
(1995) 02 AHC CK 0058

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21761 of 1994

Basant Kumar

APPELLANT

Vs

University of Allahabad and others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24
Constitution of India, 1950 — Article 136, 226, 227
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 3(1), 16A(7)
Uttar Pradesh State Universities Act, 1973 — Section 29, 29(3), 42(2), 49, 50

Citation : AIR 1996 All 33

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; Haider Husain, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, Basant Kumar filed the present writ petition challenging the letter issued to the petitioner from the University of Allahabad informing him that in accordance with the provisions contained in the Ordinances on the use of unfair means and of causing disturbances in Examination, You have been awarded following punishment for attempting/ using unfair means at the B. A. II Examination 1992 :

"Cancellation of your result of B, A. II Examination of 1992 and also debarment from corresponding (and any other) subsequent examination of 1993."

The petitioner has stated in his writ petition that no opportunity was afforded to the petitioner before coming to the conclusion that the petitioner was guilty of using unfair means and the impugned order has been passed in retaliation, as the petitioner has filed writ petition in this Hon''ble Court being writ petition No. 12896 of 1993, seeking permission of the High Court to appear in the Examination of B. A. Part-II, as no decision was taken by the University authority

in the show cause notice issued to the petitioner alleging that the petitioner has been caught red handed for copying by the Flying Squad.

2. The petitioner has stated in the writ, petition that a show cause notice was served on the petitioner dated 1-9-1992 wherein the petitioner was asked to explain the charge as to why action should not be taken against the petitioner for using unfair means on 25-6-1993 when the petitioner was solving Hindi first paper in B. A. IIInd year Examination of 1992. In the aforesaid notice it was mentioned that both side handwritten chit was found on his table. It was mentioned in the notice that the petitioner's examination can be cancelled for the relevant year and petitioner can also be debarred from appearing in the examinations in subsequent years.

3. The petitioner has given reply to the aforesaid notice wherein the petitioner has stated that the Flying Squad came within 15 minutes of the beginning of the examination on 22-6-1992 and the chit lying below the table of the petitioner, was tagged with his answer book. The chit was thrown by some other student as soon he saw the flying squad. The petitioner submitted that he has no connection with the aforesaid chit and he is innocent in the matter.

4. The writ petition came up before me on 11-6-1994 for admission. When the matter was taken up for admission, Sri Haider Hussain, counsel for Allahabad University was present with the Relevant record. The counsel for the University of Allahabad produced before me the answer book of Hindi first paper of B. A. Part-II Examination wherein the petitioner was caught red handed for copying. In the aforesaid answer book there was a note of the invigilator wherein it was mentioned that on 25-2-92 at 4 p.m. the petitioner was caught red handed while copying from a chit. The petitioner has himself admitted in paragraph-5 of the writ petition that he has signed the aforesaid note of the invigilator. The show cause notice served on the petitioner and the petitioner's reply was placed before the Confidential Examination Committee Constituted under the University Ordinance wherein Examination Committee was satisfied that the petitioner was involved in using unfair means in B. A. Part II 1992 Examination in Hindi First Paper. On being, so satisfied the Examination Committee passed the order which was communicated to the petitioner by the University on 29-6-1994 (quoted earlier in this order).

5. In the aforesaid background after hearing the learned counsel for the parties and after perusing the record relating to the petitioner, I was of the opinion that it is not a fit case for interference for exercise of jurisdiction under Art. 226 of the Constitution of India, accordingly I dismissed the writ petition in limine. The exact order passed by me is in Hindi and the same is being reproduced herein below for convenience :

^^;kph ds fonoku vf/koDrk Jh ch- Mh- e?;kUg rFkk fo"ofon~;ky; ds fon~oku vf/koDrk Jh gSnj gqslu dks lquus ds mijkUr eS lUrq"V gwW fd orZeku fjV ;kfpdk ds gLr{ksi djus dk dksbZ vkSfpR; ugh gS A rnuqlkj fjV ;kfpdk fujLr dh tkrh gS A**

6. An English translation of the aforesaid order is also being reproduced herein below for convenience of all concerned :

"Heard learned counsel for the petitioner, Sri B. D. Madhyanh and the learned counsel for University, Sri Haider Hussain. I am satisfied that there is no justification for interference in the present writ petition. The writ petition is accordingly dismissed."

