

(2013) 02 RAJ CK 0122
In the Rajasthan High Court
Case No : Civil Writ Petition No. 18212 of 2012

Arun Mishra

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 3 CDR 1235

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Banwari Sharma, for the Appellant; Reashm Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Arun Mishra, a student, whose Senior Secondary Examination, 2012 has been cancelled along with that of two other students namely; Ms. Archana Meena and Aditya Khandal by the Board of Secondary Education, Rajasthan, Ajmer on account of adoption of unfair means by them. Facts of the case are that when result of the petitioner and other two candidates was not declared, they approached the Principal of their school viz. Vivekanand Public Senior Secondary Tonk. Principal wrote a letter to the Deputy Director (Secrecy) of the Board of Secondary Education of Rajasthan, Ajmer on 16.5.2012 to supply the reason why their result has been withheld. Deputy Director (Secrecy) by letter dated 23.5.2012 informed the Principal that an enquiry was going on into the complaint made by examiner with regard to these three students and their result would be known only after completion of such enquiry. The Principal again wrote a letter on 4.6.2012 for declaring such result citing the reason of mental agony of students. It was thereafter that the Assistant Director (Secrecy), Board of Secondary Education for Rajasthan, Ajmer vide his letter dated 25.6.2012 sent an information to the petitioner that he along with other two students has been found guilty of using

unfair means and copying answers with each other. He should therefore submit his explanation before the enquiry officer by 6.7.2012 and shall appear in person before the enquiry officer on 11.7.2012 at 11.00 AM. It was conveyed that if the petitioner and other students want to examine their answer books, the same would be shown to them and they would be free to produce before the enquiry officer any class notes, pass books or other text books on the basis of which they have attempted the answers, in support of their case. If they fail to submit their reply and explanation and fail to appear before the enquiry officer, the matter may be decided ex-parte against them. Petitioner sent a reply to the aforesaid notice on 1.7.2012 denying the allegation of copying and contending that he has attempted all the questions on the basis of his own knowledge and ability. He secured 91.33% marks in Secondary Examination and was a meritorious student and therefore his result may be declared. He expressed willingness to appear before the enquiry officer on 11.7.2012. The respondents, however, by their notification dated 27.7.2012 cancelled the whole examination of the petitioner and the two other students.

2. Shri Banwari Sharma, learned counsel for the petitioner has argued that petitioner is highly meritorious student, which is evident from the fact that he has passed the secondary examination with first division and secured 91.33% marks, whereas the other students namely Ms. Archana Meena and Aditya Khandal have respectively secured only 67% & 81.50% marks. He is therefore much more meritorious than those two students, therefore, it cannot be believed that he would copy from them. Learned counsel submitted that the conclusion of the enquiry officer that petitioner and for that matter, all the three students have copied with each other, is merely based on inference and presumption as there is no evidence to that effect. Learned counsel invited attention of the Court towards number of certificates which the petitioner has produced on record showing his participation in different kinds of extra curricular activities and contending that petitioner bears a high morale character and that allegation of copying against him is totally baseless. It would cause immense injustice to an otherwise meritorious student if his entire examination of 2012 is cancelled. At the maximum, the respondent Board should have cancelled the result of Chemistry subject, requiring the petitioner to appear in supplementary examination of that subject or could have awarded marks on proportionate basis looking to his performance in other subjects. Petitioner has secured high marks even in other subjects of the examination in question.

3. Shri Banwari Sharma, learned counsel submits that if the decision of respondents is upheld, one precious year of petitioner, who is otherwise a meritorious student, would go waste and petitioner would be penalized for no fault of him. It is submitted that even if at all other students copied from the answer book of the petitioner, it is the fault of the Invigilator, therefore action should be taken against the Invigilator by the respondent-board rather than penalizing petitioner.

