

(1977) 07 OHC CK 0002

In the Orissa High Court

Case No : Original Jur. Case No. 2048 of 1975

Ananta Prasad Nayak

APPELLANT

Vs

The Utkal University and Others

RESPONDENT

Date of Decision : 29-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1978 Ori 11

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : S. Misra, No. 1, for the Appellant; S.C. Mohapatra, S.C. Mohapatra, S. Rath and Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner appeared at the Annual Bachelor in Commerce Examination conducted by the Utkal University in 1975 as a regular student from the Ravenshaw College at Cuttack. There are ten written papers prescribed for the said examination and petitioner appeared in all the papers from the Ravenshaw College centre of which opposite parties 2 and 3 were the Superintendent and the Deputy Superintendent respectively. Petitioner claims that his examination papers were appropriately valued and the marks obtained by him were tabulated and as he had secured marks sufficient enough to obtain a pass in the examination, his result was in the process of publication. Suddenly, however, the same was withheld and petitioner was served with a notice from the University in terms of Annexure-1 wherein it was stated:--

"Whereas (i) You were a candidate for annual B. Com. Examination, 1975 and an Admit Card was issued to you where your Roll number was 284 in the Ravenshaw College Centre;

(ii) You appeared in all the papers;

(iii) In all the answer papers you have filled up the cover pages yourself and

inserted Maa Kali on the covers;

(iv) The answers inside all the answer papers, are not in your hand and appear to have been written by some other person/persons;

(v) Answers in Answer papers in respect of the following subjects appear to be in one hand:--

(a) English Paper-I

(b) English Paper-II

(c) Economics Paper -- I, II and

III; (vi) Answers in Answer papers in respect of the following subject appear to be in another hand:--Commerce Papers -- I, II & III; (vii) Answers in Answer papers in respect of the following subjects appears to be in a third hand;

(a) Advanced Accountancy;

(b) Auditing;

(viii) Your handwriting is available from the answer paper in a College examination which has been obtained for verification and shows the difference of handwriting;

(ix) There is no mutilation to the disputed answer papers;

And whereas, such difference in handwriting is not possible unless you have adopted unfair means which could not be detected at the relevant time and the entire fact as to how there is difference in handwriting is within your personal knowledge;

Your explanation written in your own hand (not typed or written by another) should be received by the Deputy Registrar on or before the 24th September, 1975, or may be produced at the time of enquiry to be held on the 26th September, 1975, at 11 A.M. in the Utkal University Office at Vani Vihar, Bhubaneswar-4, at the beginning, failing which it shall be presumed that you have no explanation to offer. The matter may also be enquired into that day and if you so like you may be present and take part in the enquiry.

Your answer paper of the College examination which discloses your handwriting, your writing in the cover pages of the answer papers and the answers in those papers which disclose different handwritings are the only materials to be used in support of the charges.

In case you desire to adduce any evidence or produce any material, you shall be permitted provided you pray for the same at the time of enquiry and you should come ready for adducing those evidences or producing these materials during the enquiry at the time and place fixed....."

Petitioner showed cause as directed and took the following stand:--

"The letter under reference comes in the wake of withholding the result of my examination and raises certain questions which are really intriguing.

The statements in (i), (ii) & (iii) undoubted facts. But the statements in (iv) to (vii) are preposterous. I wrote the cover pages and all the inside papers of my answer books. I am really astonished how the answers inside the books could be found from my answer books to be in different hand. Of course, I shall be in a position to be definite after I see the answer books, but I am assuming for the present that your information is correct. If what appears to you be correct, I can possibly offer no explanation how my answers were substituted by answers written in some other hand.

As regards (viii) my answer papers in college examinations are all in my hand.

As regards (ix), it is intriguing how without changing the covers the inside answers would appear in the handwriting of some person other than mine. Such switching does not require mutilation of answer paper.

