

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.796 OF 2016**

SNEHAL P NAIK GOLTEKAR

Aged 41 years, resident of House
No.284/4C, Sodiem, Siolim, Bardez, Goa

... Petitioner

~ VERSUS ~

1 VICE CHANCELLOR

Goa University, Taleigao Plateau,
Tiswadi, Goa.

2 THE REGISTRAR,

Goa University, Taleigao Plateau,
Tiswadi, Goa.

3 DR. MARIAN PINHEIRO,

major of age, Ph.D Guide BF1,
Chapms D'Or., Santissmao, Taleigao,
Goa 403002.

4 STATE OF GOA

through its Chief Secretary,
Secretariat, Porvorim - Goa

...Respondents

APPEARANCES

FOR THE PETITIONER

Mr SG Desai, Senior Advocate, with
VR Tamba, Sagar Malkarnekar &
Paresh Sawant

FOR RESPONDENT NO 1

Ms AA Agni, Senior Advocate with G
Xettigar

FOR RESPONDENT NO 4

Mr Amogh Prabhudessai, Addl Govt
Advocate

**CORAM : GS PATEL &
NUTAN D SARDESSAI, JJ**

DATED : 26th September 2017.

ORAL JUDGMENT (per G.S. Patel J)

1. Rule; by consent made returnable forthwith. The Respondents waive service. By consent, taken up for hearing and final disposal.

2. The petition is under Article 226 of the Constitution of India. It seeks our intervention in respect of a letter dated 31st December 2014, a copy of which is at page 80. It also seeks a direction for implementation of a decision of the Goa University's Faculty Research Committee dated 8th September 2014 at page 70.

3. In essence, the Petitioner, who holds two LLM degrees, one from Pune University and one from Goa University, of the years July and May 2004, has been denied acceptance of a doctoral thesis on the ground that she did not fulfil mandatory requirements. The Petitioner was, thus, denied the opportunity of a *viva voce* examination and faced a consequential rejection of the doctoral thesis.

4. The facts are these. The Petitioner is employed with the State Government as a Deputy Director of Vigilance. The 1st Respondent is the Goa University through its Vice Chancellor. The 2nd

Respondent is the University's Registrar. The 3rd Respondent is a PhD guide. The 4th Respondent is the State Government.

5. There seems to be no doubt that the Petitioner's educational career has been unblemished and even exemplary. The Petitioner served as a part-time Lecturer at the VM Salgaonkar College of Law, Miramar Goa and that St. Xavier's College in Mapusa till 2001. In February 2002 the Petitioner was recruited to the post of Mamlatdar/Joint Mamlatdar for the State Government. The Petitioner never lost sight of her educational aspirations. The Petitioner aspired to acquiring a PhD in law and, after obtaining permission from the State Government, applied to the Goa University for registration for a Research Degree. The Petitioner was enrolled as a PhD Research Student in Law at the Goa University through its recognized research centre at the VM Salgaonkar College of Law in July 2006. At the Petitioner's request, the 3rd Respondent agreed to be the Petitioner's PhD guide.

6. It appears that the Goa University had issued or had got issued an Ordinance No.OB-9 that regulates and governs the conduct of the PhD programme at the Goa University. This was amended and Ordinance OB-9A came to be made applicable to students registered after 12th July 2010, with the previous ordinance applying to those registered before that date.

7. Under this ordinance, a special Faculty Research Committee ("**FRC**") was constituted by the Goa University. This is in terms of the Ordinance OB-9.4(ii) and it consists of the Dean as Chairman,

Head of the University Department, the PhD Guide (in this case, the 3rd Respondent) a co-guide, if any, and, importantly, one or two subject experts to be nominated by the 1st Respondent from a panel suggested by the 3rd Respondent. The submission from Mr. Desai for the Petitioner is that the FRC thus plays a crucial role in the PhD conferment process.