7. Aggrieved by the aforesaid order, the petitioner preferred a Special Appeal in this Hon"ble Court. The Special Appeal initially came up for consideration before a Bench consisting of Hon"ble Mr. Justice R. A. Sharma and Hon"ble Mr. Justice K. C. Bhargava on 19-7-1994. The Division Bench passed the following order on the Special Appeal :

"Learned counsel for the University shall produce the Order which has been passed by the University Authorities cancelling his result of B. A.-2 of the appellant and debarring him in appearing in B. A. 3 examination. As prayed by the learned counsel for the petitioner, put up this Special Appeal on 22-7-94 with the entire relevant record, relevant statutes/ ordinance defining the unfair means."

8. As per orders of the Division Bench, the Special Appeal again came up for hearing on 22-7-94. The learned Counsel for Allahabad University, Sri Haider Hussain was ready with the entire record relating to " the petitioner and the relevant statutes and ordinances as directed by the Division Bench.

9. Sri Haider Hussain) learned counsel for Allahabad University has stated before me, that when the Special Appeal was again taken up on 8-8-1994 before the Bench consisting of Hon"ble Mr. Justice R. A. Sharma and Hon"ble Mr. Justice M. Katju, Sri Haider Hussain said before the Court that I have passed the order after perusing the record relating, to the petitioner and the record is ready for being perused by the Division Bench itself but the Division Bench instead of looking into the record, allowed the Special Appeal on the ground that the writ petition has been dismissed by a non-speaking order and thereby remanded the matter for being decided afresh in accordance with law. For convenience the exact order passed by learned Division Bench is being reproduced herein below:

"Appellant has filed this appeal against judgment of learned Single Judge dismissing the writ petition by a non-speaking order.

Supreme Court in Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, has laid down that the High Court cannot dispose of writ petition by a non-speaking order. It was further held that reasons are required to be recorded in order to enable the litigants to know the reasons which weighed with the mind of the court in determining the question of fact and law in writ petition. Such requirement is also necessary for the fair and equitable administration of justice more so when there is a statutory provision for appeal to the higher court.

The same principle was reiterated by the Supreme Court in Gram Panchayat, Bari

Vs. Collector, Sonapat and another, .

For the reason given above this appeal is allowed. The impugned judgment of the learned single Judge is set aside. The matter is remanded to the learned single Judge for deciding the writ petition afresh in accordance with law."

10. In the aforesaid background the matter is before me again for being decided in accordance with law as directed by the Division bench of this Hon"ble Court. Following important points arise for consideration in the present matter.

(1) Whether under the Rule of the Court Special Appeal lie, against an order of Single Judge of this Court in a matter where the Examination Committee contemplated by the Statutes of University on recommendation of the Sub-Committee referred in subsection (3) of S. 29 cancelling the examination of an examinee and debarring an examinee from appearing in future examinations for a period of one year, if in the opinion of the Committee such examinee was guilty of using unfair means at any examination conducted by the University?

(2) Whether the order dated 11-7-1994 dismissing the writ petition in limine was a non-speaking order?

(3) Whether principles enunciated under O. 41, R. 24 of C. P. C. are also attracted for deciding the Special Appeal under the Rules of the Court.

(4) What is the import of the Supreme Court's decisions referred to and relied upon by the Division Bench in its judgment and in case the Division Bench in particular case is of the opinion that the matter requires a more detailed reasoned order by a Single Judge of the Court" is it obligatory on the Division Bench to indicate the point of law involved for consideration in the matter for guidance of the Single Judge for deciding the matter afresh in accordance with the direction of the Division Bench?