4. Per contra, Shri Reashm Bhargava, learned counsel for the respondents argued that in the process of evaluating the answer books, the Examiner detected a case of cheating/copying, therefore, result of the petitioner and other two students whose answers verbatim tallied with each other, was withheld. When the enquiry was made by the Principal of petitioner's school as to why result of petitioner and other two students was withheld, he was informed about the pendency of enquiry into the matter. A show cause notice was issued to the petitioner on 25.6.2012 calling upon him to submit his explanation and also appear in person. The enquiry officer has thereafter come to the conclusion that it was a case of adopting unfair means and copying and therefore the examination of the petitioner along with two students was cancelled. Their answer sheets can be produced even for perusal of the Court. It is argued that what is worth considering is not whether the correct and incorrect answers are verbatim the same, but the steps taken in reaching to a particular calculation and also using brackets etc. also tally with each other in the answer copies of all three students. Learned counsel in support of his arguments relied on the judgments of Supreme Court in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, , *Prem Parkash Kaluniya Vs. The Punjab University and Others*, , *Jagdish Prasad Vs. Smt. Angoori Devi*, judgement of Andhra Pradesh High Court in *Kannegolla Ramchandra Rao and Company and Another Vs. Smt. Kannegolla Santha Kumari (Plaintiff) and Others*, and judgement of Allahabad High Court in *Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad*, .

5. Having heard the learned counsel for the parties and perused the impugned order on record, I have given my anxious consideration to the rival submissions.

6. What emerges from reply to the writ petition filed by the respondents is that the answer to question No. 6 attempted by all the three students was exactly similar and was incorrect. In answer to question No. 10, all the students written the similar formula, which is incorrect. In answer to question No. 12, which was a numerical question, the steps of calculations and the answers in all the three answer books were exactly similar which is 4.898, whereas the correct answer is 28. Even in question No. 13, the answer given by three students was exactly similar, which was incorrect. In question No. 20, which was again a numerical question, the steps of calculations in all the three answer books are similar and answer was 4.19×10^{-5} , whereas the correct one is 4.03. In answer to question No. 21A & 22A, exactly similar answers have been given by all the three students, which were incorrect. In answer to question No. 28(B), which was a numerical question, the steps of making calculation were similar and the incorrect answer being 26.66 was similar, whereas the correct answer was 32.28 kJmol⁻¹. Answers to question Nos. 1, 2, 3, 5, 7, 8, 9, 14, 16, 17, 19, 21(B), 28(A), 27, 25, 24(A) and 23 were exactly similar in the answer books of all the three students and all were correct. Likewise answer to question No. 4, 11, 13, 29, 26, 18 and 30, were either not attempted or did not tally with each other in all three answer books. Answer to question Nos. 1 to 17 have been attempted in

the same order, however, there is a difference in the order in which the questions have been answered thereafter. Answer to question No. 7 was exactly similar and verbatim tallied with each other in all the three copies. In question Nos. 27, 28 and 29, two options were given in each of them and all the three students opted the same option to answer the question.

7. The Supreme Court in Bagleshwar Prasad, *supra* while considering an identical case in which the High Court in the writ petition filed by the two students, whose examination was cancelled on similar allegation of adopting unfair means and copying from each other, observed that the charge, in terms, was that having regard to the identity of the mistaken answers, the apprehension was that there had been copying, and that is very different from saying that the only charge was that the respondent had copied from the other candidate. Though the student concerned denied the allegation of copying, but he could not deny the fact that the mistakes in answer to the question in two papers was identical and therefore he could not offer any explanation why there was this similarity. In those facts, it was held by the Supreme Court that the charge against the respondent was either that he copied from candidate bearing Roll No. 94733, or that he connived with the said candidate copying from his answer books, or both of them had copies from a common source. In either case, it would amount to the adoption of unfair means. It was observed by Supreme Court in paras 11 & 12 as under:

11. xxx We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source xxxx

12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Art. 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that

the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. In the present case, no animus is suggested and no mala fides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent.

