

(2006) 09 AHC CK 0121
In the Allahabad High Court

Amit Anand Singh

APPELLANT

Vs

Vice-Chancellor, Banaras Hindu University, Examination
Controller, Banaras Hindu University and Banaras Hindu
University

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Citation : (2006) 7 AWC 7755

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Impugned herein is the office memorandum/order dated 10.4.2006 issued by the Examination Controller, Banaras Hindu University, Varanasi by which it was intimated to the petitioner that his entire examination in which the petitioner has already appeared or which he is likely to appear in future during the current examination has been cancelled.

2. The facts forming background to the case are that on 5.4.2006 while the petitioner was writing answer to the question paper (Geography of B.A. Part III), a geometry box was recovered from his possession by the flying squad alleging further that on its; obverse-side, the offending copying material was found written. It is averred in the writ petition that the petitioner was not afforded any opportunity either by way of hearing or by requiring him to explain his stand and further that the entire proceeding was carried out in a post-haste manner and ultimately, by means of impugned order, he was intimated that his entire examination which he has appeared and which he is likely to appear in future has been cancelled upon consideration of the decision taken by Unfair Means Committee of the University. It is in this backdrop that the present writ petition has been preferred by the petitioner.

3. The petition was argued on 11.8.2006 on which date the learned Counsel for the university was enjoined to file counter affidavit and also to produce the entire

material relating to unfair means on the date fixed. The entire original record relating to proceeding of Unfair Means Committee has been annexed to the counter affidavit filed on behalf of the University.

4. The learned Counsel for the petitioner began his submission arguing that the petitioner was not afforded any opportunity of hearing and the entire proceeding was carried out in a rushed and corner manner against the provisions of the statute. The learned Counsel denied having employed any unfair means in answering the question paper and also repudiated the claim that the geometry box belonged to me. Per contra, learned Counsel for the University contended that the Invigilator had recovered the geometry box from the possession of the petitioner on which copying material was found written and further that the material found written on the box related to question No. 3 of the paper being answered by the petitioner. The learned Counsel also drew attention of the Court to the fact the answer script was immediately withdrawn from the petitioner and he was supplied "B" answer-sheet and requisite form was also filled up by the invigilator forming part of the flying squad and also the invigilator on duty in the prescribed column. He further contended that the petitioner was afforded sufficient opportunity of submitting written explanation in accordance with the provisions of the statute and further that he admitted in his own hand-writing that he had written the material on the box by mistake which is not related to the subject. He also drew attention to the report of the examiner which vouchsafed the fact that material had bearing on the subject matter of the question paper being answered by the petitioner on the date.

5. An exhaustive counter affidavit has been filed annexing therewith the entire papers relating to the proceeding in the matter of use of unfair means by the petitioner have been annexed. Annexure No. 1 is the form for reporting case of unfair practice. From a close scrutiny, it would appear that the incident relating to unfair means occurred on 5.4.2006 at 9 a.m. In the column requiring mention of details of specific complaint:, the expression-dated 5.4.2006 is "The candidate has written on the geometry box and enclosed signed by me." From a further scrutiny of the form it would also appear that the same day it was forwarded for necessary action by the two Invigilators. In the self-same form, it is written in the hand-writing of the petitioner that "Me Galti Se Box Par Likha Tha Vo Vishai Se Sambandhit Nahin Hai." This statement of the petitioner is shown to have been written in the presence of the invigilator and it also bears the signature of the two invigilators. In part C of the Form, there is a note appended by the superintendent of Examinations to the effect "Forwarded for necessary action". This note also bears the date 5.4.2006. Annexure C.A. II is the Certificate of Scrutiny bearing signature of the examiner and it would appear that the examiner has certified the same day i.e. 5.4.2006 that the resource material is related to the concerned examination and that the examinee had actually made use of the resource material in his answer book in question number No. 3. It would further appear from its perusal that the Unfair Means Committee held the meeting on the same day i.e. 5.4.2006 in which decision was taken to cancel the

entire examination. In the same annexure is contained the proceeding of unfair means committee in which it is shown that eight members had participated. The proceeding of unfair means committee is excerpted below.

The candidate was given due opportunity to explain his version through Scheduled-I Part-B (Unfair means form), which was duly considered by the Committee.

The committee also considered the reports/charges made against the examinees as detailed, Further committee also scrutinized the relevant papers on record and the concerned answer books. The recommendations made by the Committee are serialized in the Annexure- 1.

6. Though in all eight members are shown to have participated in the meeting, the proceeding bears only three signatures.

7. Before analytically examining the matter, it would be appropriate to acquaint myself with the relevant Rules contained in the Statute of the University which are quoted below.

