

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.17565 of 2017

ORDER:

Heard Sri K.Lakshmi Narasimha, learned counsel for petitioner, learned Advocate General for Sri Taddi Nageswara Rao, Standing counsel for the NTR University of Health Sciences, Andhra Pradesh at Vijayawada (1st respondent) and Sri B.S.Prasad, learned counsel for Principal Osmania Medical College, Hyderabad (2nd respondent).

2. This case raises a disturbing issue as to whether Post Graduate students in the Osmania Medical college can decide for themselves as to who shall/shall not be their internal examiner and pressurize it's Principal to replace the petitioner, who was earlier nominated as an Internal Examiner by the 1st respondent University at the instance of the said Principal. Another question is whether it is proper for the 1st respondent University to succumb to the said request of the Principal, thus abdicating its responsibility under the law to maintain high standards of evaluation of students.

3. The petitioner is working as Professor of General Surgery and is also the Head of the said Department in 2nd respondent college. He was nominated by the 1st respondent University on 18-05-2017 on the recommendation of the Principal of the said College to be one of the Internal Examiners for the Post Graduate exam of M.S. General Surgery (Practical Examinations) to be conducted from 29-05-2017 to 01-06-2017.

4. The 3rd respondent is junior to the petitioner in the same Department and was not one of the persons nominated by the 1st respondent University to

be the Internal Examiner for the above examination. He gave a letter on 04-05-2017 to the 1st respondent University that he was retiring in April, 2018, that the petitioner had completed 2 terms as Internal Examiner for M.S. General Surgery (Practical Examinations), and therefore he should be posted as Internal Examiner instead of the petitioner and others.

5. On 08-05-2017, Post Graduate students of the M.S. General Surgery Department gave a representation to the Principal that they faced certain problems from the petitioner and so the Principal should allot another Professor as Internal Examiner in view of allegations faced by the petitioner and an on-going investigation into the same. On 19-05-2017, another letter was addressed by the said students to the Principal that they do not feel that a fair exam would be conducted if the petitioner is the Internal Examiner in view of previous misunderstandings between him and the students and that the Principal should consider any other Professor for posting as Internal Examiner.

6. On the basis of the letter dt.08-05-2017 of the Post Graduate Students, the Principal addressed letter dt.12-05-2017 to the 1st respondent University that Post Graduate students complained against the petitioner being the Internal Examiner for the M.S. General Surgery (Practical Examinations) to be held from 29-05-2017 to 01-06-2017 and that therefore, in the place of the petitioner, the 3rd respondent should be nominated as the Internal Examiner.

7. On the basis of the said letter, the 1st respondent replaced the petitioner with the 3rd respondent as the Internal Examiner for the said examination.

8. The petitioner wrote a letter dt.26-05-2017 to 1st respondent stating that without any valid reason, he was removed as Internal Examiner and asking that he be restored as the Internal Examiner for the said examination.

9. The action of the 1st respondent in replacing the petitioner with 3rd respondent as Internal Examiner was also objected to by the Telangana Government Medical Professors Association in its letter dt.29-05-2017 addressed to the 1st respondent. It pointed out that the petitioner is the HOD of the General Surgery Department, there would be always some differences between faculty and the Post Graduate students, and if he is removed as an Internal Examiner by the 1st respondent in this manner on the basis of the baseless apprehensions expressed by some Post Graduate students, in future, all the Post Graduates will follow the same trend and seek change of Examiners. It requested the 1st respondent to restore the petitioner as the Internal Examiner.

10. The petitioner filed the present Writ Petition challenging the action of the 1st respondent in replacing him as Internal Examiner for the M.S. General Surgery (Practical Examination) and questioning the proceedings dt.25-05-2017 of the 1st respondent.