Such switching of covers is possible after the submission of the answer papers. This does not lead to the inference that I adopted unfair means. How such a switching was made cannot be within my personal knowledge. I can only speak up to the time I submitted the answer papers to the invigilator and I assert that till that time the answer papers were all in my handwriting. After that the University is responsible for the same

If you please call for reports from the Invigilators, you will be assured that I was throughout writing in the book supplied to me. Now the question is what has become of the answers that I wrote. You are aware that the examination was being conducted strictly as per rules, and had there been any instance of my bringing paper from outside or taking away papers from the examination hall, the matter must have been reported by the Invigilators.

Regarding the materials to be used against me, I have no comments to make until I see the materials. If what you assure me is correct, then what I have, stated above will apply. After seeing the materials, I shall state which of them are in my hand. However, I would like to rely on the reports of the Invigilators and the Superintendent in this regard. I would also request that the report and name of the person who first brought the matter to your notice be supplied to me and to examine him before you as to the source of his knowledge, because he is the man who knows how the switching of covers took place....."

An enquiry followed in the manner indicated above and the University authorities cancelled the result of the examination of 1975 and debarred the petitioner from appearing at any examination prior to the second examination of 1978. Petitioner assails this order of the University and has asked the Court to quash it.

2. The Controller of Examinations of the Utkal University filed a counter affidavit on behalf of opposite party No. 1 and stated that neither the Invigilators nor the Centre Superintendent nor the examiners of the written papers of the petitioner

reported against him. However, during the process of publication of the result, information was received in the University Office that the petitioner had adopted malpractice in the examination. Accordingly all his answer papers were collected, examined and a prima facie case of malpractice was found. The Discipline committee which enquired into the matter in the presence of the petitioner consisted of the Administrator and Dr. Misra, Professor of Philosophy. It has been pleaded that when the petitioner appeared before the Committee, the answer papers were shown to him and after inspecting all the answer papers, the petitioner stated that they were not in his handwriting. Asked as to whether the answer scripts were intact, he examined the same and stated that they were intact and there did not appear to be any evidence of any change. Petitioner accepted that the writing "Maa Kali" on the cover page of each of the answer papers was in his own handwriting. In view of these facts, petitioner was asked to state if he had got anything more to say or show or any further evidence to be adduced on his behalf. He stated that he had nothing more to say than what had already been stated in his explanation and declined to adduce any evidence. In response to the petitioner's demand for disclosure of the source of the information by the University, petitioner had been told that the source was not material particularly when petitioner has conceded on scrutiny of the answer papers that they were not his. It has been further pleaded that the answer papers supplied by the University have perforation of U. U. at the left hand top and one particular type of stapling is adopted. The answer papers also bore a serial number on the cover. During the enquiry the position of the perforation marks on the cover page as also on the pages containing the answers were scrutinised and found to be symmetrical which prima facie satisfied the enquiry committee that the contents within the cover pages in each of the answer books had not been substituted subsequent to the perforation of the answer papers. The Controller further averred that the usual process is to collect the answer papers in the examination hall and the invigilators carry the answer papers to the Centre Superintendent and from his office they are sent to the University by insured post in properly sealed packets. In the office they are not at all opened. During 1975, the area covered by the jurisdiction of the Utkal University was divided into five zones each with a Supervisor-in-charge and the answer papers of each zone were carried by the University vehicles and staff to the respective Supervisors. The Supervisors satisfied themselves as to genuineness of seals and their being intact before taking delivery of the answer papers. The examiners met the Zonal Supervisors within a fixed period to take over their assignments and returned the packets after examining the answer papers. The Zonal Supervisors after receiving the valued scripts together with perforated mark-sheets sent them to the University Office and in the University Office tabulation was made on the basis of the perforated mark-foils. In view of the strict care taken throughout* from the stage of the Invigilator collecting the answer papers in the examination hall up to receiving the answer papers from the Zonal Supervisors along with marks, there was absolutely no scope for substituting the answer papers within the cover pages after the answer papers had left the

candidate. The following circumstances have been stated to be the basis for the conclusion that the petitioner was guilty of malpractice:--