8. In *Prem Parkash Kaluniya*, supra also in similar circumstances, the Supreme Court upheld the findings of the enquiry committee, which came to the conclusion that Examiner had thoroughly examined the answer books of both the candidates and had pointed out that mistake committed by them are common mistakes showing copying from common source or by both the candidates from each other. In those facts, it was observed by the Supreme Court in para 11 as under:

11. A good deal of emphasis had been laid on the answers which were given by the two candidates and our attention had been invited to the discrepancies between the details of the answers contained in the two answer books. It was further pointed out that the appellant had made rough calculations at the back of the answer book which showed that he had worked out the answer on his own without the aid of any other source which could be regarded as common from which the other candidate was alleged to have copied. These, however, are matters on which the court cannot entertain a petition under Article 226. It was for the Standing Committee to arrive at its own conclusion on the evidence before it and the same cannot be re-examined except on very limited grounds which have not been established. We are also unable to see how the finding of the Standing Committee could be regarded as vague or as having been based on no evidence.

9. In *K. Santha Kumari & Anr.*, supra, the Andhra Pradesh High Court while considering the scope of interference by the High Court under Article 226 /227 of the Constitution in such matters held that such power is to be operated within the well defined limits. It is no part of the function of this court, while exercising the power of judicial review to record a finding that explanation offered by students was plausible and satisfactory as that power is vested with Malpractices Committee and that Committee alone has power to decide the question of the fact. The High Court in that case had called for the answer sheets of the petitioners and observed that all the petitioners who answered in Telugu medium attempted identical bits in Botany examination and the answers were written in verbatim. Same was the case with the English medium students. It was held that

even though there was no direct evidence to prove such mala fides, yet the probabilities and circumstantial evidence are so heavy against the petitioners which only lead to an inescapable conclusion that there was a mass copying. It was held that circumstantial evidence was itself sufficient to draw legal inference that the petitioners had resorted to malpractice. The judicial review is concerned not with a decision, but with the decision making process.

10. Similar view was expressed by the Full Bench of Allahabad High Court in Triambak Pati Tripathi, supra.

11. What is to be therefore examined is whether in the light of settled proposition of law referred to above, this Court can interfere with the decision of the respondents in cancelling the entire senior secondary examination of the petitioner or can substitute their decision by directing that examination of only concerned paper should be cancelled rather than entire examination. It is trite that the power of judicial review of this Court in such matters extends to the decision making process not the decision itself. It is also well settled that in matters of adoption of unfair means and malpractices in the examination where direct evidence may invariably be not available, the probabilities and circumstantial evidence lead to the inference that there was copying and no interference possibly would be made by this Court. This Court would not go into the sufficiency of such probabilities as held by the Supreme Court in Bagleshwar Prasad, supra. This Court in such like matters should be slow to interfere with the decision of the domestic Tribunals appointed by bodies like Universities/Education Boards because in dealing with validity of orders passed by them, this Court does not sit in appeal over decision of those authorities and its jurisdiction is limited to examine the decision making process rather than the decision itself. In the present case, as noticed above, there were several similarities in the answers given by the petitioner and other two students. Not only the correct answers, but also the incorrect answers and the steps taken in arriving at the answer in case of numerical questions are the same including use of brackets. Moreover, the order in which the questions were attempted was also same. All these possibly could not be accepted as just co-incidence because this was quite impossible to find such large number of co-incidences at a time. All these facts only lead to the inescapable conclusion that the petitioner and the other students either copied from same source or from one another. This Court is also satisfied that the principles of natural justice were fully complied with in the present case as not only notice was served upon the petitioner, but his explanation was also obtained and opportunity of personal hearing was also afforded to him. However, copying by the petitioner and other students could not be possible but for the connivance of the Invigilator. The respondents are therefore directed to take appropriate disciplinary action against the Invigilator and also debar him from his invigilation work in future. There is, however, no case for interference with the decision of the respondent-Board. The writ petition is dismissed.