
(1968) 02 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 200 of 1966

Bansi Lal Gera

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 23-02-1968

Acts Referred:

Citation : (1968) 4 DLT 353

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : K.L. Arya, P.R. Mongi and A.B. Lal, for the Appellant;

Judgement

H. Hardy, J.

(1) The petitioner was a student in one of the colleges affiliated to the University of Delhi. In April, 1968 he appeared in B.A. (Pass) examination held by the said University. On 25th August, 1960 the Registrar of the University sent him a letter stating that he had been disqualified from passing the said examination and expelled from the University and also debarred from being admitted to any future examination of the University.

(2) The petitioner has challenged the validity of the said order by a petition filed by him against the University and its Registrar under Article 226 of the Constitution praying for a writ of certiorari with a view to quash the order passed against him and also to issue a direction to the University To treat him as having duly passed the B.A. (Pass) I examination held in April. 1966.

(3) The petition is opposed by the Respondents on whose behalf an affidavit has been filed by Shri Madan Mohan Assistant Registrar (Examinations) University of Delhi reciting the circumstances under which the impugned order was made by the Executive Council of the University. Affidavits have also been filed by Shri B. S. Khosla and Prof. S. N. Verma. The latter was a member of the Committee of Enquiry while the former was Invigilator who had caught the petitioner using unfair means at the examination. According to the affidavits of Shri Madan

Mohan and Shri B. S. Khosla the petitioner was detected by Shri B. S. Khosla trying to read from a paper in his hand while answering Commerce Paper Iii on 20th April, 1966. The Invigilator at once asked him to hand over that paper to him but the petitioner refused to do so and swallowed it. The petitioner then tried to run out of the room but was chased by the Invigilator and brought inside. The matter was at once reported to the Superintendent of Examination who on his arrival asked the petitioner if he wanted to make any statement about the incident. The petitioner replied in the negative. Shri Khosla's version of the incident was supported by the other Invigilator Mrs. S. Butalia. A waterman, named, Shri Ishwar Das who was attached to the Examination hall also stated that he had seen the petitioner swallowing the piece of paper and noted that the petitioner was running out of the room. The Superintendent and the Invigilators sent their reports to the University.

(4) It appears that there were a few other instances also of the use of unfair means by candidates and Therefore, the University appointed a Committee consisting of three professors namely. Prof. Nagendra, Head of the Department of Hindi; Prof. R. P. Mittal, Head of the Department of Chemistry; and Prof. S. N Verma, Head of the Department of African Studies to inquire into such cases and to make recommendations on each case

(5) On 9th August, 1966 the Committee called the petitioner to appear before it The charges as contained in the reports of the Invigilators and the Superintendent were explained to the petitioner and he was asked to answer the same. The petitioner denied the charges. After considering the facts and circumstances of the case, the Committee, recommended that the petitioner be expelled and declared as not a fit and proper person to be admitted to any future examination of the University. The Committees recommendations were accepted by the Vice Chancellor, Dr. C. D. Deshmukh and finally by the Executive Council by its resolution dated the 20th August, 1966 and resulted in the passing of the impugned order.

(6) On 16th September, 1966 the petitioner sent a representation to the Registrar of the University denying the allegations made against him and asserted that he did not know why such punishment had been awarded to him.

(7) The main contention urged by Mr. K. L. Arya learned counsel for the petitioner before me is that there has been gross violation of fundamental principles of natural justice inasmuch as the petitioner has not been afforded proper opportunity of knowing and meeting the charges against him. It is argued by the learned counsel that neither any particulars of alleged unfair means were communicated to him nor was he afforded any opportunity of defending himself. The report of the Superintendent of Examination Centres on which reliance was placed by the Committee of Enquiry had been deliberately withheld from him. Even the notice dated 28th July, 1966 which called the petitioner to appear in the University office on 9th August, 1966 at 4.00 P.M. for interview did not give any indication that he was required to be interviewed by a Committee of Enquiry,

(8) It is further argued that it was incumbent upon the University to have served a proper memorandum of charges on the petitioner informing him about the material allegations which he was required to meet and he should have given adequate opportunity to defend himself by cross-examining the persons who had reported against him. On the other hand he was even supplied with copies of the Superintendent's report and other connected papers although he had specifically asked for the same.

