

(1981) 03 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7003 of 1980

Anand Kumar Agarwal

APPELLANT

Vs

Registrar, Agra University Agra, and others

RESPONDENT

Date of Decision : 03-03-1981

Acts Referred:

Citation : (1981) 03 AHC CK 0018

Hon'ble Judges : M.N.Shukla, J and K.M.Dayal, J

Final Decision : Allowed

Judgement

M. N. Shukla, J.

This is an unfortunate case in which an ostensibly bright student was involved in an episode which not only deprived him of one precious year of his career but also cast on him a stigma which if not effaced by appropriate orders of this Court might prove to be his perennial Waterloo. The petitioner appeared at the combined PreMedical Test for the year 1980, conducted by the Agra University. Our attention was drawn to the averments made in Paragraph 3 of the writ petition in which the petitioner, without any false sense of modesty stated that he had his early education in the Scindia Public School, Gwalior and passed the High School Examination of the U. P. Board in the year 1978 with distinction in Mathematics, Biology and English and also secured 387 marks out of a total of 500 marks. He was also awarded the National Scholarship and U. P. Scholarship. He passed his intermediate examination of 1980, securing distinction in Biology, Physics and Chemistry.

It was alleged that he was appearing at the above mentioned PreMedical Test which consisted of four papers, including one of Physics. These papers contained objective questions and the answer to each of the questions was given below the question itself and the candidate had only to indicate which of the many answers contained therein was the correct answer and to tick mark the same in the column against it. The charge against the petitioner was that while he was attempting the Physics paper he had an instrument box in his possession in the

examination hall and on that instrument box some formulae were found written. Taking it to be a case of use of unfair means, his examination result for the year 1980 in the PreMedical Test was cancelled. Aggrieved by that order he filed this writ petition.

He was given an opportunity of showing cause. His defence was that while going to the examination he had picked up the instrument box belonging to his brother on which there were some scribbling of which he was unaware, that the sundry insignificant writings on the instrument box were of no relevance for the paper in which he was appearing; that at all event he never made use of the same and that he never attempted to resort to any unfair means. The Unfair Means Committee (SubCommittee) which investigated this matter submitted a report to the Chairman, recommending cancellation of the petitioner's examination. In the minutes of the Unfair Means Committee (Subcommittee) dated July 4, 1980. which embodied the decision taken in the case, it was noted:

"9. Sri Anand Kumar Agarwal, Roll No. 41286. According to the report of the invigilator and the observer and the Superintendent of the Centre, the candidate was found in possession of Instrument Box. There are four things outside and inside the Instrument Box which relate to the subject of Physics. The candidate has accepted it. The Instrument Box has been produced by the Centre Superintendent as evidence.

The Committee decided to recommend cancellation of the examination." Sri B. D. Agarwal, appearing for the respondents Nos. 1 and 2 relied on Direction No. 18 (a) which occur in the Directions which are annexed to the admission form which every candidate has to fill up before he is permitted to appear at the examination. It is quoted in Paragraph 7 of the counteraffidavit and reads "in case a candidate is found to be in possession of material likely to be of use for the day's examination his/her whole examination be cancelled." The basic facts are more or less admitted. The petitioner himself never denied the recovery of the instrument box from his possession which contained the notings referred to above. The crucial point, however, is whether the writing on the instrument box contained anything which in terms of Direction 18 (a) could be described as "material likely to be of use for the day's examination". There is nothing on the record to indicate that there was any material which could lead to the conclusion that the writing on the instrument box was likely to be of use for the day's examination. Neither there is any such finding nor does the counteraffidavit disclose any material on the basis of which such opinion could reasonably be formed. It was merely suggested that the notings on the instrument box were connected with the subject of Physics. This bare suggesting is not sufficient to sustain a charge as contemplated by Direction 18 (a). If a candidate is possessed of or is unwittingly found in possession of something which is of such a trite and elementary character that it may be safely presumed that the candidate himself could not possibly be ignorant of it, particularly a candidate of the petitioner's calibre, it is not possible to hold that he had used unfair means. We have

personally examined the instrument box produced before us. We are satisfied that there was absolutely no evidence in this case on the basis of which the petitioner could be said to have been in possession of any incriminating material. The impugned action taken against the petitioner is illegal and appears to have proceeded from a nonapplication of mind.

In these circumstances, we allow this writ petition and quash the entire proceedings of the enquiry resulting to the unfair means alleged to have been resorted to by the petitioner. We also issue a writ of mandamus, directing the respondents Nos. 1 and 2 to declare the result of the petitioner's PreMedical Test at which he appeared for the year 1980. We make no order as to costs.