
(2006) 07 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 69970 of 2005

Abhay Kumar Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Citation : (2006) 6 AWC 5861

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Aditya Kumar Tripathi, for the Appellant; Neeraj Tiwari, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Impugned herein is the notice dated 10.6.2005 issued under the signatures of Asstt. Kul Sachiv (Confidential) Chhatrapati Sahuji Maharaj University, Kanpur Nagar (hereinafter referred to as the University) served to the Petitioner listing therein the charge that the Petitioner had used unfair means in the course of attempting the answers of question paper No. III (Economics) while appearing in B.A.III year examination and further that one printed piece of paper was seized from his possession.

2. It would transpire from the record that reply to the aforesaid notice was submitted on 20.9.2005 by the Petitioner but result of the aforesaid examination was not declared and hence, the present petition came to be instituted seeking the relief that Respondent No. 2 be directed to declare result of the Petitioner of B.A. 3rd year examination conducted in the year 2005.

3. This Court, by means of order dated 10.11.2005 granted one month's time to produce relevant record attended with the direction to also file counter affidavit. Sri Neeraj Tiwari, appearing for the University, filed counter affidavit today and also supplementary counter affidavit. Alongwith the supplementary counter affidavit, the learned Counsel has also filed copy of order dated 25.7.2005 by

which the Asstt. Registrar issued a letter informing that Petitioner's result of B.A. Part III conducted in the year 2005 was cancelled further informing that he has been permitted to re-appear in examination to be held in the year 2006.

4. Learned Counsel for the Petitioner repudiated the contention that copy of order-dated 25.7.2005 was ever communicated or served to the Petitioner by the Asstt. Registrar concerned at the same time stating that the said letter has, for the first time, seen the light of the day today through the supplementary counter affidavit filed today. The original record as demanded by the order aforesaid, was produced by Sri Neeraj Tiwari, learned Counsel for the University before this Court today. Learned Counsel for the Petitioner canvassed that as a matter of fact no charge-sheet was served to the Petitioner although it is claimed to have been issued by the office and further that subsequently, the Petitioner obtained duplicate charge-sheet. It is further canvassed that the charges levelled against the Petitioner as contained in the notice are scrappy, nebulous and vague inasmuch as it does not disclose in specific terms that the alleged offending printed material had any nexus to the alleged copying while attempting Economics paper No. III or that it was ever seized from the possession of the Petitioner or from any place easily accessible to the Petitioner. The learned Counsel quipped that the Petitioner never used any unfair means in the examination nor any offending material was found from his possession in the examination hall and lastly, it has been submitted that the charges levelled against the Petitioner do not stand substantiated from any material on record. The learned Counsel also canvassed that the entire procedure followed by the University in the matter of use of unfair means by the Petitioner smacks of mechanical exercise of power without any application of mind. Per contra, Sri Neeraj Tiwari, learned Counsel appearing for the University contended that although it has not been stated in so many words in the charge-sheet whether mutilated printed paper had any nexus to the same subject or that it was used for the said purpose but it is amply eloquent from the record that the Petitioner made use of the offending paper for copying in the said examination. The learned Counsel also drew attention to the fact that the Unfair Means Committee examined the materials and in the ultimate analysis found the Petitioner guilty of using unfair means in the examination.

5. I have bestowed my anxious consideration upon the arguments advanced across the bar and have also scanned very closely the materials on record. I have also been taken through the finding of the Unfair Means Committee. As stated supra, the charge listed out against the Petitioner was that he used unfair means or attempted to use the unfair means for copying. There is nothing clinching in the finding recorded by the Committee that the Petitioner either used or attempted to use the unfair means in the examination while attempting Economics paper No. III. The committee has drawn a presumption without any valid justification that Petitioner might have used materials which amounts to using the unfair means in the examination on the basis of alleged recovery of a torn half-page printed piece of paper which has not been proved to have been

found from the possession of the Petitioner. I have searched the entire record and there is nothing on record that the offending material was found or recovered from the actual possession of the Petitioner or it was found either from the desk or from a place easily accessible to him near the desk where the Petitioner was sitting while writing the answers. It is also worthy of notice here that there is no shade of allegation either in the charge-sheet or anywhere else in the entire record that the Petitioner had made use of torn printed paper or any other offending paper for copying or he attempted to make use of the offending piece of paper or that during the course of examination, he was caught *in flagrante delicto* by the invigilator or any member of the flying squad. Yet another circumstance worthy of notice in this case is that the torn piece of paper alleged to have been recovered from the possession of the Petitioner did not bear signature of the Petitioner. In the circumstances it makes sense that in case offending piece of paper had been recovered from the possession of the Petitioner, the signature of the Petitioner must have been obtained thereon. I have every reason to believe that the Petitioner in attempting any of the questions did not appropriate for copying any offending piece of paper. There is nothing in the charge-sheet that the Petitioner could have used the material in examination found from his possession.

6. Another aspect worthy of notice here is that though charge-sheet is claimed to have been issued by the office but there is no evidence on record that it was ever served to the Petitioner and subsequently, the Petitioner obtained duplicate charge-sheet from the office containing charges against him and submitted his explanation which it would further appear from the record was not taken into reckoning by unfair means committee and further that the reasons recorded are not persuasive that offending piece of paper had been used in attempting the questions. It is also not clear as to from what place, the offending piece of paper was found kept or was recovered. The Court in the above perspective is of the view that charges framed against the Petitioner as contained in the notice are vague, nebulous and hazy and have not been framed with the required clarity to show that the Petitioner used unfair means or attempted to use unfair means or that the offending piece of paper was recovered from his possession. To be precise, the inescapable conclusion is that the no charge-sheet was served to the Petitioner and further that subsequently, duplicate charge-sheet was obtained by the Petitioner from the office and submitted his reply which was not taken into reckoning. From a close scrutiny of the charge-sheet it would also transpire that the charge-sheet lacked requisite details in absence of which effective reply could not be submitted and any action on the basis of charge-sheet would occasion gross injustice to the Petitioner.