(9) Learned counsel further argued that the allegations made against the petitioner were of a quasi- criminal nature and this cast a duty on the Committee of Enquiry which was required to act Judicially to have informed the petitioner about specific charges and material allegations in support thereof before he was condemned

(10) In support of his argument the learned counsel has cited a large number of cases and has submitted that in all those cases the order of expulsion or disqualification was set aside where it was established that inquiry had not been made in accordance with rules of natural justice.

(11) It is not necessary to refer to all the judgments cited by the learned counsel as the principles governing a case like the present are no longer in doubt It is well settled that the proceedings taken against a Candidate by a Committee appointed by the University to inquire into allegations of unfair means having been used by him at the examination are in the nature of quasi judicial proceedings and the candidate is entitled to an opportunity being afforded to him to present his case before he is debarred from appearing at the next examination.

(12) It is also well settled that where no specific rules or regulations have been framed prescribing the procedure to be followed by the Committee, it can prescribe its own procedure so long as the procedure followed by it is consistent with principles of nature justice See Board of High School and Intermediate Education U. P Allahabad v. Ghanshyam Das Gupta.

(13) It has also been laid down by their Lordships of the Supreme Court that in dealing with writ petitions against the orders of the Universities cancelling the examination results of candidates or disqualifying them from appearing at future examinations or closing the doors of Universities and its affiliated institutions against them it has to be borne in mind that normally it is within the jurisdiction of the domestic tribunals set up by the Universities to decide all relevant questions in the light of evidence adduced before them and that in pronouncing upon the validity of the orders made by the Universities the court is not sitting in appeal over the decision in question. (See A.T.R. S.C 8/5).

(14) Where the enquiry held by the Committee appointed by the University is fair and the Committee has scrupulously followed rules of natural justice its decision can not be interfered with in exercise of powers under Article 226 of the Constitution.

(15) What are the requirements of natural justice has been dealt with in a variety of cases decided in England as well as in India. It has been pointed out that rules of natural justice are centered round two maxims to the effect *Nemo debet esse iudex in propria causa* and *audit alteram partem* pattern "In simple language they mean (1) that a man should not be judge in his own cause and (2) no order should be passed without hearing the other side. It is in the application of these two rules to the actualities of a case that judges have analysed the component parts of the two maxims by dividing and sub-dividing them into various heads.

(16) The extent and nature of the enquiry which will satisfy the requirement of natural justice will obviously vary from case to case as was held by a Full Bench of the Punjab High Court in *Ramesh Kapur v. The Punjab University* and another "it will depend on the facts and circumstances of each case whether the rule of natural justice has been complied with by the University authorities by affording an adequate opportunity to a candidate to present his case against the charge or allegation made against him. It may be added that if the right of a candidate to be heard is to be a reality, he must know the case which he has to meet and if he asks the University authorities to supply him with necessary details of such material or evidence on which the case against him is based, any refusal to do so will be *prima facie* violative of the rule of natural Justice."