(a) As conceded, the answers were not in the handwriting of the petitioner in any of the answer books:

(b) The perforated marks U. U. and the staples were intact and the answer papers had not been mutilated in any manner;

(c) There was no chance of the answer papers being mutilated by anybody and there would be no justifiable reasons to assume that the answer papers of the petitioner alone had been picked up from out of the huge bundles to be specially attended to;

(d) The names .of the examiners, the movement to and fro to the Zones were kept secret and no outsider had knowledge about it;

(e) From a big lot of answer papers, it would be difficult for any one to pick up those of the petitioner particularly when the petitioner's answer papers would be kept distributed in ten separate packets relating to the ten separate papers. Unless a person has too much of interest, it would indeed be difficult for any outsider to undertake such a process;

(f) The Administrator and Dr. Misra, the other member of the Committee, had no prejudice against the petitioner and since after a dispassionate examination of the materials and hearing granted to the petitioner the conclusion has been reached by the Discipline Committee.

It has been further pleaded that the answer papers were shown to the petitioner for his own examination and after having seen them, petitioner did not want to adduce any evidence in defence. The proceedings of the Discipline Committee as also the final order have been produced as enclosures to the counter affidavit being Annexures B/1 and C/1 respectively.

Petitioner filed a rejoinder.

3. Petitioner applied for a direction to the University authorities to produce his answer papers and counsel for the University agreed as would appear from order No. 6 dated 2-2-1976 to produce them. An endorsement on the order-sheet dated 20-2-1976 shows that counsel for the University filed the answer papers in a sealed packet Order No 9 dated 28-2-1977 runs thus:--

".....At the instance of the counsel for the petitioner, the packet was opened in Court during hearing. One of the answer papers produced in book No. 138875 as given on the cover page shows the subject to be English Paper I where the candidate with Roll No. 284 has secured 30 marks. The first page of the answer paper deals with Temperature. Thermal Expansion and there is no indication of anything relating to English Paper I inside. Another answer paper deals with Economics Paper III and the answer paper in book No. A.143708 contained some answers touching the subject of Physics, as we are told at the Bar. Under book

No. A. 914243 labelled as subject of law contained the answer on Temperature, Thermal Expansion. We have also found that two answer books separately marked with the same roll number have substantially the same answers.

The Controller of Examinations be called upon to file an affidavit explaining as to how these things happened....."

Pursuant to the aforesaid direction, the Controller of Examinations filed an affidavit on 21st of March. 1977, wherein he took the stand:--

"That after conclusion of the proceedings by the Examination Discipline Committee, the answer papers were wrapped with two rose-coloured fly-leaves of the University, put inside a cloth bound cover which was sealed with my official seal which bears my inverted facsimile signature. This sealed packet was kept in a Godrej Steel Almirah in the strong room where question papers are kept. The room is well secured by grilled collapsible iron gates besides wooden doors which are provided with two locks. The keys remain in my personal custody. When it was required to be submitted to Hon"ble Court this sealed packet was put inside another cloth backed cover of the University and this outer cover was again sealed and submitted on 20-2-76

That on the 18th of March. 1977, I examined the answer papers which were kept in a sealed packet by the Deputy Registrar. I found only one clothbacked cover bearing seals and not two such covers which were submitted to the Court,

That on examination of the answer papers it was found that the cover pages only of all the ten answer papers were the same as when they were put in the sealed covers. But the inner pages in all the ten answer papers are not the same as when they were placed before the Examination Discipline Committee and later kept in a sealed cover which was submitted to this Hon"ble Court.

That before the Examination Discipline Committee arid said that they were intact (sic). I found on examination before the Deputy Registrar (of the Court) on 18-3-77 that they are not intact. The stapling of all the answer papers has been manipulated and interfered with clearly showing the marks of interference. The inside papers did not bear the punch hole which were found on the cover pages of the answers. The perforation marks "U.U." which should run through the entire answer script are found at different places on the outer cover and the inner pages, They are not symmetrical in the inside papers and the covers. The marginal folding marks of the cover and inside paper do not overlap and in some cases the cover does not bear any folding mark whereas the inside papers bear folding marks.

