

G.P. Singh vs The Faculty Of Law, University Of ... on 15 April, 1952

Equivalent citations: AIR1953ALL6, AIR 1953 ALLAHABAD 6

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an application by G.P. Singh for the issue of a writ of mandamus commanding the Faculty of Law of the University of Allahabad and the University of Allahabad to accept the recommendations of the majority of examiners for the award of the degree of Doctor of Laws of the University of Allahabad to the applicant on his thesis for the same.

2-3. The facts leading to this application are as follows:

The application of the applicant for permission to supplicate for the degree of LL. D. was placed before the Faculty of Law on 19-10-1946. The Faculty granted the permission, approved the subject for the thesis and passed a resolution appointing a Committee of three persons to value his thesis. The applicant submitted his thesis to the Registrar in October 1947 for the award of the degree of Doctor of Laws.

4 On 18-12-1946 the Academic Council of the University resolved requesting the Faculty of Law to consider the revision of the Ordinances relating to the degree of Doctor of Laws. The Faculty of Law appointed a Committee for the purpose on 13-3-1947 and accepted the Ordinances proposed by it on 7-12-1947. These draft Ordinances are in general agreement with the Ordinances for the degree of Doctors in other Faculties. The Academic Council accepted them on 21-3-1951. They were not accepted by the Executive Council of the University which resolved on 10-11-1951 that the recommendation be considered along with the draft Ordinances for the D. Sc. and D. Litt. degrees.

5 It appears that on 13-3-1947, even before the acceptance of the draft Ordinances by the Faculty of Law, it agreed on the general principle that the award of the degree of Doctor of Laws would be in conformity with the award of Doctors' degrees in other Faculties and considered the question of appointment of examiners to assess the thesis in place of one of the members of the Committee who declined to evaluate it

and appointed another person. It also resolved that two other persons would be viva-voce examiners. Ultimately the three examiners who actually examined the thesis submitted their reports which were considered by the Faculty of Law on 18-3-1948.

The Faculty resolved that the applicant be asked to re-present the thesis after necessary revision and improvements in the light of the criticisms offered by the examiners not earlier than six months and not later than two years. The applicant re-presented the thesis after revision in March 1950. The reports of the examiners on the re-submitted thesis were considered by the Faculty of Law on 20-3-1951.

It did not accept the alleged recommendation of the majority of the examiners for the award of the degree of Doctor of Laws and resolved that the applicant be permitted to submit the thesis in the light of the criticisms made by the examiners if he so desired. The applicant then submitted a re-presentation to the University authorities in April 1951. It was rejected by the Faculty of Law on 27-10-1951.

6. It is contended that the Faculty of Law was bound to accept the recommendation of the majority of the examiners who recommended award of the degree of Doctor of Laws to the applicant.

7. The existing Ordinances for the degree of Doctor of Laws are published at p. 302, vol. I of the Calendar of the University of Allahabad for the year 1948-49. They provide that no special examination shall be held and that a person with the prescribed qualification may be admitted to the degree of Doctor of Laws without examination if he satisfied two conditions. One of the conditions is that:

"he has written an essay approved by the Faculty of Law or by a Sub-Committee thereof on some subject connected with Law or with Jurisprudence."

It is not disputed that the thesis submitted by the applicant has not been approved by the Faculty of Law or by a sub-Committee thereof. The three examiners appointed to examine the thesis cannot be deemed to be a Sub-Committee of the Faculty of Law, as all the three examiners were not members of the Faculty of Law.

The Sub-Committee, in the nature of things, must consist of the members of the larger body, i. e. the Faculty of Law. It follows therefore that one of the conditions necessary to be satisfied before a person can be admitted to the degree of Doctor of Laws is not satisfied. Consequently the applicant cannot claim any mandamus to the University of Allahabad ordering it to accept his thesis and award him the degree of Doctor of Laws.

8. The contention of the applicant is really based on the provisions of the draft Ordinances which were approved by the Faculty of Law and Academic Council but which have not been so far accepted by the Executive Council. These draft Ordinances cannot become binding Ordinances unless they are made in accordance with the provisions of the Allahabad University Act of 1921. Section 33

provides procedure for the making of Ordinances and says that the Ordinances shall be made by the Executive Council. It lays down certain restrictions on the power of the Executive Council with respect to its altering the draft proposed by the Academic Council. The Ordinances made by the Executive Council are to have effect from such date as it may direct. But such Ordinances can be made void if the Court resolves to cancel the Ordinances or if the Chancellor signifies his disallowance of any Ordinance to the Court or the Executive Council.