11. I am dealing all the aforesaid points in the same seriatim in which they are mentioned.

12. Section-29 of U. P. State University Act, 1973 (hereinafter referred to as the Act) provides for constitution of Examination Committee and its powers. For convenience, Sec. 29 of the Act is being reproduced :

"29 Examinations Committee:-- (1) There shall be an Examinations Committee in the University, the constitution of which shall be as may be provided for in the Ordinances.

(2) Except as provided in sub-section (2) of S. 42, the Committee shall supervise generally all examinations of the University including moderation and tabulation, and perform the following other functions, namely -

(a) to appoint examiners and moderators and, if necessary, to remove them;

(b) to review from time to time the results of University examinations and submission of reports, thereon to the Academic Council;

(c) to make recommendation to the Academic Council for the improvement of the examination system;

(d) to scrutinise the list of examiners proposed by the Board of Studies, finalise the same and declare the results of the University.

(3) The Examinations Committee may appoint such number of sub-committees as it thinks fit, and in particular may delegate to any one or more persons or sub-committees the power to deal with and decide cases relating to the use of unfair means by the examinees.

(4) Notwithstanding anything contained in this Act, it shall be lawful for an Examinations Committee or, as the case may be, for a sub-committee or any person to whom the Examinations Committee has delegated its power in this behalf, under sub-section (3), to debar an examinee from future examinations of the University, if in its or his opinion, such examinee is guilty of using unfair means at any such examination."''

13. Section 49 of the Act provides that subject to the provisions of the Act, the Statutes may be made for any matter relating to the University and Section 50 of the Act provides as to how Statutes are to be made. Section 51 of the Act provides that subject to the provisions of this Act and the Statutes, the Ordinances may be made and without prejudice to the generality the Ordinances shall provide for conduct of the examinations (see Section 51(2)(m) of the Act)

14. . First Statute of the Allahabad University provides for constitution of the Examinations Committee. The relevant statute is as under:

"8.16 The Examinations Committee may, on the recommendation of the person or persons or the sub-committee referred to in sub-section (3) of S. 29, debar an examinee from appearing in any future examination for a period of one year, if in the opinion of the committee, such examinee was guilty of misbehaviour or using of unfair means at any examination conducted by the University."

15. The University of Allahabad has made Ordinances for conduct of examinations including the subject on the use of unfair means and causing disturbances in the examinations. The ordinance is relevant in the present context which is being reproduced herein below :

"Revised Ordinances on the use of unfair means and of causing disturbances in examination

1. Unfair means

1.1 Candidates found using or attempting aiding, abetting or instigating to use unfair means at the examinations of University of Allahabad shall be punished.

1.2. Definitions

(A) Unfair means -- A candidate shall be deemed to have used "unfair means" if the candidate is in possession of unauthorised material or if he has transcribed

any part or the whole of the unauthorised material or if he intimidates or threatens or manhandles or uses violence against any invigilator or person on duty in the examination or if he leaves the examination hall without surrendering his examination script to an invigilator or if he is found communicating with other examinees or any one else inside or outside the examination hall.

(B) possession of unauthorised material --"possession of unauthorised material" by a candidate shall mean having any unauthorised material on his person or desk or chair or table or at any place within reach in the examination hall and its environs or having such material on him in the urinal/ toilet or in the passage thereto or therefrom at any time from commencement of the examination till its end.

(C) Unauthorised material :-- "Unauthorised material" shall mean any material whatsoever, related to the subject of the examination, printed, typed, written or otherwise paper, cloth; wood or other material, in any language or in any form of a chart, diagram, map or drawing.

(D) A candidate found in possession:--"A candidate found in possession shall mean a candidate reported in writing as having been found in possession of unauthorised material the Invigilator or Head Invigilator or by a teacher or official authorised in this behalf even if the unauthorised material taken away by the candidate or by any other person acting on his behalf provided that such report is submitted to the Registrar, Allahabad University, or an officer deputed for this purpose on his behalf within three hours of the end of the examination concerned after authentication by the Head Invigilator concerned (along with the unauthorised material found, if available as evidence.

(E) Material related to the subject of the examination:-- "Material related to the subject of the examination" shall, if the material is produced as evidence, mean any material certified as related to the subject of the examination by the teacher of the subject. If the material is not produced as evidence for any of the reasons referred to in (D) above, the presumption shall be that the material did relate to the subject of the examination.