7. In the above conspectus, the irresistible conclusion is that the Petitioner did not make use of any unfair means in attempting question of Economics paper No. III, while appearing in B.A. III year examination.

8. The Court feels constrained to observe that the belated disposal of such

matter imperils the career of a student and in such matters it is expected that the authorities must act with alacrity and promptitude. In the matter at hand, the charge of copying is attributed to the Petitioner while attempting answer to Economics III paper on 22.3.2005 while charge-sheet alleged to be issued to the Petitioner is dated 10.6.2005 though it was never served to the Petitioner as stated supra. In this connection, averments made in para 9 of the writ petition may be noticed in which it is clearly stated that charge-sheet alleged to have been issued was never received or served to the Petitioner. In the counter affidavit in reply to the above averments, it has not been denied that the Petitioner was previously served charge-sheet and all that has been stated is that the charge-sheet was issued to the Petitioner. In this view of the matter, the averment that no charge-sheet was served to the Petitioner commends itself for acceptance. It would appear from the record that after obtaining duplicate copy of charge-sheet, the Petitioner submitted his reply on 20.9.2005. The impugned order conveying decision of cancellation of examination is dated 25.7.2005 though it also was not served to the Petitioner and the learned Counsel minced no words to say that this order annexed to the supplementary counter affidavit never saw the light of the day earlier nor it was served to the Petitioner. Yet another circumstance worthy of notice is that the charge-sheet framed is on printed form and the charges embodied therein are vaguely spelt out and few choice-drawn charges made applicable to the Petitioner have been merely right-clicked. By this reckoning, it is implicit that reply of the Petitioner dated 20.9.2005 submitted after obtaining duplicate copy of charge-sheet was not taken into reckoning as the impugned order annexed to the supplementary counter affidavit had already been passed on 25.7.2005. This shows that the Petitioner was seriously prejudiced on account of his not being afforded opportunity of submitting reply to the charges. All this goes to show that the authorities acted indifferently and arbitrarily and in a manner, which was fraught with the consequence of dallying with the career of the students. It is indeed shocking that the charge sheet was never served to the Petitioner and subsequently, reply submitted by the Petitioner after obtaining duplicate charge-sheet was not taken into reckoning and as a result, it can well be said that the indifferent and arbitrary attitude of the authorities resulted in spoiling two precious year of the Petitioner. In the circumstances, I feel compelled to lay down following guidelines for edification of all the university authorities in the State of U.P.

(1) That the charge-sheet so issued must contain definite charges expressed with clarity whether the student actually made use of unfair means or attempted to use the unfair means or may have used the same or the offending material from which copying is alleged was recovered from the possession of the student or it was recovered from a place accessible to the student or from any other place or that the offending material was smuggled into for copying by the student from other side or that the student cribbed from the student nearby or next to him and such charges must be propped up with relevant evidence on

record.

(2) That it must be mentioned with clarity in the charges as to which of the offending material was used by the student while attempting a particular question and from which place the material used for copying was recovered.

(3) That the authority concerned must be held responsible for serving personally the charge-sheet. In case, charge-sheet so issued is not received by the student concerned, it would be deemed that no charge-sheet has been served to the student and in that event, benefit would accrue in favour of the student and the authority concerned would be held responsible for spoiling the career of a student.

(4) That the authority concerned charged with the duty of conducting proceeding in the event of charge of copying being foisted upon the student, shall ensure that the proceedings are taken to some finality within a specified period i.e. within a period not exceeding three months from the incident of copying or from the last date on which the examinations come to a close.

(5) That the order in this connection shall be informed with reasons and no printed form will be used by the authority as has happened in the case in hand.

(6) That the offending material if found from the possession of the student or from a place accessible to the student, must bear signatures of the student concerned and if student refuses to sign the offending material/paper recovered from his possession, such refusal must find mention in the charge-sheet.

(7) That the charge-sheet shall be framed separately informed with requisite details in each case and no printed form will be used by the authority.

9. It must be borne in mind that where the career of a young man is at stake, every body concerned must be anxious that if the charge of malpractice is being pursued the enquiry should be brought to as speedy a conclusion as possible and should be conducted in such a manner as to give not the least room for complaint. In the instant case, the loss of two years is a big blow to the career of the Petitioner and delay in the matter can safely be attributed to the indifference and arbitrary attitude of the authorities concerned. In the circumstances, it would be in the fitness of things that the Court should take proactive attitude to repair the loss and harassment suffered by the Petitioner.

10. In the result, the writ petition is allowed with costs. The order dated 25.7.2005 (Annexure 1 to the supplementary counter affidavit) canceling the examination of the Petitioner is quashed and in consequence it is directed that the University shall take all necessary steps for evaluation of the copy of Economics III paper of B.A. III year and declare the result within 15 days from the date of production of a certified copy of this order.

11. Before parting with the case, I would not refrain from observing that the Petitioner was seriously prejudiced and damage done to the career of the

Petitioner cannot be repaired in terms of money. In the facts and circumstances of the case, the Petitioner would be at liberty to claim damages from the authorities concerned for the loss of two precious year on account of lackadaisical, indifferent and arbitrary approach of the authorities concerned, by invoking appropriate remedy permissible to him in law.