As already mentioned, the Executive Council has not so far accepted these Ordinances. These Ordinances could not have taken effect till the Executive Council fixed a date for their enforcement. They were not submitted to the Court or to the Chancellor. It is, therefore, clear that these draft Ordinances do not in any way replace the Ordinances printed in the University Calendar and cannot have any force as Ordinances of the University. It is contended for the applicant that the Faculty of Law, the Academic Council and even the Executive Council and the Vice-Chancellor of the University have, in a way acted in accordance with the provisions of the draft Ordinances and have required the applicant also to take certain steps which were mentioned in the draft Ordinances and that therefore the University is bound to act in accordance with these Ordinances so far as the application of the applicant for the award of the degree of Doctor of Laws is concerned.

We are of opinion that the mere fact that the University authorities acted in accordance with the provisions of the draft Ordinances would not make the draft Ordinances valid Ordinances properly made under the provisions of the Allahabad University Act. It is true that the applicant submitted a number of copies of his thesis, that examiners were appointed and he was required to pay Rs. 200 towards the fees to be paid to the examiners. But these facts cannot in any way operate as estoppel against the University in the absence of any direct representation by the University to the applicant that his application for the award of the degree would be considered in accordance with the provisions of the draft Ordinances. No such representation was made.

The applicant, it may be said, seems to have been under the impression that the procedure laid down in the draft Ordinances would be followed in the matter of considering the propriety of awarding him the degree of Doctor of Laws or not, and such impression does not appear to have been really due to any representation of the University to him, as its requiring him to furnish a certain number of copies of the thesis, and to deposit Rs. 200 as fees for the examiners would not have been sufficient to make such an impression, but was due to his knowledge of what passed in the meetings of the Faculty of Law and of which he was a member probably on account of his appointment as a teacher in the University. The Faculty of Law and the University could not have gone against the provisions of the existing valid Ordinances, and, therefore, could have recommended and conferred the degree of Doctor of Laws only if the Faculty of Law or its Sub-Committee had approved of the thesis.

It is immaterial how the Faculty of Law approved the thesis. If the Faculty of Law guides itself by the provisions of the draft Ordinances in the matter of its approving an essay for the conferment of the degree of Doctor of Laws such an action would be a matter for its discretion. The Ordinances in force do not lay down procedure to be adopted by it before it be in a position to approve any such essay.

9. Any resolution passed by the Faculty of Law about its awarding the degree of Doctor of Laws in conformity with the award of the degree for Doctor in other Faculties will, for similar reasons, not affect the main question that the Ordinances governing the grant of a degree of Doctor of Laws would be the Ordinances framed by the Executive Council under Section 33 of the Act. Unless the provisions of such Ordinances are contravened no case for the issue of a writ of Mandamus can possibly arise.

10 Even if it be held for a moment that the University was bound by the provisions of the draft Ordinances in view of certain action which can be deemed to have been taken in accordance with its provisions the question still remains whether the Faculty of Law has acted in such a manner as to require an order of this Court commanding it to act in any other manner.

11 It would be necessary to reproduce certain draft Ordinances. Draft Ordinance no. 6 is:

"The thesis submitted by the candidate must be entirely his own work and must be an original contribution to knowledge characterised either by the discovery of new facts and their significance or by a new interpretation of facts or theories; and, in either case, it should evince the capacity of the candidate for critical examination and judgment. It shall also be satisfactory so far as its literary presentation is concerned and must be suitable for publication.

"

Ordinance 8 is:

"The examiners shall examine the thesis and other published work, if any, of the candidate and shall submit their reports on the prescribed form either conjointly or separately. The examiners may consult one another before submitting their reports.

They may make such suggestions as they may deem fit for the improvement of the thesis. These suggestions shall be communicated to the candidate."

Ordinance 9 is:

"After the examiners have examined the thesis they may recommend that the thesis be rejected or that the candidate be allowed to present the thesis in a revised form not earlier than six months and not later than two years from the date of the decision of the Faculty."

Ordinance 10 is:

"If the majority of the examiners report that the thesis is satisfactory, the University shall arrange for the holding of the viva voce examination and the recommendations of the examiners shall be placed before the Faculty for consideration."