1.13.2. No candidate shall bring with him into the examination room/hall any book, notes or, other materials capable of being used by him in connection with the examination, nor shall he communicate to or receive from any other candidate any information in the examination room/hall.

1.13.3. No candidate shall assist or received assistance from any other candidate at in examination or adopt any unfair means to further his/her interest in connection with an examination.

1.13.4. No person shall adopt any unfair practice to further or adversely affect the interests of an examinee or indulge in acts which interfere with the property conduct of examinations. 1.13.6. The superintendent of the examinations shall give him/her an opportunity to submit a written explanation on the prescribed form....

X x x x x x x x x 8.13.8 In the event of detection of use of unfair means by a large number of examinees or in the event of refusal by examinee to give statement, the invigilator/superintendent shall submit a confidential report to that effect to the controller of examinations and the University shall take suitable disciplinary against the examinee on the basis of confidential report. In such cases the names of the Invigilator/superintendent making the report shall be kept confidential.

8.13.9. The written explanations submitted by an examinee alleged to have violated the provision of Clauses 2, 3 and 4 a confidential report under the provisions of Clause 8 shall be placed before the Vice Chancellor for suitable disciplinary action.

8.13.10. If the allegations against an examinee is found correct he/she will be liable to disciplinary action.

8. A close perusal of the above rules would reveal that in the event of allegations against an examinee of using unfair-means are found to have been proved, he will be liable to disciplinary action. In Clause 8.13.9 it is postulated that the written explanation submitted by an examinee alleged to have violated the provision of Clauses 2, 3 and 4 a confidential report under the provision of Clause 8 shall be placed before the Vice Chancellor for suitable disciplinary action.

9. From a perusal of the various annexures annexed to the counter affidavit, it would transpire that the entire proceeding was taken to completion within a span of one day ending up in the decision of cancellation of examination. The question now arises whether proceeding was violative of principles of natural justice and whether the petitioner was given opportunity to explain his stand especially regard being had to the fact that any action consequent upon the proceeding would be fraught with grave consequence putting the future of the petitioner at stake who is at the threshold of his career.

10. It brooks no dispute that the Unfair Means Committee constituted by the University being creation of the Statute, is a statutory body and it is bound to abide by what constitutes "opportunity" of hearing. It would appear from the record that immediately after the geometry box containing written material on its back had been recovered, it is clear from the record that the petitioner's explanation was had on the prescribed form which is to the effect that he had mistakenly written on the geometry box attended with further explanation that the writing on the geometry box did not relate to the subject matter of the question paper. The examiner's report is also contained in the printed form in question and answer manner. In the certificate of scrutiny the examiner has right-marked all the three queries showing that the resource material related to question No. 3. Although the proceeding, annexed as annexure 2 to the counter affidavit did show that the committee considered the reports/charges made against the examinees and further scrutinized the relevant papers on record and the concerned answer books and also the recommendations made by the Committee, there is nothing on record to manifest that any such material alleged to have been considered by the committee was at all taken into reckoning. It is also manifested from the record that no charge sheet was issued nor any show cause notice was issued to petitioner after receipt of the report from invigilator and further no explanation was had from the petitioner. It therefore, transpires that the impugned order was passed without considering whatever explanation was obtained at the time of the examination.

11. Now I proceed to examine whether the entire matter relating to unfair means has been considered in accordance with the mandate of the statute and that the petitioner has been afforded reasonable opportunity of hearing in the matter to vindicate his stand.

12. The court can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances. This Court now proceeds to examine whether the Committee was a statutory body

exercising quasi judicial function and whether the alleged decision rendered by it in the matter was reasonable, rationale and informed with reasons observing in compliance the principles of natural justice.

13. The Committee dealing with unfair means matter of a student is a statutory committee having imprimatur of the Act and the statute of Banaras Hindu University and by this reckoning it is a body performing quasi-judicial functions. Every authority exercising quasi-judicial functions is bound to give reasons in support of the order he makes. The essence of the settled position is that examining the question on principle why every quasi-judicial order must be a speaking order. The necessity of giving reasons flows as a necessary corollary from the rule of law, which constitutes one of the basic principles of the Constitutional set up. They must decide solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. It was further observed that now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or at any rate, minimizes arbitrariness in the decision making process.

14. The provisions afore-quoted clearly envisage that the Committee shall reckon with the report about the candidate having been found in possession of unauthorized material, the reply of the candidate to the notice, the report of examiner concerned regarding the transcription or non-transcription of the unauthorized material of which the candidate was allegedly found in possession. At page 18 of Annexure C.A. 2, the recommendation of the Committee signed by Chairman and member is contained. There is no discussion and all that the Committee has done is to right-mark query No. 2 the substance of which "entire examination be cancelled". Likewise Annexure 4 is the paper stated to be recommendation of the Committee forwarded to the Vice Chancellor and at the end of this paper, what is couched is "examined and approved". It does not appear from the materials on record whether any reply of the petitioner was had and whether it has been taken into reckoning. Furthermore, there is no order canceling the result passed by the Vice Chancellor.