That in view of the fact that the original inside papers have been detached from the cover page and substituted by some other papers, the answer papers contain some irrelevant writings. Similarly identical writings are found in two papers because of indiscriminate substitution.

That on examination of the answer papers, I am satisfied that they are not the

same as were submitted to this Hon"ble Court although the covers in all the answer papers are the same. It is not possible for me to explain how the substitutions were done.

That if the Hon"ble Court so desire, the following circumstances may be subjected to a more detailed probe by experts in the line to discover how the matters were substituted:--

(a) Absence of one of the cloth-backed sealed covers:

(b) Presence of a marginal cut mark in the cloth-backed cover in a corner with a fine cutting instrument when the remaining portion of the same margin has been irregularly torn out;

(c) The inverted facsimile signature in the seals found on the cover now in the custody of the Deputy Registrar are to be compared with the seal of the deponent to find out whether they are identical or not." The aforesaid affidavit was placed before the Court on 22-3-1977, when the following order was passed:--

"Pursuant to our direction in order No. 9, the Controller of Examinations has filed an affidavit yesterday. Many of the statements made therein are challenged by Mr. Misra for the petitioner. The facts already disclosed show. that the cover page in each of the answer papers is owned by the petitioner to be in his own handwriting. The writing inside is disowned. It has further transpired that while the cover paper would show that the subject of examination is English Paper-I, the answer inside deals with Temperature, Thermal Expansion and items of that type. Admittedly, the answer papers were in the custody of the University and the Controller has also stated to that effect in his counter affidavit. The University has to explain as to how while the cover remained unchanged, the matter inside was changed. For consideration of this aspect of the matter, we find there is no help in the affidavit. Since the matter is of a serious nature, it is appropriate that the Controller of Examinations be summoned to appear for examination in Court."

Pursuant to the said direction, the Controller of Examinations appeared on 27th April. 1977 and was examined. On that day, we passed the following order:--

"Mr. Mohapatra, counsel for the University, makes a statement before us in Court after the Controller of Examinations of the University was examined to the effect that, he delivered the sealed packet to the Deputy Registrar of the Court. On 28-2-77, the sealed packet was brought to the Court. As order No. 9 would show, at the instance of counsel for the" petitioner the packet was opened in Court during hearing. Nothing unusual appeared with the seals and, therefore, the Division Bench which handled the matter that day consisting of one of us and Panda, J., did not make any specific record. The answer papers were directed to be put into a sealed cover and the packet was also directed to be kept with the Deputy Registrar to be opened only with the permission of the Court. On an

application of the University authorities; by order No. 10, inspection of the answer papers contained in the sealed packet was granted and, as a fact, the Controller of Examinations has examined the papers with the Deputy Registrar.

We leave this note for reference when the case is further heard. The papers be sealed and left with D.R." On an application of the petitioner, the then Administrator of the University has also been examined. We shall refer to the evidence of the Administrator and the Controller in due course.

4. From the cover pages of the answer papers which are admittedly in the handwriting of the petitioner, the following materials are available:--

Sr. No.	Date of Examination	Subject	Number of answer book	Mark secured
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- | | | | | |
|-----|-----------|-----------------------|--------|----|
| 1. | 30-4-1975 | English Paper I | 138675 | 30 |
| 2. | 2-5-1975 | English Paper II | 139814 | 41 |
| 3. | 5-5-1975 | Eco (Perhaps Paper I) | 140721 | 55 |
| 4. | 7-5-1975 | Economics Paper II | 140965 | 38 |
| 5. | 9-5-1975 | E. C. III | 143708 | 43 |
| 6. | 12-5-1975 | A. C. | 143997 | 48 |
| 7. | 14-5-1975 | S. T. | 145309 | 55 |
| 8. | 16-5-1975 | Law | 914243 | 47 |
| 9. | 19-5-1975 | A. A. | 237671 | 48 |
| 10. | 22-5-1975 | Auditing | 236018 | 30 |