8. The Petitioner was registered for a PhD Degree in Law as a Post-Graduate Research Student in July 2006. As such, the Petitioner was and is governed by the unamended ordinance and about this there is no dispute. The Petitioner was required to select a subject for research in consultation with the Guide. The Petitioner chose the following subject: “*A Critical Study of the Mundkar Act vis-à-vis the Socio Economic Situation in Goa*”. On 12th July 2012, the Petitioner submitted a synopsis. This was accepted by the FRC, which recommended the Petitioner for provisional registration and confirmed the topic as a suitable PhD Research subject. This was in terms of Ordinance OB-9.4(iii). As required by that Ordinance, the Petitioner conducted library work for a literature survey for six months, submitted the necessary reports through the 3rd Respondent in the prescribed format for review of the FRC and these were then accepted.

9. Paragraph 13 of the petition candidly states that the Petitioner was unable to complete the research mandated within the prescribed time and was compelled to seek an extension by two terms. Again, about this there is really no controversy before us and, in fairness, it is not suggested by Ms Agni for Respondents No.1, 2 and 3 that the rejection of the doctoral thesis was for this reason.

10. In all these time, the Petitioner continued in Government service. In parallel, her research work also continued and included gathering of materials, interviews, additional research work and so on. Finally, in September 2012, the Petitioner completed the thesis. She submitted 10 copies of the synopsis on 28th August 2012 and four copies to Respondent No.2, offered herself as a candidate for the award of a PhD. The research coordinator sent a letter which included six monthly progress reports, and minutes of the FRC.

11. Under Ordinance Clause OB-9.7, a Doctoral Committee is constituted. This consists of the 1st Respondent Vice Chancellor as Chairman, the members of the FRC, and subject experts nominated by the Vice Chancellor from a panel of three names from outside the University. These external names are suggested by the PhD guide, Respondent No.3. This Doctoral Committee is required to recommend a panel of a minimum of six names of proposed external examiners. From this, the Vice-Chancellor must appoint two to adjudicate the thesis. The 3rd Respondent, the PhD guide, is to serve as an internal examiner.

12. This is where the problem begins. On 30th October 2012, the Vice Chancellor directed that names of more experts be sought — well-known scholarly lawyers and judges — since he was apparently of the view that five of the six names of experts were outside Goa and the subject of the thesis being Goa-specific they “might be” unfamiliar or unaware of the subject matter. The PhD guide, Respondent No.3 was asked to submit the names of experts. This the 3rd Respondent did on 2nd November 2012.

13. About 10 days later, on 12th November 2012 the 1st Respondent nominated an expert. The expert was contacted on 16th November 2012 and a Doctoral Committee was constituted under OB-9.7 for reviewing the panel of the examiners suggested by the expert to examine the Thesis. On 26th March 2013, the 2nd Respondent wrote to the external examiner for approval. An acceptance followed to which the 2nd Respondent communicated the terms, mode and manner of evaluation. On 4th April 2013, the 3rd Respondent submitted an evaluation report to the 2nd Respondent for consideration.

14. Very surprisingly, on 24th April 2013 one of the external examiners wrote to the 2nd Respondent for guidelines for the standards required for awarding a PhD The Registrar responded on 6th May 2013, but did not refer to the ordinance in question. On 27th August 2013, given the amount of time that had lapsed, the 3rd Respondent emailed the 1st Respondent saying that although six months had passed, there was no report yet received from the examiner and this was not only against the terms of the ordinance, but was unfair to the Petitioner. The 3rd Respondent suggested that given the unavailability of a response from the external examiner, the Petitioner should be allowed to continue on the basis of the material available.

15. The very next day, 28th August 2013 the 2nd Respondent sent a reminder to the external examiner and on 17th September 2013, the examiner replied. This is a document to which we will return. We are constrained to note that the contents of this are less than inspiring.

16. The Petitioner had received no communication in all this time. Much of what is stated here was obtained in response to an RTI query. On 27th September 2013 the Petitioner was told that one external examiner had asked for some corrections in the thesis and that these corrections should be carried out. The delay is considerable, but that in itself is not the vulnerability of the impugned communication. It is sufficient to note that as required by the University, the Petitioner carried out the necessary corrections and resubmitted the thesis to the 1st Respondent on 14th October 2013.

