

## **Laxmi Narayan Acharya vs Lt. Col. C.B. Mahajan on 25 February, 1955**

**Equivalent citations: AIR1955ALL534, AIR 1955 ALLAHABAD 534**

ORDER

Mukerji, J.

1. This is a petition under Article 226 of the Constitution by one Laxmi Narain Acharya praying for a writ or direction whereby this Court should direct the opposite parties "to recall their order cancelling the petitioner's B. A. and previous LL. B. degrees and to restore these degrees to the petitioner forthwith". In order to appreciate the prayer it is necessary to state a few facts.

2. The petitioner applied to the Agra University which is a body corporate, constituted under an Act of the Local Legislature, namely, the Agra University Act of 1926 for among other things, conducting Examinations and awarding Degrees including the degree of Bachelor of Arts.

3. An application was made by the petitioner to take the Examination of Bachelor of Arts. The application was made by the petitioner in the prescribed form on 28-8-1950. The application was received in the office of the Registrar of the University" on 6-9-1950. After a consideration of the application, permission was accorded by the University to the petitioner to take the University's Bachelor of Arts, Examination which was to commence in March of that year, namely, the year 1951. The petitioner took the examination and was declared successful. The result of the examination was published in the U. P. Gazette and therein the petitioner was shown as a successful candidate.

4. On 18-9-1951, one Section P. Jain drew the attention of the Registrar of the University to certain malpractices which had been resorted to by certain candidates who wrongly alleged themselves to be teachers in educational institutions. This letter of Mr. Jain made the University investigate into the matter. Investigation into the case of the petitioner led to the discovery that the petitioner was not a wholetime teacher at any educational institution. The petitioner was found to be a clerk in some educational office in Madhya Bharat. As a result of the enquiry the University came to the conclusion that the petitioner was not "a bona fide" teacher and that he had, therefore, "cheated" the University by making a kind of false declaration in his application form. By a resolution of the Executive Council -- which is the highest executive body of the University -- it was resolved that the petitioner's "result of B. A. examination of 1951 be cancelled and this fact be notified in the U. P. Gazette".

Effect was given to this resolution of the Executive Council and the petitioner's B. A. result was duly notified to have been cancelled by the University.

5. The petitioner has come up to this Court and he has challenged the power of the University to cancel his result after it had been declared and published in the Gazette.

6. Under Section 4, Agra University Act of 1926, hereinafter referred to as the Act, the scope of the activity of the University has been indicated. Section 4(2) is in these words :

"(2) To confer degrees and other academic distinctions on persons who

(a) have pursued an approved course of study in an affiliated college and have passed the examinations of the University under conditions laid down in the Statutes or Regulations, or

(b) are teachers in educational institutions under conditions laid down in the Statutes and Regulations, and have passed the examinations of the University, under like conditions;..... (it is not necessary to quote the other provisions of this sub-section)".

The relevant Statute framed under the Act is Statute no. 2 which is in these words : .

"A teacher who desires to enter for an examination must submit his application, in a prescribed form (stating the subject or subjects in which he desires to present himself for the examination), so as to reach the Registrar not later than September 15, preceding the examination and must send with his application the following :

(a) A certificate from the Principal of the College or the Higher Secondary School, or from the Head Master of the High School, in which the candidate is teaching or (in the case of teachers of High School below the High School standard) from the Chief Educational Officer of the District or the Deputy or Sub-Deputy Inspector of Schools of the area concerned to the effect that immediately preceding the date of examination at which he wishes to appear he will, unless his period of service is interrupted, have served continuously as a teacher for one academical year in one or more institutions maintained or recognised by

(iv) The Education Department Rajasthan or Madhya Bharat or Vindhya Pradesh, or Bhopal; or....."

7. There is in the Statutes or in any Regulation no other relevant rule in regard to teachers who wish to offer themselves as candidates for examination by the University. Dr. Asthana who appeared on behalf of the University and who has vast knowledge of the Agra University Act, its Statutes and its Regulations having been its Vice-Chancellor, was unable to draw my attention to any other relevant provision in either the Act, the Statute or the Regulations which had any application to this matter.

8. On the facts it is clear that the petitioner made his application in the prescribed form. He also put in the requisite certificate under Statute No. (2)(a)(iv). The application was, as I have already said, granted and the requisite permission to take the examination accorded by the University to the petitioner.

9. The main question which called for determination was whether the University had the power after it had declared the petitioner successful at the B. A. examination of 1951 and had his result published in the Government Gazette, to cancel that degree or to cancel the results which followed from the declaration which the University gave in regard to the petitioner's examination result. Dr. Asthana was unable to draw my attention to any provisions of the Act, Statutes or Regulations which conferred any power on either the Executive Council or any of the Ministerial Officers of the University to take the action that has been taken against the petitioner. The position, therefore, is that the action that has been taken by the University is action beyond its competence or action without jurisdiction. Dr. Asthana drew my attention to Section 34 of the Act which gave the University the power to remove a person from the membership of the University and he argued that this section should be interpreted to mean that the University's Executive Council had the power to do what it has done in the case of the petitioner.

10. Section 34(1) is in these words :

"The Senate may, on the recommendation of not less than two third of such members of the Executive Council as are for the time being in India, remove the name of any person from the register of graduates.