1.3 A candidate found using unfair means in an examination shall be served with a notice therefore in the examination hall and, if he refuses to accept or avoids or escapes personal receipt of such notice, such notice shall be sent to him by Registered Post within seven days of the incident. The candidate shall be required to submit his reply to the notice within 10 days of the issue of such notice. If no reply is received within this period, it would be presumed that the candidate has nothing to state in his defence.

1.4 Punishment prescribed in these Ordinances (No. 1.1 to 1.6) shall be awarded by a Committee of not less than five teachers appointed by the Examinations Committee or by the Vice-Chancellor acting on behalf of the former. The quorum of this Committee shall be three.

1.5 The Committee referred to in Ordinance 1.4 above shall consider:--

- (a) the report, if any, about the candidate having been found in possession of unauthorised material;
- (b) the reply of the candidate, if any, to the notice;
- (c) the report of the examiner concerned, if any, regarding the transcription or non/ transcription of the unauthorised material of which the candidate was found in possession;
- (d) any other report of intimidation, threat, manhandling or violence received in connection with the conduct of the examination by any person on duty of the University, and
- (e) any other material.

1.6 The Committee referred to in Ordinance 1.4 shall award the following punishment after placing on record that it has examined all the documents referred to in Ordinance 1.5 and that it has satisfied itself regarding the facts of the matter;

- A(i) For possession of unauthorised material, or
- (ii) For leaving the examination hall without surrendering the examination script to an Invigilator, or
- (iii) For communicating with other examinees or any one else inside or outside the examination hall.

Cancellation of the results of the candidate in the examination in question.

- B(i) For transcribing any part or the whole of the unauthorised material of which he was found in possession, or
- (ii) For intimidating or threatening any invigilator or person on duty in the examination.

Cancellation of the results of the candidate in the examination in question and debarment from the corresponding (and any other) subsequent examinations of the next academic session.

C. For manhandling or using violence against any invigilator or person on duty in the examination;

Such cases, after scrutiny by the Committee referred to in Ordinance 1.4, shall be forwarded to the proctor for necessary action."

16. Under Chapter-8, Rule 5 of the Rules of the Court, a Special Appeal is provided against the order of a single Judge of this Court before a Division Bench. The exact Rule is reproduced for convenience;

"5. Special Appeal -- An appeal shall lie to the Court from a judgment (not being

a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made, in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or The Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

17. The question which calls for consideration in the present matter is whether the Examinations Committee constituted under the State University Act and the Statutes and Ordinances made by University can be termed as a "Tribunal"? and the order passed by the Examination Committee can be said to have been made or purported to be made in exercise or purported exercise of jurisdiction under any U. P. Act, with respect to any matter enumerated in the State List or Concurrent List in the Seventh Schedule to the Constitution. Education is one of the subjects both in the State List as well as in the Concurrent List. The word "Tribunal" is not defined under the Rules of the Court. They are to be understood in reference to the context of the particular statute. In the State Universities Act, the word "Tribunal" has also not been defined. Since the Rules do not define the word "Tribunal", general meaning of the "Tribunal" is to be looked into for the purposes of appreciating the scope of the word used in the Rules.

18. The dictionary meaning of the Tribunal in various Dictionaries are being quoted below:

1. Tribunal-- A group of persons empowered to decide a specific issue according to the law, arbitrator in a dispute etc. (The New Lexicon Webster's Dictionary)
2. Tribunal -- Place of judgment, board of officials or Judges appointed for special duty e.g. to hear appeal against high rank, for exemption from military service. (Oxford advanced learners" dictionary of current English language)
3. Tribunal -- A group of people appointed officially, Judges, etc. with powers to deal with special matters. (Longman Dictionary of contemporary English)

19. Words and phrases permanent Edition classifies the word "Tribunal", Administrative Tribunal, Appellate Tribunal, Competent Tribunal, Court of Justice, Fair Tribunal, Inferior Tribunals, Judicial Tribunal and so on. In different context the word Tribunal" has been interpreted in different senses. In Wright v. Callahan, 99 p. 2d 961, 966, 61 Idaho 167, it has been held:

"The validity of statute creating office of State Comptroller cannot be upheld on theory that notwithstanding term "State Auditor" within Constitution impliedly

includes powers and duties theretofore vested in territorial "Controller", the constitutional provision constituting the Governor, Secretary of State and Attorney-General as Board of Examiners deprives State Auditor of principal functions of territorial "Controller", since State Board of Examiners is a "Tribunal" and not a "Board of Auditors" and hence such constitutional provision does not confer upon the Board, powers and duties conferred upon State Auditor."

20. Dr. D. D. Basu in his Treatise of Administrative Law (3rd Edition 1993) has dealt with the subject of statutory Tribunal wherein he has described the examination bodies under the statutory provisions of the University as a "domestic Tribunal". The relevant extract from the aforesaid authority is reproduced for convenience reference: "Similar instances of domestic inquiry which have come to the forefront in "recent years are to be found in the inquiries held against examinees for misconduct at examinations, under the statutory provisions of University Acts. Though the High Court, in exercise of its jurisdiction to issue prerogative writs, does not sit as a Court of Appeal over such Tribunals, it may interfere if such Tribunal violates the principles of natural justice, or acts ultra vires, or without any evidence at all. But the scope of review under the principles of natural justice does not seem to be very wide, and the principles relating to a criminal trial cannot be imported."

21. De Smith in his Treatise of Judicial Review of Administrative Action has quoted an extract of passage from the decision of House of Lords which is relevant for the purposes of determining the fairness of procedure to be adopted by the departments of the State as quoted herein below for reference:

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds..... In such cases... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial.... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

22. Various authorities on Administrative Law have dealt with on the subject of statutory Tribunals, administrative Tribunals and domestic Tribunals. The word Tribunal has wide amplitude and no hard and fast rules can be laid down for determining as to whether the particular authority is acting as a Tribunal. The word has to be interpreted in its context. Recently in two Division Bench decisions the question which precisely came up for consideration was as to whether the District Inspector of Schools while deciding the question of inter se seniority amongst the teachers, acts as a Tribunal the Division Bench held that the District Inspector of Schools has all trappings of a Court, and in a matter of seniority of a teacher where single Judge of this Court decided writ petition against an order of District Inspector of Schools determining the seniority of a teacher, it has been held that Special Appeal under Chapter-8, Rule-5 was not

maintainable before the court. The relevant portion of the aforesaid decisions are quoted herein-below for convenient reference:

"(1) The Seniority of the teachers of an Intermediate College is to be determined in accordance with regulations framed under the Intermediate Education Act, 1921. The District Inspector of Schools while deciding the dispute regarding seniority of the teachers has to give notice to the parties, look into the pleadings which may be filed by the parties, given an opportunity to produce evidence and after considering respective case of the parties has to determine the dispute by a reasoned order. He has trappings of a court and this power has been vested under Statue i.e. Clause (f) of Regulation 3(1) of the Regulations under the Intermediate Education Act, 1921. Special Appeal is not maintainable against the decision of tribunal under Chapter VIII, Rule 5 of the Rules of the Court."

(2) "This appeal is directed against an order dated 11-7-1994 passed by the learned single Judge. This fact is not disputed that on account of election dispute of the Committee of Management the District Inspector of Schools referred the matter to the Deputy Director of Education under the provisions of Section 16A(7) of the U.P. Intermediate Education Act. Against this order the writ petition was filed. Under the provision of Chapter 8, Rule 5 of the High Court Rules a special appeal is not maintainable if it is filed against any appellate or revisional order or against an order of a Tribunal. We are of the view that while exercising power u/s 16A(7) the Dy. Director of Education discharges his duties as a Tribunal. Similar view has been taken by a Division Bench of this Court in *Sita Ram Lal v. DIOS Azamgarh*. We may also refer to the decision of a Division Bench of this Court in the case of *India Thermit Corporation* Special Appeal No. 567 of 1994 decided on 23-8-1994 where, following the decision in writ petition No. 3503 of 1991 it was held that the Regional Provident Fund Commissioner is a Tribunal. This being so this Special Appeal is not maintainable and is accordingly dismissed. Stay order stands vacated."