(17) Applying these principles to the facts of the present case there can be no doubt that the petitioner can have no grievance against the procedure adopted by the Committee. The charge of using un-fair means at the examination by the petitioner was based on the statements of two Invigilators Shri B. S. Khosla and Mrs. S. Butalia who both stated that the petitioner was found trying to read from a piece of paper in his hand and that he swallowed the same as soon as he was required to hand it over to Shri B. S. Khosla. There was also the statement of Shri A. N. Sharma Superintendent of Examination who asked the petitioner if he had to make any statement to which the petitioner replied in the negative. According to the affidavit of Prof. S. N. Verma who was member of the Committee of Enquiry, the reports of the Superintendent Shri A. N. Sharma and the Invigilators Shri B. S. Khosla and Mrs. S. Butalia were placed before the Committee when the petitioner was called to appear before it on 9th August, 1966. The petitioner was informed about the charges against him and he was given adequate opportunity to explain the charges, The only Explanations that the petitioner offered at that time was a mere denial of the charges Even in the petition filed by him in this Court there is no allegation that the petitioner asked for any of those persons to be produced before the Committee for his cross-examination or that he asked for any opportunity to produce any witnesses in defense.

(18) It is no doubt true that after the decision of the University was communicated to him by the Registrar on 25th August, 1966 the petitioner addressed a letter to the Registrar asking for the report of the Superintendent of Examination which request was turned down by the Registrar's letter dated 22nd/23rd September, 1966 on the ground that copies of such documents were

not supplied to candidates. But no such request was made either at the time when the petitioner appeared before the Committee of Enquiry or at any time before the impugned order was made by the University.

(19) Relying upon a decision of Hal-bans Singh J. in the case of Ram Chander Singh v. Punjab University, learned counsel for the petitioner argued that the order passed by the University disqualifying the candidate from appealing at the examinations for the year 1962 and 1963 had been set aside in that case because the copy of the Superintendent's report had not been supplied to the candidate nor was he given any opportunity to show cause against the action on the basis of that report. The facts in that case were entirely different. The candidate had neither been called for personal interview by the Unfair Means Committee appointed by the University nor were the contents of the report submitted to the Registrar by the Superintendent of Examination, revealed to him to enable him to give his Explanations. Action was taken against him pursuant to Regulations 10 and 11 of the Punjab University Calendar and it was contended on behalf of the University that the Regulations made no provision for the suspected candidate to know what exact report had been made by the Superintendent to the University or to afford him opportunity to give his Explanations after seeing the report this contention was lightly rejected by the learned judge.

(20) It is apparent that this was a case in which no enquiry whatsoever had been made by the University and is more or less in line with the decision of the Supreme Court in Board of High School and Intermediate Education U. P. Allahabad v. Ghanshyam Das Gupta & others,

(21) Learned counsel has next relied upon a Bench decision of Madhya Pradesh High Court in Rajendra Kumar v. Vice Chancellor, Vikram University and others where it was held that the charge of adopting unfair means in an examination is more or less of a quasi criminal nature involving the reputation and character of the student and that before a person is condemned he must be given an opportunity to be heard to explain the materials and circumstances appearing against him. No assistance can be derived by the learned counsel from that case as it does not lay down any new rule of law. On the other hand, the judgment makes it clear that opportunity to prove his innocence did not entitle the person concerned to invoke any statutory provision of the Civil or Criminal Procedure Code or the Indian Evidence Act. What was permissible was broadly speaking, a fair opportunity to be heard and to prove one's innocence. If these two essential requirements are satisfied the question of procedure is not very material because the procedure as applicable to the Courts of law can in no event, be insisted upon by the person concerned and the enquiry need not be elaborate like the one in a law court. In fact it may as well be summary. But the basic principles are not to be ignored, namely, that the authority taking disciplinary action has some material before it, which can be the foundation for arriving at a conclusion of the guilt of the person concerned and that any reasonable man would arrive at such conclusion.

(22) For the fore-going reasons, I am satisfied that there is no merit in this petition and it must Therefore be dismissed, but I would not like to make any order as to costs.

(23) Before parting with this case. I must say that while the decision disqualifying the petitioner from being admitted to any future examination of the University appears to me to be fully justified having regard to the general complaint of adoption of unfair means by candidates at University examinations, this is a fit case in which the University might favorably consider the petitioner's representation. If and when it is made, exempting him from further operation of the order on the expiry of three years from the date of the impugned order.