(2) the Senate may remove any person from the membership of any authority or power of the University upon the ground that such person has been convicted by a court of law of an offence which, in the opinion of the Senate, is a serious offence involving moral delinquency or upon the ground that he has been guilty of scandalous conduct; and upon the same grounds withdraw from any person any degree, diploma, or certificate conferred or granted by the University."

11. This power which is vested in the Senate is to be exercised, in my opinion, within the ambit of the Act, strictly; this power cannot be exercised by any other body than the Senate. Admittedly, there is no resolution of the Senate in this matter. The petitioner has not been found to have been convicted of any offence involving moral delinquency. It was argued by Dr. Asthana that the petitioner was guilty of making an inaccurate statement in his application to the University for permission to appear at the B. A. examination in regard to his eligibility. It was pointed out by Dr. Asthana that the application form had a note appended to it. The note is in these words:

"Teachers mean persons, who are bona fide wholtime teachers and does not include persons who are serving elsewhere and devoting part of their time to teaching in a school or college."

It was pointed out by Dr. Asthana that whatever else may be true or false this thing is clear that the petitioner was not a wholetime teacher: He may have been a part-time teacher and that being his position, he made a false statement in his application when he said he was a teacher. Item no. 14 on the application form is in these words :

14: Name of the institution in which the candidate is serving -- this item was filled by the petitioner as follows:

Government Upper Primary School, Ratlam (Madhya Bharat).

Item no. 15 required an applicant to give the period of his service with dates and the territories. This the petitioner also filled in. From the data supplied under' this item it is apparent that the petitioner served as a teacher for a total period of one year, one month and seventeen days.

12. The resolution of the Executive Council which was resolution no. 288 and finds recorded in the minutes of 12-3-1953, removing the petitioner's name from the result of successful candidates does not give any reasons. The resolution is in these words :

"Resolved that the Candidate's result of B. A. Examination of 1951, be cancelled and this fact be notified in the U. P. Government Gazette."

There is, therefore, no finding by even the Executive Council that the petitioner was in any manner found by the Executive Council to have been guilty of an offence involving moral turpitude or scandalous conduct. It is no doubt true that before the resolution was recorded the Council took into consideration the letter of Mr. Jain which made the complaint against the petitioner and some others and they also had before them the report of the Director of Education Madhya Bharat dated 13-2-1953. It is however not clear from the Resolution of the Executive Council that the Executive Council accepted either of those two reports or believed any part of either of the two reports. It may be worth while pointing out that the report of the Director of Public Instruction Madhya Bharat indicated clearly that the petitioner was a teacher though in an honorary capacity. The Statutes, namely, Statute no. 2 does not clearly state that a person can fall under the category of teacher, as mentioned in the Statutes, only if he is a paid teacher or a wholetime teacher. Some argument was adduced as to the spirit of this Statute but in a matter like this it is difficult to rely on what is considered the spirit of a Statute when the words do not clearly bring out that spirit. The fact that the Statute did not refer only to whole-time teachers is clear from the fact that the University, under its powers, amended this Statute in the year 1953 and gadded a note to it in these words :

"For purposes of the Statute, a person will be regarded a teacher if he is a whole-time teacher at an educational institution and does not hold any other full-time appointment to make his living."

The amended Statute obviously cannot apply to the present case because the petitioner put in his application as far back as the 28th August, 1950 while the amendment to the Statute came sometime

in the year 1953.

13. Dr. Asthana, further, laid stress ' on the note which appeared on the application form and which was practically in the same terms as the note that has now been added to the Statute to contend that the petitioner was not competent to take the examination. I cannot agree with Dr. Asthana's contention. In order to judge the competence of the petitioner to take the examination we have to look to the provisions of the statute itself and not to anything that is added by way of a note in an application form. On the Statute any person who was a teacher, whether part-time or wholetime, whether honorary or stipendiary, was competent to appear at the examination provided he continued the occupation of a teacher for a period of one year. On the facts of this case there is no doubt, in my mind, that the petitioner did perform the functions of a teacher whether he did it in an honorary capacity and for part-time only or not for a period of one year. Therefore there was no inherent want of competence in him to offer himself as a candidate for the B. A. examination of the University in the year 1951. In my judgment, it is not open to the University, after the petitioner had been declared successful and after a degree of Bachelor of Arts had been conferred on him to cancel that degree. I am in agreement with Dr. Asthana's contention that the University should have the power to refuse or withdraw its degrees, diplomas etc., in cases where it is satisfied that the holder of the degree or the diploma or the certificate, as the case may be, has obtained it by a sort of misrepresentation. But this is a matter for the framers of the law to determine. The Legislature gave the power of withdrawing a Degree to the University under certain circumstances only and that power has been given to it under Section 34. The University can exercise that power only in the manner provided for in the Act and in no other manner. It is a matter of utmost importance that statutory Bodies, like an University, should act strictly in accordance with the law made for it and not to transgress if either in the spirit or in the letter.

14. The prayer in the petition was neither<sup>1</sup> properly worded nor properly sought. On the circumstances of the case, however, the appropriate prayer which should have been sought was a writ of Certiorari. The Executive Council has, as I have stated above, exceeded its jurisdiction and its powers in making its Resolution No. 288 of the 12-3-1953: this Resolution must therefore be quashed and I quash it hereby.

15. Under the circumstances of the case I consider it desirable however to order that parties should bear their own costs of this petition.