23. In *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, the Apex Court has laid down that the words for themselves have no meaning. They have to be understood in their context. The relevant portion from the aforesaid judgment is being extracted for convenient reference (at p. 334 of AIR):

"168. In Chapter 4 of the *Treaties* title, "The Loom of Language", it is stated:

"Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a degree to all the word that they shall mean only so much, no more and no less. Though its own particular personality each word has penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol."

"169. In *Town V Eisner* (1917) 245 US 418, Mr. Justice Holmes said that "a word is not crystal, transparent and unchanged; it is the skin of a living thought and

may vary greatly in colour and content according to the circumstances and the time in which it is used."

170. Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, has pointed out that "The words used in a statute cannot be read in isolation; their colour and content are derived from their context and, therefore, every word in statute must be examined in its context..... The context is of the great importance in the interpretation of the words used in a statute."

24. In this connection extract from the principles of statutory interpretation by Justice G.P. Singh Fifth Edition 1992 at page 10 may also be relevant:

"Each word, phrase or sentence", observed Mukherjee, J." is to be construed in the light of general purpose of the Act itself." In the words of K. Iyer, J. the interpretative effort" Must be illumined by the goal though guided by the word". For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of "intention."

25. The words used in Rule 5 of the Chapters of the Rules of the Court or a Tribunal made or purported to be made in the exercise or purported exercise of the jurisdiction as a tribunal under any U.P. Act is to be given its liberal meaning. The word "Tribunal" used in the Rules has to embrace in itself all statutory authorities who are conferred with a jurisdiction to decide a particular issue for which the body is constituted. Under the State Universities Act, the Examination Committee is a body constituted for taking decision in regard to the matter of conducting an examination including the power to deal with a disputed case regarding use of unfair means by examinees and also to exercise power to debar an examinee from future examination. This power is exercised by the Examinations Committee under State Universities Act and under First Statute of the Allahabad University and the relevant Ordinances wherein the Committee constituting of five teachers of University have taken a decision in regard to the use of unfair means by the students and exercise of the power in regard to the aforesaid use of unfair means by the Students, the scope of the words used in Rule 5 aforesaid, Examination Committee should be termed as a Tribunal and the order passed by the Examination Committee is an order of a Tribunal or of a body purported to be a tribunal in exercise or purported exercise of the jurisdiction of a tribunal under State Universities Act.

26. In the context of the aforesaid Rule another word which requires consideration is import of the word "purported". The word "purported" has been defined in New Lexicon Webster's Dictionary of the English Language "to have meaning or purpose to be meant" "to appear" In this context it is clear that language of the Rule is couched in a language, where word tribunal has to be construed in its widest sense. Tribunal need not have all the import of the Court and tribunal itself may not require to have all its import for the purposes of judicial tribunal. The word purported to be a tribunal or purported to be exercise

of tribunal clearly extends the scope of the Rule to bring in any authority which decides any type of dispute under statute so in any case the Examination Committee in its larger sense is a "tribunal" in the context of the Rule. In any case the Examination Committee comes within the ambit of word purported to be tribunal or and its decision comes within the ambit of purported exercise of a tribunal.

27. The matter requires consideration from another angle. Chapter 8, Rule 5 of the Rule of the Court have been amended vide U. P. Gazette notification dated 5-12-1964 and U.P. Gazette notification dated 13-8- 1983. The provisions with which we are concerned has been brought in by notification dated 13-8-1983. For convenience the said notification is being reproduced below:

""Criminal jurisdiction" rFkk "of one Judge" ds e/; esa -

"or in the exercise of jurisdiction conferred by Art. 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act. ^^^kCnksa dks vUrfoZ"V dhft, A**