17. Nearly an entire year went by. On 8th September 2014, the 1st Respondent convened a meeting of the FRC. The members were shown five reports. Two recommended acceptance of the subject thesis. Another two from the same examiner who had asked for a correction and a fifth report from an additional examiner did not recommend the acceptance of the thesis. Finally, the Goa University's Controller of Examinations issued the communication on 31st December 2014 effectively rejecting the Petitioner's thesis and declining the PhD Degree.

18. Mr Desai for the Petitioner has taken us through the relevant portion of the OB-9 at Annexure B from page 32 onwards. The first important clause is 9.6 and it reads thus:

**"OB-9.6 (Effective from 22nd September, 2009)
Guides/Appointment of C-guide for PhD guidance**

- (i) The following persons shall be eligible to work as guiding teachers for PhD degree:

(a) All the confirmed teachers working in the P.G. Departments of Goa University having a PhD degree and minimum two years of post PhD post graduate teaching experience.

(b) All the confirmed research students from recognized Institutions having a PhD degree and minimum of 5 years of post PhD research experience as evidenced by published work in learned journals. Their applications shall be forwarded to the Registrar in the prescribed format, through the Head of the Recognized Institution.

(c) All the persons recognized as PhD guides by Goa University.

(ii) The maximum number of students that a guide could be allowed to supervise at a time for PhD shall not ordinarily exceed five. The Vice-Chancellor may permit this number to be exceeded on the merits of each case.

(iii) In all such cases where the topic of research is of an interdisciplinary nature, a co-guide shall be appointed in consultation with the guiding teacher. However, the administrative responsibility of the smooth conduct of the research work and the final certification of the thesis shall remain with the main guide.

(iv) If a research scholar is registered under a guide from recognized institutions, the Head of Department shall be the Convenor of Faculty Research Committee who shall be responsible for monitoring the research scholar's research work and other administrative matters. The Vice-Chancellor in consultation with HOD may nominate a senior teacher from the concerned Department as Convenor of Faculty Research Committee.

(v) After attaining the age of up to 3 years before the age of superannuation, a guide is permitted to supervise students for PhD programme jointly with a co-guide. Superannuated persons recognized as PhD guides of this University may be permitted by the Vice-Chancellor to guide the research student jointly with a Co-guide."

(Emphasis added)

19. We must then consider Clause 9.7 which reads thus :

"OB-9.7 Doctoral Committee

(i) For every student for the PhD degree, there shall be a Doctoral Committee comprising of the following:

- (a) Vice-Chancellor ... Chairman
- (b) Members of the Faculty Research Committee ... Members
- (c) One Subject Expert nominated by the Vice-Chancellor from a panel of three names from outside the University suggested by the guide/s.

(ii) Ordinarily the Doctoral Committee will meet to draw up a panel of external examiners within a month from the date of the receipt of the synopsis from the student,

(iii) The Doctoral Committee shall recommend a panel of a minimum of six names of external examiners to examine the thesis. The Vice-Chancellor shall approve the panel on behalf of the Academic Council/Executive Council and appoint two external examiners from the panel for adjudicating the thesis. The research guide/s shall serve as the internal examiner/s for the thesis. In the case

of a student who submits the thesis without any guide, the Vice-Chancellor shall appoint three external examiners to adjudicate the thesis.

(iv) As soon as the thesis is received from the student, the Registrar shall contact the external examiners so appointed and dispatch the thesis to them after obtaining their consent, while maintaining strict confidentiality. The Registrar shall also dispatch the thesis to the internal examiner/s."

20. Clause 9.7(ii) speaks of a Doctoral Committee drawing up a panel of external examiners. Clause 9.6(i) speaks of the eligibility of guiding teachers and requires that they have PhD Degrees. Clause 9.9 deals with examination and sub-Clause (vii) at page 39 reads thus:

"(vii) **Each external/internal examiner appointed to adjudicate the thesis as per OB-9.6** shall send an evaluation report in the prescribed format to the Registrar in a confidential cover within two months of the receipt of the thesis. Such a report shall include

- (a) A critical assessment of the work as embodied in the thesis and an evaluation of the work in terms of its contribution to the advancement of knowledge.
- (b) Detailed list of any questions to be asked or points to be clarified in the Viva Voce examination.
- (c) A definite recommendation as to whether the thesis attains or not the required standards for the award of PhD degree.