These ten answer books were admittedly valued by duly appointed examiners of the University. We see no reason to dispute the position that the different examiners valued the answer papers and assigned marks on merit. If the answer papers then contained what they now contain, there could be no scope for the petitioner to secure any mark in any paper. We propose to demonstrate our conclusion by referring to the answers in the select of law -- a matter in which, we believe, we are in a position to scrutinise the contents. The first answer is on "temperature and thermal expansion." It is stated to be answer to question No. 3 where 9 marks have been assigned. The second answer deals with "Ideal gas temperature" and 13 marks have been given. The next answer is on "Volume expansion" as against question No. 5 and 5 marks have been assigned. The answer to the sixth question is on "General gas law"" where no marks have been given. The cover page has marks against questions 5, 6, 7, 8 and 9. None of the answers is on the topic of law. Admittedly, the answers do not represent the questions set for the paper. It is also clear that while different questions have been answered, the cover page shows credit of marks in other questions different from those which have been answered. It is clear beyond any dispute

that the contents of the answer papers as now found were not in existence when the examiners were scrutinising the answer papers for purpose of valuation. As we find, initially petitioner had secured 41 marks in the Law paper which has been re-valued and made 47. There are two sets of initials on the cover page and it has been explained to us at the time of argument that one is the signature of the Examiner and the other of the Head-Examiner. In the absence of any material, we do not think it appropriate to say anything more on that aspect of the matter. Our observations about the law paper equally apply to each of the other answer papers.

If these answer papers were inside the cover page, it is clear, therefore, that no examiner would have given credit to the petitioner for such answers. It must, therefore, follow that answers relevant to the subjects in which petitioner was examined and appropriate for questions set in the examinations were available in the respective answers. There can also be no doubt in the premises that after the papers have been valued, the contents have been changed

5. Petitioner has now admitted and had also admitted that position before the Discipline Committee that the contents in the answer papers shown to him at the enquiry were not in his hand. In the show cause issued to the petitioner, it had clearly been indicated that the answers were found to be in the hands of three different persons. If by then, the present answers were inside, such an allegation would not, have been made because upon a look at the answers we find that they seem to be in two different hands only. At the enquiry, if these answers were in existence, petitioner as also others who participated in the enquiry could not have overlooked the fact that these were not the answers to the questions. The drawings appearing in some of the papers would be wholly out of place in answer papers on Commerce subjects. We are, therefore, led to hold that the answers as now available were not the answers which the answer books contained at the time the papers were valued or at the time when the enquiry was conducted.

6. The answer papers now found in the record were filed by counsel for the University after the same had been received by him from the Controller of Examinations through an Assistant of the University. The packet containing the answer papers had been given to the Deputy Registrar of the Court and it has been gathered that the same had been kept in the iron safe meant for valuable documents, the key whereof is kept by the Deputy Registrar himself. The sealed packet was opened in the Court in the presence of the learned Judges constituting the Division Bench, as already indicated. We are, in the circumstances, satisfied that there has been no substitution of the answer papers after the packet had been tendered to the Deputy Registrar. On the allegation of the University, the answer papers which were valued had been written by three different hands, none being in the hand of the petitioner and had been submitted for valuation, which meant one substitution which, for convenience hereafter may be referred to as "first substitution". The answer papers as now found, for

the reasons we have indicated must have undergone another substitution which for convenience we refer as "second substitution." There have thus been prima facie two substitutions of answer papers. For the reasons we shall presently indicate both the substitutions seem to have been after the answer papers were collected in the examination hall and before they were produced in this Court. The second substitution is not very material so far as the petitioner's results are concerned, though they have far-reaching effect for other purposes. The first substitution, however, is directly connected with the petitioner's performance and merit of the case as such.

