

(1996) 02 KAR CK 0014
In the Karnataka High Court
Case No : WP. 39980 of 1995

Ashok Iyer

APPELLANT

Vs

The Pre-university Education Board and Another

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) ILR (Kar) 2769 : (1996) 5 KarLJ 563

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Vagdevi Associates, for the Appellant; N.B. Viswanath, HCGP, for the Respondent

Judgement

M.F. Saldanha, J.—Heard petitioner's learned Advocate. Heard learned Government Advocate. The petitioner was undoubtedly a bright student and a perusal of the earlier order passed by me will indicate that this Court had gone into two aspects of the matter the first of them being that the petitioner has pointed out that the malpractice that is alleged is in relation only to the Sanskrit paper and that the marks obtained by him in this paper are of no consequences as far as his attempt to secure admission for professional courses and that therefore, it would be unlikely that the petitioner would indulge in any malpractice in regard to this subject. The second point raised by him was that if the records were to be scrutinised it would be found that he has secured 70% in the S.S.L.C. examination and that therefore, he is not one of the student who even need to indulge, in malpractice for purposes of getting through. These circumstances were once strongly pleaded by the petitioner at the earlier point of time and the authorities were directed to produce the record and indicate precisely as to what happened in the enquiry. The allegation was that a slip of paper containing answers to the questions was recovered from the floor in the immediate proximity of where the petitioner was sitting for the examination. When action was taken against him, one of the circumstances that emerged was that the petitioner had left the first three pages of the answer sheet blank after

only writing down the question numbers. The Enquiry Committee held a brief enquiry and came to the conclusion that the material warranted action for having indulged in a malpractice. A short order was accordingly passed on 8.12.95 where by the petitioner was debarred from the April and October examinations of 1995 but was permitted to take his examinations in April 1996.

2. Petitioner's learned Advocate has vehemently submitted that while assessing the case of a student, one of the important aspects would be his previous academic record and if it can be demonstrated that he is one of the better student who has done extremely well, that the likelihood of such a candidate indulging in a malpractice at the examination will have to be totally ruled out. He has also submitted that there is no conclusive evidence to indicate that a slip of paper was recovered from the petitioner whereas on the other hand, it is the respondents case itself that this slip was found on the floor. He has also pointed out to me that in the course of the enquiry, the petitioner pointed out to the Committee that nothing from the slip had been reproduced in the answer paper and that therefore, it was absolutely wrong on their part to have held him guilty of a malpractice. Learned Advocate has also submitted that in this background, it was incumbent on the part of the authorities to have produced cogent and conclusive evidence before holding the charge proved as against the petitioner. He has put forward his explanation that if the petitioner for the reasons set out by him had decided to leave the earlier three pages of his answer paper blank in order to attempt some other questions and then come back to these ones, that it was perfectly legitimate and that this circumstance alone cannot be used against him. In sum and substance therefore, he submitted that the finding is totally unjustified and that it must be quashed. The subsidiary argument was that no proper enquiry was held and that therefore, the proceeding itself is vitiated. Dealing with this last aspect of the matter, I need to once again record that judicial interference in cases of this type is necessarily minimum particularly where Universities, Boards and academic bodies are concerned. Unless it is demonstrated that there has been a total miscarriage of justice or that a patently wrong or perverse order has been passed, the proceedings under Article 226 of the Constitution in these cases are not full fledged appeals and the Court is only required to ascertain as to whether there has been broad compliance with the principles of natural justice. In this case, the petitioner himself insisted on asking for the charges to be framed which was done and the petitioner himself has thereafter recorded in great detail as to what transpired at the time when he was called for the enquiry. A perusal of these documents will indicate that the authorities did hold an enquiry. It is true that this enquiry is not like a formal judicial trial but that is not required in so far as this type of a disciplinary enquiry is a fact finding operation and if the petitioner had an opportunity of being aware of the charges, participated in the enquiry defended himself and put forward his say, nothing more requires to be done. As far as the merits of the case are concerned, one needs to take a practical view of the fact namely that in cases where malpractices are alleged, there are hardly ever two formal eye witnesses

and it is on the basis of the circumstantial evidence that the Court will have to decide as to whether the charge is proved or not. The Petitioner's learned Advocate may be right when he says that it purely within the petitioner's discretion to answer the questions in the order in which he decided and if he felt that he would like to leave certain pages of his answer paper blank for whatever reason, that this would ordinarily be an innocuous circumstance. The fact remains that the Court has to take a total view of the material and the circumstance ceases to be innocuous in the light of the accusation against the petitioner that the piece of paper contained material which was sufficient for the purpose of answering those very questions which has been left blank. The aspect of leaving three pages of the answer paper blank changes the complexion of the case completely. This circumstance is directly co-relatable with the fact that the paper that is recovered did have something to do with the answers which could later have been written on those very pages. I do concede that in this case the paper was recovered therefore anything from it was copied into the answer book. This to my mind would not make any difference because the concept of indulging in a malpractice includes any act or an attempt to use unfair means in relation to an examination and even if a candidate who has taken any material to the examination hall was apprehended with that material without it being used, it would still come within the definition of a malpractice. This is the settled law on the subject and under these circumstances, the finding of the Enquiry Committee to the effect that a malpractice has been committed does not require to be interfered with.

3. The last aspect of the matter is with regard to the punishment imposed on the petitioner. The learned Advocate advanced a strong plea that this was the last paper and that admittedly there is no inter-connection between this paper and the earlier ones and that even assuming that an adverse finding has resulted against the petitioner in respect of this one paper, that it would be too harsh to set-aside the examination in respect of the remaining subjects and that at the highest, the petitioner can be directed to reappear in this subject alone. There is considerable substance in this contention but the learned Government Advocate has placed before me the rules framed by the Board and the rules specify that if a malpractice has been indulged in the course of the holding of the examination that irrespective of whether it relates to one before or more papers, that the whole of the examination will have to be set aside. There is no discretion left either with the Board or with the Court as far as the application of the rule is concerned and therefore, once an adverse finding is recorded the consequences are inevitable.

4. The Board has taken a reasonable view of the case in so far as no attempt has been made irrespective of what has happened to damage the petitioner's career. He is free to reappear for the examination in April, 1996 and therefore, in view of the provisions contained in the rules even as far as the quantum of punishment is concerned, this Court cannot interfere.

5. In view of the aforesaid situation, the Writ Petition fails and stands disposed of. Learned Government Advocate is permitted to file his memo of appearance within 3 weeks.