CONTENTIONS OF COUNSEL FOR PETITIONER

11. Learned counsel for petitioner contended that petitioner was initially appointed as Internal Examiner with three other persons, out of whom two are External Examiners; normally only the Head of the Department is appointed as Internal Examiner-cum-Chairman, Board of Internal Examiners; that certain Post Graduate students were creating trouble to him

by behaving high handedly; he was adopting a strict attitude to curb their indiscipline; they have given a false complaint against him; an enquiry was conducted against him, but nothing was proved therein against him. He contended that the Principal ought to have ignored the false allegations made by the Post Graduate students, but instead succumbed to the pressure of them and recommended that 3rd respondent should replace the petitioner though he is far junior to the petitioner. He stated that he sought to move a House Motion on 27-05-2017 itself during the summer vacation for this Court, before the said examination was held, permission was declined and therefore he filed the Writ Petition on the reopening day i.e. 01-06-2017. He also contended that the 1st respondent did not apply its mind before passing impugned order and that if this action is not set aside, it would lead to unruly behaviour and indiscipline among the Post Graduate students of the Medical College.

CONTENTIONS OF THE 1ST RESPONDENT

12. The learned Advocate General, appearing for the 1st respondent stated that the petitioner was no doubt competent to be appointed as an Internal Examiner; though there was a notification dt.20-10-2008 recommending that the Head of Department of an Institution should ordinarily be one of the Internal Examiners, this was deleted subsequently and so petitioner cannot claim any preference for being appointed as Internal Examiner on the basis that he is the Head of the Department. It is also contended that Internal Examiners are appointed as per request of the Principals from the list of Professors sent by the Principal and that on the request of the Principal of the 2nd respondent College, the petitioner was

replaced by the 3rd respondent. It is stated that the 2nd respondent mentioned some problems in the Department of General Surgery, the pendency of a Court case; and that an enquiry report opined that a neutral person be chosen as Head of Department till the Court gives a judgment. It is further stated that the Principal sent another letter by e-Mail on 29-05-2017 at 7.08 p.m. requesting the University to reinstate the petitioner as Internal Examiner but by that time practical examinations had commenced on 29-05-2017 as per schedule, and so the request of the 2nd respondent could not be considered. It is stated that only to avoid controversy, the 1st respondent University acted as per the request of the Principal and changed the petitioner as Internal Examiner. The Advocate General contended that the exam has already been conducted by the time this Writ petition was filed and at this stage, this Court ought not to interfere.

CONTENTIONS OF 2ND RESPONDENT

13. Sri B.S. Prasad, learned counsel for Principal of 2nd respondent College contended that the Writ Petition filed on 01-06-2017 by the petitioner became infructuous since the practical examinations for M.S. General Surgery were completed on 01-06-2017 and that the 2nd respondent was correct in acting on the complaint of the P.G. students of General Surgery and recommending petitioner's replacement as Internal Examiner for the above examination to the 1st respondent. Certain issues about whether the petitioner was entitled to be Head of Department at all were also mentioned and it is stated that a Writ Petition No.32432 of 2016 was filed challenging the posting of the petitioner as HOD of the General Surgery Department. It is clearly admitted that the 2nd respondent had acted on the

basis of representations of the students who claimed that there were misunderstandings between petitioner and them. It is denied that the students were undisciplined. It is admitted that the enquiry conducted by a Committee into the allegations against the petitioner did not find any proof of said allegations and that the 1st respondent was entitled to change the Internal Examiners.

REPLY CONTENTIONS OF PETITIONER

14. Reply affidavit was filed by the petitioner enclosing the copy of the enquiry report dt.12-01-2017 of the Committee into the allegations against him. Counsel for petitioner pointed out that the said report reveals that there was no truth in the allegation of harassment and ill-treatment of the Post Graduate students by the petitioner and that the complaints of the students were totally baseless; and without even bothering to verify their truth, the 1st respondent passed the impugned order. It is stated that the petitioner has no grudge against any one but he was heckled and threatened by the students and by replacing him at their instance, the respondent Nos.1 and 2 undermined the discipline of the students.

15. I have noted the contentions of the parties.

THE CONSIDERATION BY THE COURT

16. From the admitted facts it is clear that the petitioner is the Head of Department of the General Surgery Department in the 2nd respondent Medical College. Though certain allegations were leveled against him by the Post Graduate students of the said Department, an internal enquiry

committee gave a report on 12-01-2017 that these allegations were not proved. The observations in the said report are as under:

“Allegations and observations

1. Harassment and ill treatment?

Observation : Did not find any truth in the allegation.

2. Treating post graduates like criminals?

Observation: Found to be not true.

3. Refused to sign the theses?

Observations: Not true. Actually, the HOD has rectified the mistakes and then signed the theses of the PGs.

