

Changing of text books is left to the discretion of the University and there is no law that there should be no change of the text books for a certain period for examination and the High Court should not enforce by a writ or direction such a prayer.'

5. As against this Learned Counsel for the University submitted that regulation or even a bylaw cannot be struck down on the ground of unreasonableness. It is only when the Court finds that bylaw is manifestly unjust, capricious inequitable or partial, its operation can be invalidated on the ground of unreasonableness. According to him even if the Court sees unreasonableness in the impugned regulation, other purpose of regulation cannot be lost sight of. He pointed out that at the time of declaration of the result and the merit list, the University has to do it in time bound manner and even though a mistake is subsequently found, the same cannot be corrected as it would affect adversely number of other people. He, therefore, suggested that instead of taking an idealistic view one must take pragmatic one.

6. He placed reliance on certain observations of the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education & Anr. V/s. Paritosh Bhupeshkumar Sheth & Ors. reported in (1984) 4 SCC 27. Para No. 16, 18 & 21 of the said judgment are as under:-

"16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

18. In the light of what we have stated above, the constitutionality of the impugned regulations has

to be adjudged only by a threefold test, namely, (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. We have already held that the High Court was in error in holding that the provisions of clause (3) of Regulation 104 do not serve the purpose of carrying into effect the provisions of the Act and are ultra vires on the ground of their being in excess of the regulation-making power conferred by Section 36. The Writ Petitioners had no case before the High Court that the impugned clauses of the regulations were liable to be invalidated on the application of second and third tests. Besides the contention that the impugned regulations were ultra vires the power conferred under Section 36(1), the only other point urged was that they were in the nature of bye-laws and were liable to be struck down on the ground of unreasonableness.

21. The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the judges do not approve of it. Unless it can be said that a bye law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye laws must ordinarily be presumed to know what is necessary, reasonable, just and fair."

7. Learned Counsel for the University also placed reliance on the following observations of the Supreme Court in the case of **The Secretary, All India Pre-Medical/Pre-Dental Examinations, CBSE and Ors. V/s. Khushboo Shrivastava & Ors. reported in 2011 (9) SCALE 63.** Para 29 of the said judgment is as under:-

"29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

8. We are of the view that the impugned regulation

is part of policy of this University and we are not inclined to interfere in such policy, merely because we found that the petitioner was wronged. For the reasons mentioned in para 29 of the Supreme Court judgment in the case of Secretary, All India (cited Supra), we decline to entertain the petition.

9. The petition, therefore, stands dismissed. No costs. Rule discharged.

[A.I.S. CHEEMA, J.]

[A.V. NIRGUDE, J.]