28. The provisions of the Rule excluding the judgment of the learned single Judge from the jurisdiction of the special appeal in respect of the matters whether either a tribunal or Court or a statutory arbitrator has given any judgment, order or award or any authority having decided a matter which can be purported to be tribunal or statutory arbitrator in exercise of jurisdiction under any of the-State Act or Central Act or in purported exercise of such jurisdiction were excluded from the preview of the special appeal against a judgment of learned single Judge. The rationale for incorporating the aforesaid amendment in the Rule is that if any authority either under Central or State Statute decides a particular matter within the framework of the statute and when such decision is challenged in the High Court, a single Judge of High Court is to examine the validity of order or decision of the authority or tribunal, thereafter the appeal against the judgment of a single Judge was excluded, keeping in mind that a statutory authority has already exercised the jurisdiction under the provisions of the statute and thereafter matter has been examined by a single Judge. It was thought that a further appeal in the aforesaid matter is not called for and from the aforesaid angle the Single Judge in a matter where statutory authority has already taken a decision, were excluded from the preview of the appeal before a Division Bench under Chapter 8, Rule 5, Examining the present matter from the aforesaid angle, the detailed ordinances . framed by the University is to be looked into. A detailed procedure has been provided under the Ordinances of the University where it is contemplated that the examinee will be given due notice

for indulging in use of unfair means and his reply shall be considered by a Committee constituting of not less than five teachers of the University. Sufficient safeguard was provided in the Ordinance for ensuring the interest of the students and a further detailed procedure was provided regarding taking decision in the matter and the material which was likely to be considered for taking such a decision. This was a complete procedure contemplated by the Ordinances made and complete and independent consideration, regarding the light of examinee in the matter where he is found to have used unfair means in the examination. The court has their own limitation in the matter and in the matter of autonomous educational authority like University and particularly with reference to an examinee having been found indulged in use of unfair means due weight is to be given to the decision the Committee of five teachers who examined the matter in accordance with the detailed procedure prescribed in the Rules, Thereafter one scrutiny by the High Court at the level of single Judge is sufficient to take care of the interest of the examinee. The Examination Committee while deciding the question of using unfair means of examinee also takes decision regarding cancellation of his result and debarring him from further examination which involve a civil right of the examinee to appear in the examination and this adjudication in the matter of use of unfair means by a Committee constituted under the Ordinances by the Teachers which thereafter was approved by the Examination Committee in the-present matter clearly show that the order passed by the Examinations Committee of the University was an order of an authority under Statute which has all the tenets of the tribunal and as such, the order should be held to have been passed by an authority purported to be a tribunal and the order itself was in purported exercise of tribunal.

29. On the basis of the aforesaid analysis it is clear that in the matter where an authority like examination body has passed an order in the matter of use of unfair means against an examinee and Examination Committee is an authority which can be purported to be a tribunal and the order of the authority is in purported exercise of the tribunal. As such, under the Rules, special appeal against my judgment dated 11-7-1994, was not maintainable.

30. Remaining three points indicated above can be conveniently dealt with together. In Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, the decision referred to by the Division Bench for remanding the case back to me for deciding in accordance with law, the Supreme Court itself considered the entire facts of the case and thereafter itself recorded satisfaction that substantial question law and facts were involved for consideration of the case. In the aforesaid background, the Supreme Court remanded back the matter. The relevant portion from the aforesaid judgment is being reproduced below:

"No speaking order was made assigning any reason whatsoever for rejecting the aforesaid two writ petition which involved substantial questions of law and facts."

31. Likewise in Gram Panchayat Bari case (AIR 1991 SC 1082) a decision referred by a Division Bench, the Hon'ble Supreme Court itself was satisfied that

substantial question of law and facts were involved for consideration. The relevant portion from the aforesaid judgment is being reproduced below:

"However, we are of the view that the matter is sufficiently important for reconsideration with reference to the facts and the law. It is necessary, therefore, that the question should be reconsidered and disposed of by the High Court by a detailed speaking order."