Ordinance 11 is:

"The Faculty shall accept recommendations made by a majority of the examiners. In the event of no definite recommendations being made by a majority of the examiners the Faculty may allow the candidate to represent the thesis or may appoint one or more fresh examiners to examine the thesis,"

Ordinance 12 is:

"In case the recommendation of the Viva voce examiners differs from the recommendation of the examiners of the thesis the candidate may be asked to reappear for the viva-voce examination within six months of the decision of the Faculty. If the candidate fails to satisfy the viva-voce examiners a second time his thesis shall be rejected."

It would be clear from the above that if the report of the majority of the examiners is that the thesis is satisfactory, the University would be bound to arrange for the holding of the viva-voce examination. The Ordinances do not say what the Faculty is to do if the report of the majority of examiners of the thesis and the re-

port of the viva voce examiners be satisfactory. It would, naturally, be expected that the Faculty would ultimately act according to the recommendations of both the sets of examiners. In case of a difference between the reports of the viva voce examiners and the examiners of the thesis, the faculty can require the applicant to appear a second time for viva voce examination. If they differ again, the thesis is to be rejected. No viva-voce examination of the applicant has taken place so far. It is, therefore, premature for the applicant to require this Court to issue a writ of mandamus commanding the University to grant him the Degree of Doctor of Laws.

11a. The Faculty of Law has not rejected the thesis. It has asked the applicant to resubmit it after revision and improvement in the light of the criticisms made by the examiners. The question is whether the Faculty can be said to have acted in such manner as to indicate that it has not acted fairly and that it is not expected to act fairly even if the applicant complies with its directions. Of the three examiners who examined the thesis of the applicant, one expressed the opinion that he could not recommend him for being admitted to the LL. D. Degree. One recommended the award of the Degree, but added :

"If Mr. Singh wants to publish the thesis in a book form, I would suggest to him that he may compress it a little as I find he has discussed over and over again some of the case law, which I think detracts a little from the value of the work."

The third examiner concluded his opinion thus:

"Originality cannot be expected in a work of this character, but I think there is merit in the way in which he has approached the subject and his discussions might be of assistance to Judges in solving some of the problems that still await solution. The author at places has been unduly prolix; some of his opinions do not seem to be well considered and there is much in his thesis which can be left out as having a most remote bearing on the subject matter. In my opinion, it is a meritorious work and by way of encouragement to, or recognition of his industry and research I can recommend that the Doctorate Degree may be awarded to him. I still think, however, that the work is still capable of further improvement, particularly in the shape of reducing its volume by discarding all unnecessary and useless matters. Opinions on matters which are controversial and which have no direct bearing on the subject matter of discussion may also be avoided."

12. It would appear that even the two examiners who recommended the conferment of the Degree of Doctor of Laws on the applicant had to express that some portions of the contents required revision. Draft Ordinance 6 requires a thesis to be satisfactory so far as its literary presentation is concerned and must be suitable for publication. Ordinance 14 of the draft Ordinances is :

"If the thesis which has been approved by the University is subsequently published, the candidate shall state on the title page that it was a thesis approved for the Degree of Doctor of Laws of the Allahabad University."

It follows that once the University approves of the thesis it can be published by the applicant and that the applicant has to state that it was a thesis approved for the Degree of Doctor of Laws of the Allahabad University. The University must therefore give its approval to a thesis after it finds it absolutely satisfactory. If a thesis is not absolutely satisfactory and fit for publication the University is to defer its approval in spite of the recommendations of the examiners. All what draft Ordinance 11 requires is that the Faculty shall accept the recommendations by the majority of the examiners of the thesis, but it does, not say that the Faculty must accept it at the earliest opportunity after the receipt of the recommendations. The Faculty can take its time and can take steps to see that the thesis is in such a form to which no objection be taken and which, if published, brings no discredit to the University.

If in view of the reports of the examiners the Faculty of Law is of opinion that the applicant should revise his thesis in the light of the remarks of the examiners it is difficult to say, that the Faculty has acted in any unfair or obstinate manner or mala fide and that a case is made out for the interference of this Court by ordering issue of a writ of mandamus or other direction ordering the Faculty of Law or the University to act in a particular manner.

13. There appears no reason to suppose that the Faculty of Law and the University will not act fairly and will not consider the question of the conferment of the degree of Doctor of Laws on the applicant properly. We feel no doubt that these proceedings will not prejudice such consideration when the applicant resubmits his thesis after revising it in the light of the suggestion of the examiners.

14. We, therefore, dismiss the application and order the applicant to pay RS. 400 costs to the University of Allahabad.