15. In *Union of India v. Mohan La Capoor* (1973) 2 SCC 936, the Apex Court in a Bench of two Judges held in paragraph 28 that the reasons are the links between the materials on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject matter for a decision, whether it is purely administrative or quasi judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in *Gurdial Singh Fijji Vs. State of Punjab and Others*, In *S.N. Mukherjee Vs. Union of India*, , the Constitution Bench of the Apex Court surveyed the entire case law and held in para 40 that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for

its decision. In para 36 of the said decision, it was further held that recording of reasons excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. It is not required that the reasons should be as elaborate as in the decision of a court of law. In *Mazharul Islam Hashmi Vs. State of U.P. and Another*, the Apex Court pointed out that "Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly, but: in the absence of any such exclusion, the principle of natural justice will have to be proved." In *Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others*, a Full Bench of this Court dealing with the proof of the charge of use of unfair means at the examination, held that it was the duty of the Examination committee to maintain purity of examination and if examinee is found to have used unfair means at the examination, it is the duty of the Examination Committee to take action against the erring examinees to maintain the educational standard. It was further observed that direct evidence is available in some cases but in a large number of cases direct evidence is not available. In that situation the Examination committee has of necessity to rely on circumstantial evidence which may include the answer given by the examinee, the report of the Superintendent of the center, the invigilator and the report of the experts and other attending circumstance. The Examination Committee, if it relies upon such evidence to come to the conclusion that the examinee has used unfair means in answering questions then it is not open to the High Court to interfere with the decision merely because the High Court may take a different view or, reassessment of those circumstances. While it is open to the High Court to interfere with the order of the quasi judicial authority, if it is not supported by any evidence or if the order is passed in contravention of the statutory provisions of the law or in violation of the principles of natural justice, the court has no jurisdiction to quash the order merely on the ground that the evidence available on record is insufficient or inadequate or on the ground that different view could possibly be taken on the evidence available on the record. The above decision has been cited with approval in the following decision. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, the Apex Court held as under:

The reasons are harbingers between the mind of the maker of the order to the controversy in question and the decision or conclusions arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, irrespective of the fact whether it is a quasi judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is germane and precise relevant reasons as apart of fair procedure. In an

administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage....

(Emphasis supplied)

16. In *Mohan Lal Goenka and Another Vs. The State of West Bengal*, the examination results of three candidates were cancelled and the Apex Court held that they should have received an opportunity of explaining their conduct. It was also said that even if the enquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity.

17. In *R.P. Bhatt Vs. Union of India and Ors (UOI)* ., , the Apex Court while interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 held that the word "consider" in Rule 27(2) of the Rules implied "due application of mind". It was further held that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. In *Ram Chander Vs. Union of India (UOI) and Others*, the Apex Court held that the duty to give reasons is an incident of the judicial process. In *Divisional Personnel officer, Southern Railway v. T.R. Chellappan* (1976) 3 SCC, the essence of what has been held by the Apex court was that the terms "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. In *Barium Chemicals Ltd v. A.J. Rana* (1972) SC 591, the Apex Court reckoned into consideration the dictionary meaning of the word "consider" which according to Shorter Oxford Dictionary means 4Lo review attentively, to survey, examine, inspection, to look attentively, to contemplate mentally, to think over, mediate on, give heed to. take note of, to think deliberately, bethink oneself to, reflect. Again the Court consulted Words and Phrases-Permanent Edition Vol. 9-A according to which the word "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; mediate upon, think or reflect with care.

18. It would thus be eloquent that the statutory committee, which was dealing with the matter of unfair means allegedly employed by the petitioner in attempting questions, being quasi-judicial authority was to act judicially and was bound to give reasons, the duty to give reasons being an incident of the judicial process and to decide the matter on the facts of the case, on the material before them and by applying legal norms to factual situations. There is no order at all on "record, not to speak of a reasoned order-evidencing the fact that requisite material was taken into reckoning by the Committee. As no reasons are given in the decision of the Unfair-means Committee, which is a creation of statute, the

order impugned herein is liable to be quashed. It thus leaves no manner of doubt that the petitioner was not given any opportunity and there is also non-application of mind. Since no reasons have been given, the impugned order suffers from error apparent on the face of the record and is liable to be quashed.

19. As a result of foregoing discussion, the writ petition succeeds and is allowed and the impugned order dated 10.4.2006 is quashed. The Opposite party is directed to declare result after evaluation of answer-sheets.

20. In the facts and circumstances of the case, there would be no order as to costs.