4. Threatening to fail in examinations?

Observations: no truth in this allegation.

5. Forcing post graduates to follow unethical practice?

Observation : based on the statistics the treatment done by the HOD is as per the norms.

6. Showing careless attitude towards departmental issues?

Observation : Not true – operation theatre has been started after renovation during his tenure.

7. Discouraging clinical and surgical teaching?

Observation : baseless – We found him to be a good teacher as per our enquiry.

8. Asking money from the PGs?

Observation : Totally false.

9. Not forwarding attendance?

Observation : The surgical registrar look after the attendance and sends the attendance regularly in time.

10. Peripheral postings regarding?

Observation : Not true. As PGs were not attending the given peripheral posting, the monthly peripheral posting is introduced by the previous HOD and the same is being continued.

11. Threatening to the throw out the PGs from the HOD room?

Observation : True. But the concerned PG refuse to leave the room until the HOD signs the theses which was not in order. Hence, HOD was forced to call the security.

12. Made false allegations against the PGs saying that they were stealing hospital material?

Observation : False.”

17. From the above, it is clear that a clean chit was given to the petitioner by the Enquiry Committee vis-à-vis the allegations leveled against him by the Post graduate students, though it did recommend that a neutral person be chosen as the HOD till final judgment of the Court in the Writ petition pending relating to appointment of HOD. This recommendation is without any merit since he was continuing as HOD pursuant to an interim order granted in his favor by this Court.

18. Coming to the present issue, it is not in dispute that the Principal of the 2nd respondent College recommended the petitioner to be the Internal Examiner initially and on that basis, the 1st respondent University, on 18-05-2017, appointed the petitioner as one of the Internal Examiners for the ensuing M.S. General Surgery (practical examinations) scheduled to commence from 29-05-2017 to 01-06-2017.

19. But at the instance of the Post Graduate students, the Principal wrote to the 1st respondent University on 12-05-2017 to replace the petitioner. On the basis of the said letter, the petitioner was replaced by the 1st respondent with the 3rd respondent by the impugned order dt.25-05-2017.

20. When the internal enquiry showed that the complaints made by the P.G. students against the petitioner were false, and the Principal of the 2nd respondent was aware of it, how the said Principal could recommend the replacement of the petitioner as Internal Examiner on the basis of the complaints of the same P.G. students, is inexplicable.

21. The issue as to whether the petitioner was validly appointed as HOD of the General Surgery Department, may be subjudice and the petitioner may not have any right as such to be an Internal Examiner. But having recommended that he be the Internal Examiner initially, to replace him at the instance of the P.G. students was totally uncalled for and clearly amounted to an arbitrary action intended to humiliate him.

22. It is obvious that the Principal acted irresponsibly and unreasonably without applying her mind to the issue raised by the students, and thus undermined the position of the petitioner as HoD of the General Surgery Department by recommending that he be replaced as Internal Examiner.

23. It is equally unfortunate that the 1st respondent University, without applying its mind, and without verifying the true facts, accepted the request of the Principal and replaced the petitioner as the Internal Examiner.

24. Persons holding the office of Principal or Controller of Examinations/Vice Chancellor of 1st respondent University have an onerous responsibility to ensure that high academic standards are maintained and that authority of HODs is not undermined.

25. Referring to the powers of a Vice Chancellor, the Supreme Court in **Marathwada University v. Seshrao Balwant Rao Chawan**¹ observed:

“16. ... The question is whether the Vice-Chancellor was competent to direct disciplinary action against the respondent. In this context, we may make a few general observations about the position and powers of the Vice-Chancellor. The University Education Commission in its report (Vol. I December 1948 to August 1949) has summarised the powers and duties as follows (at 421):

¹ (1989) 3 SCC 132

“Duties of Vice-Chancellor.—A Vice-Chancellor is the chief academic and executive officer of his university. He presides over the court (Senate) in the absence of the Chancellor, Syndicate (Executive Council) Academic Council, and numerous committees including the selection committees for appointment of staff. It is his duty to know the senior members of the staff intimately and to be known to all members of the staff and students. He must command their confidence both by adequate academic reputation and by strength of personality. He must know his university well enough to be able to foster its points of strength and to foresee possible points of weakness before they become acute. He must be the ‘keeper of the university’s conscience’, both setting the highest standards by example and dealing promptly and firmly with indiscipline and malpractice of any kind. All this he must do and it can be done as constitutional ruler; he has not, and should not have autocratic power. Besides this he must be the chief liaison between his university and the public, he must keep the university alive to the duties it owes to the public which it serves, and he must win support for the university and understanding of its needs not merely from potential benefactors but from the general public and its elected representatives. Last, he must have the strength of character to resist unflinchingly the many forms of pressure to relax standards of all sorts, which are being applied to universities today.”