(d) A check sheet containing the overall recommendation on the thesis duly filled in."

(Emphasis added)

Then Clause 9.10 refers to the viva examination.

21. The qualifications of external examiners are set out in Clause 9.9, sub-clause (vii) which speaks of every external or internal examiner being appointed as per OB-9.6. As we have seen, OB-9.6 requires the examiner to himself hold a PhD Degree. Thus, even external examiners must hold a PhD under the ordinance in question.

22. Mr. Desai draws our attention to the document at page 70 which is sought to be enforced. Here the FRC recommended that the thesis be sent to an external examiner from a panel of examiners and the next clause specifically suggested that the examiner should be an academician with a PhD and with substantial experience and comprehensive knowledge of research methodology. Annexure O is the opinion of the 1st Respondent of 30th October 2012 that the thesis topic being "quite specific to Goa" it would be prudent to "pick a legal expert from Goa to seek advise on possible examiners".

23. What is important about this is the recommendation and its wording which is simply to pick a legal expert not to evaluate the thesis, but to recommend possible external examiner. Obviously, the external examiners selected could not possibly be contrary to the terms of the ordinance itself.

24. It appears that what the University then went ahead and did was to directly appoint two external examiners — one of them said to be a Counsel or Senior Counsel of this Court — and another person said to be a legal expert of some kind. We do not know their names, which is probably just as well.

25. On 27th November 2013, one of the experts wrote to the Registrar. A copy of this letter is at page 86. He/she had before him or her the corrected thesis. For some reason, instead of addressing the thesis, from paragraphs 4 to 7 of the communication this external examiner then proceeds to render a narrative of his/her own pre-Liberation experience of 1957 at a time when there were no Law Colleges in Goa. All of this is wholly and entirely irrelevant; monumentally so. It has no bearing at all on the thesis or the subject. In paragraph 8, the Assistant Registrar, and now we, are treated to what we can only describe as a truly bizarre approach. Here this external examiner relies on an earlier communication and quotes paragraph 20 of that earlier communication (we can scarcely imagine what the other paragraphs might have contained). This is what the external examiner says :

" 8. While giving evaluation report of the same dated 17/09/2013, at para 20, I had said:

20. Applying the test as set out by me in para 1(4) supra; it is finally to the researcher to decide, after following the rules of interpretation of statutes, whether:

a) "Appointed" date is necessary?

b) "Definition" clause is a must?

c) The policy of agrarian reform with deemed purchase can be brought in?

d) Always express power is required to be conferred on the Mamlatdar?

e) How to find out the ratio decidendi?

f) How to bring the legal reform so that mundkar gets speedy, cheap and effective remedy?

21. The need of the hour is to have legal fraternity to apply their minds to interpret legal decisions in the light of righteousness instead of accepting judicial decisions as a final word of the court. Some judicial decisions play an important role and affect a large class of people. The legal fraternity should inculcate in them a spirit of interest to remedy the deficiencies in decisions that do not reflect the true sense and purpose of law, while giving due respect to the law and to the judges.

22. Lastly, in order to comply with fundamental duties enshrined in Article 51A(h) of the Constitution of India, one has to have spirit of reform of the system."

(Emphasis added)

26. We would not ordinarily address this kind of communication on merits. We are constrained to do so only because it shows up the

complete lack of wisdom in appointing this person as an external examiner. Questions (a) to (f) and, in particular, the questions at (a), (b), (d), (e) and (f) have nothing at all to do with the specifics of the thesis. They are generalised and in the air. Paragraph 21 is a gratuitous homily on what the legal profession needs. It actually points out what it does *not* need and that is this kind of *ex cathedra* pronouncement from a person so distracted and unfocussed, and apparently with little or no academic experience. A PhD doctoral thesis cannot be assessed in this cavalier a fashion. As to the communication from the other external expert, there is a communication of 24th April 2013. It only has a query regarding the guidelines relating to the required standards for the award of the PhD Degree.