7. It is not the case of the University that some other persons impersonated for the petitioner in the examination hall nor is it the allegation that the answer papers not written in the examination hall had been tendered at the close of each day's examination. The cover page of each of the ten papers has been signed by the Invigilator of the day in the examination hall. On verification we find that different persons have signed on different days. It would, therefore, be appropriate to accept that nothing was wrong until the answer papers were deposited with the Invigilators on the respective days of examination. As the whole paper in each of the subjects had been written in one hand, apparently the examiner thereof had no scope to make any complaint. It was only when all the answers were compared, there could be scope to allege that there were answers in three different hands. Non-receipt of complaint from the examiner, therefore, is an innocuous feature. Prima facie, both the substitutions thus seem to have occurred after the answer books had been collected from the examination hall and before they were produced in the Court.

8. We have now to deal with two different aspects firstly, as to the merit of the case and then about the answer papers in the custody of the University. The enquiry conducted by the Disciplinary Committee has not been a very appropriate one. Dr. Misra, one of the members of the Committee was incapable of seeing things. About him, the Controller has stated in his evidence :--

"..... One of the members of the disciplinary committee was Dr. Ganeswar Misra who does not have eyesight enough to put his signature by himself. He puts his signature only if given assistance to sign any document."

We do not propose to make any further comments as in our view it is sufficient to say that in an enquiry of the present type, scrutiny of the papers was necessary and a person who was not able to put his own signature without assistance on account of loss of eyesight should not have been on the committee which in view of the allegations was required to closely scrutinise the answer papers.

In the absence of allegations of substitution at earlier stages, i.e. allegations of substitution from the Invigilators, Centre Superintendent, et cetera, the committee should have held a more detailed examination to find out the truth. A memorandum of enquiry should have been recorded in presence of the petitioner

and he should have been asked to sign it so that there could be no scope for challenge as to what happened in the enquiry. The Disciplinary Committee should have also taken into consideration many circumstances appearing in the answer papers. For instance, in the answer paper in book No. 236016 dated 22-5-1975, the subject seems to be "auditing" and has been written by the petitioner as "ADITING". We are of the view that the enquiry has not been adequate and the constitution of the Committee has not been appropriate. As such the petitioner should be given another opportunity of being heard on the charges framed and the cause shown.

9. What we have said above should normally have been sufficient for disposing of the writ petition. We cannot, however, overlook the seriousness of the matter. Universities have been set up for teaching and conducting of examinations. The institution is a big social trust. Thousands of students sit at the different examinations conducted by the Utkal University and accept the adjudicatory assessment made of their performances by it. The system of examination has been intended to be fool-proof. Acceptance of the assessment made by the University lies upon the same being just and correct. Social institutions accept the valuations to be appropriate on the basis that the performance is assessed in a dispassionate manner. In order that assessments made by the University have universal acceptance, it is absolutely necessary that the fool-proof character of the process should not be doubted. If, however, after the answer papers are collected and are in the custody of the University they are available to be substituted the basic confidence would soon be lost and the Utkal University would soon cease to be of any utility to Society. Examinations conducted by the University would be more a mockery than a social event. Both the Administrator as also the Controller of Examinations have claimed that all care has been taken to preserve the answer papers, but here is an enigma which unless answered by appropriate probe would knock out the faith of the society in the process. We would, therefore, commend to the Chancellor of the University to direct appropriate enquiry into the entire system and ensure that the unfortunate incident appearing in the case may not recur and those that are responsible for what has happened are appropriately dealt with so that the institution continues to be of service to society in future.

10. The writ application is allowed, the impugned punishment is quashed. We direct that an appropriate Disciplinary Committee be set up and the enquiry be made afresh and the charges raised against the petitioner be dealt with against on the basis of the explanation already furnished in accordance with law. We make no order for costs.

11. We further direct that the Registrar of the Court shall cause a copy of our judgment to be transmitted to the Chancellor of the University for such action as he may consider appropriate.

Das, J.

12. I agree.