17. This has been approved by the Education Commission, 1964-66. In the report of the Education Commission, 1971 (at 610-11 para 13.32) it was stated:

“The person who is expected, above all, to embody the spirit of academic freedom and the principles of good management in a university is the Vice-Chancellor. He stands for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. His selection should, therefore, be governed by this overall consideration.”

18. Dr. A.H. Homadi in his wise, little study about the role of the Vice-Chancellor in the university administration in developing countries has this to state (at p. 49):

“The President or the Vice-Chancellor:

The President must be willing to accept a definition of educational leadership that brings about change to the academic life of the institution. He must be fired by a deep concern for education. He should instil a spirit and keenness about growth and development in such a way that the professariate feels that their goals are interlinked with those of the

University, that their success depends upon the success of the University. The professors should be given detailed information about the jobs that they have to perform and their good performance should be given due recognition by administration leadership. Even such small encouragement will boost their morale to greater heights. The President should have faith in his own abilities as well as on the abilities of other professors and administrators and should provide guidelines about the kind of efforts he would like his professors and administrators to make, setting an example by his own actions and exercises. The negative force of fear, when used and no one denies that an element of hardheadedness is sometimes required as a persuasive inducement to professors and administrators of university should be employed judiciously. Under no circumstances should the apathy and belligerence of the professors and administrators be aroused. These call for strong but sympathetic leadership in the President.”

26. Similar views were expressed by the Supreme court in regard to the 1st respondent university also specifically in **Sahiti v. Dr. N.T.R. University of Health Sciences**². It held:

“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.”

27. Why I am referring to the role of the Vice Chancellor is that in the instant case, the Vice Chancellor of 1st respondent has filed the Counter affidavit on behalf of the 1st respondent justifying the action of the 1st respondent in replacing the petitioner as Internal Examiner at the request of the Principal of 2nd respondent college, whose request was made at

² (2009) 1 SCC 599

instance of the Post Graduate students. In fact, the order dt.25.5.2017 also shows that it was the Vice-Chancellor who directed petitioner's replacement as Internal examiner by the Controller of examinations of the 1st respondent University.

28. In my considered opinion, he has clearly abdicated his responsibility as conscience keeper of the 1st respondent University and acted arbitrarily and unreasonably.

29. I am also of the view that students cannot be allowed to dictate and decide who shall be their Examiner. If they are allowed to get away with this, grave and irreparable loss would be caused to public interest and to standards of evaluation /excellence which ought to be maintained by the University and send a wrong message that they can bully the authorities and get whosoever they wish as their Examiner.

30. It is not in dispute that petitioner attempted to move a House Motion on 27-05-2017 itself before the practical examination was held, but permission was declined. It is not the petitioner's fault that he approached this Court on 01-06-2017 and filed the Writ petition since the Court was closed for vacation between 01-05-2017 to 31-05-2017. Merely because the Practical Examination was over on 01-06-2017, the injustice done to the petitioner by the action of the respondents, cannot be left without a remedy.

31. I therefore reject the contention of the respondents that the Writ Petition is practically infructuous since the examination was over by the date the Writ Petition was filed.

32. For the aforesaid reasons, the Writ Petition is allowed; the Practical Examinations held between 29-05-2017 to 01-06-2017 for M.S. General Surgery shall be treated as cancelled for all purposes by both respondent Nos.1 and 2; the 1st respondent shall reconstitute an Internal Examiner panel afresh including the name of the petitioner; appoint two external Examiners and another Internal Examiner; hold fresh Practical Examination for M.S. General Surgery P.G. students within four (04) weeks from the date of receipt of the copy of this order. The respondent Nos.1 and 2 shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) each to the petitioner.

33. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 07.07.2017
Vsv

JUSTICE M.S.RAMACHANDRA RAO