27. We have also seen page 64, evidently a communication by the same person who wrote the letter on 27th November 2013. Once again, there is a repetition of his/her personal experiences.

28. What is of significance is neither of these external examiners is shown to have PhD degree. We do not question the capabilities of the counsel who was approached, but the practice of law might conceivably be quite different from the study of law. Academics are not necessarily great practitioners. The converse is also true. Indeed it is quite rare to find a person who is both an acknowledged academic with the necessary qualifications and holds high repute as a counsel. These are among the few we truly consider our luminaries in law. The requirement of an external examiner having a PhD is not without basis. These are entirely different skill sets and an academician is perhaps best placed to understand the research

methodology that is required when assessing a doctoral thesis and looking at questions of legal theory. An academic will address a larger body of law, general principles, and so on. A practitioner must, usually, and barring the exceptional case that raises, say, questions of constitutional interpretation, address himself or herself to the brief in his hands, and the law, or the parts of it, that fall for consideration.

29. As we have noted, the provisions of the Ordinance are clear. The qualifications of external examiners are those set out in clause 9.6 and these are incorporated by reference in Clause 9.9(vii). Otherwise, there is no meaning at all to the words ‘as per OB-9.6’ in Clause OB-9.9(vii). It is also not possible to say on any fair reading that when these two clauses are put together internal examiners and guides such as the 3rd Respondent are required to have a PhD but that there is some exception that must implied or imputed into Clause 9.6 for external examiners. If there was to be an exception, it ought to have been specifically stated. Without that specific statement of exclusion, we cannot lightly infer it nor assume it and we will not read down Clause 9.6 or 9.9(vii). The reason is plain. That would confer wholly uncontrolled and uncanalized discretion on the University. What the cross referencing does is to stipulate minimal standards. Prescribing standards and guidelines serve a purpose and it is to ensure that like is met with like, and that there is a system of checks and balances. In the context of a doctoral thesis, it is to ensure that a doctoral candidate is not required to answer to someone far less qualified, but only to those to whose qualification that candidate aspires.

30. The facts in this case actually demonstrate the hazards of ignoring or bypassing these restrictions. Those hazards are amply demonstrated by frivolity of the sample “test” questions set out in the letter of 27th November 2013. Question (e) is particularly startling. “How to find out the *ratio decidendi*?” That, we are afraid is not a question that needs to be put to a doctoral student in law. A third year LLB student would answer it. It has no relevance whatsoever to the subject matter of the thesis which was a critical study of the Mundkar Act in relation to socio-economic conditions in Goa. The framing of these questions leaves us in no manner of doubt that not only was this external examiner ill-equipped, and could never have qualified as an external examiner, but in all likelihood had probably not read the thesis, or at least not with sufficient care.

31. It is impossible to sustain the rejection by the University at Annexure P of 31st December 2014. We cannot of course confer a degree on the Petitioner. That is not even the plea. We will also not mandate the conducting of a *viva voce*. We will, however, grant relief in terms of prayer clause (a) and quash and set aside the 31st December 2014 communication. We will then leave it open to the University to appoint suitably qualified external examiners in accordance with our foregoing interpretation of the Ordinance and then to follow their recommendations and the process in the Ordinance for considering the grant of a doctoral degree to the Petitioner.

32. We make it clear that we are not mandating the implementation of the FRC decision of 8th September 2014 in so

many words. We are only setting aside the selection of the two external examiners and the consequences flowing therefrom. We would request the University to complete the exercise at the earliest and if possible within eight months from today.

33. Rule is made partly absolute in these terms. There will be no order as to costs.

34. We express our gratitude to Mr. Desai and also to Ms. Agni for the fairness of their approach.

NUTAN D. SARDESSAI J.

G. S. PATEL J.