32. In both the matter the High Court dismissed the petition by one word dismissed" and the Supreme Court after scrutinising the facts and law involved in the matter was satisfied that substantial question of law and facts are involved in the matter. The Division Bench in the present matter has not indicated that the Bench is satisfied that any substantial question of law or facts are involved nor indicated any such things in its order. In these circumstances, it is very difficult to ascertain as to what substantial questions of law and facts are involved for consideration for which reasons are required to be recorded in particular circumstance where the appellate authority is satisfied that the matter involves consideration of facts and law. I am of the humble opinion that it is appropriate for the appellate court to indicate in its order as to on which point the court to which the matter is being remanded back is required to consider the matter again and pass appropriate direction in accordance with the directions of the appellate court. Hon"ble Division Bench has not given any indication in its order, as such, it is very difficult to appreciate as to what question of law and facts are involved in the present matter which require to be decided in accordance with law as directed by the Division Bench.

33. The writ petition was earlier dismissed on the ground that I am of the opinion that it is not a fit case for interference under Art. 226 of the Constitution and this opinion was formed on perusing the record of the University which was produced by the University counsel and after hearing the counsel. This itself indicates the application of mind. At the cost of repetition I am stating that the counsel for the University, Sri Haidar Hussain has stated before me that the Division Bench was informed that I passed the order after perusing the record and Sri Haider Hussain has also stated that he requested the Division Bench to look into the record, instead of remanding the matter but the Division Bench instead, choose to sent back the matter. In the same context it may also be considered that the Supreme Court while dealing with the matter in SLP is not in a position to peruse the record, as the record of the case is not available at hand before the Supreme Court whereas the. Division Bench while deciding the special Appeal has before it the record itself the two situations are quite different. Hon"ble Supreme Court in appropriate circumstances while dealing with the matter under Art. 136 is not in a position to look into the record itself and, therefore, on the basis of the pleadings of the parties sent back the matter to the High Court for afresh decision whereas in the Special Appeal the record is available before the Division Bench and it is but appropriate that the Division Bench except in exceptional circumstances should look into the record and decide the matter itself which is

an consonance with the procedure of Order 41, Rule 24 of Code of Civil Procedure. The Division Bench in the present matter has neither indicated as to what question of law and facts are required to be decided nor have indicated any exceptional circumstance under which the Division Bench found itself unable to decide the matter itself in accordance with the procedure of Order 41, Rule 24 of C.P.C.

34. The last point which remains to be considered is as to whether the order passed by me dismissing the writ petition on the ground that it is not a fit case for interference under Art. 226 of the Constitution was non speaking order? Recently Hon''ble Supreme Court in State Bank of India v. S.S. Koshal 1994 SCC 1019: (AIR 1994 SCW 2901) held the following order to be a speaking order (Para 2, at p 2903 of AIR SCW):

"The Board considered at length the facts of the case including the fact that the disciplinary authority has deferred from the finding of the inquiry authority, after having considered the appeal and other relevant papers and having applied their minds, the Board concluded that there are no grounds to sustain the appeal and accordingly resolved that the order of the disciplinary authority be upheld and that the appeal made by Shri S.S. Koshal be dismissed."

35. The latest decision of the Supreme Court shows that if the order itself shows application of mind by Judge and mutatis mutandis the record on the basis of which the order is passed, it cannot be termed as non-speaking order. In view of this decision whether the order dismissing the writ petition on the ground that it is not a fit case for interference, under Art. 226 of the Constitution of India is a speaking order or not? is a matter which requires consideration by a larger Bench, as the record of this Court is full of such decisions where single Judge has dismissed the writ petition on the ground that it is not a fit case for interference in exercise of jurisdiction under Art, 226 of the Constitution. Such questions are likely to arise for consideration in several matters.

36. Since the questions raised in this order indicated at page 647, are of general importance and are likely to come up in several cases, I am of the view that for consideration of these question a larger Bench should be constituted for setting the issues arisen in this matter. In this view of the matter, the papers of the present writ petition may be laid before Hon''ble Chief Justice for constituting a large Bench for deciding the points arising in this matter.

37. Let the papers be placed before the Hon''ble Chief Justice for appropriate directions.

38. Order accordingly.