

(1995) 03 GUJ CK 0041
In the Gujarat High Court
Case No : Special Civil Appn. No. 3468 of 1993

Desai Devang V. and Others	Vs	APPELLANT
The Registrar, South Gujarat University and Others		RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115
South Gujarat University Ordinance — Ordinance 142, Ordinance 156, Ordinance 157

Citation : AIR 1996 Guj 96 : (1995) 1 GLR 773

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : K.A. Mehta, for Ajit Desai, for the Appellant; S.N. Shelat, for the Respondent

Judgement

R.K. Abichandani, J.—The petitioners-students have come with a grievance against the order of the Syndicate dated 17th April, 1993 holding that these students had adopted unfair means at the S.Y. B.Com. examination in which they appeared in May, 1992 and canceling their results which were declared on 14th October, 1992 as also debarring them from appearing at any of the examination conducted by the University or from filling up terms in any of the affiliated colleges up to the end of the education year 1993-94. A direction was also sought on the respondents to abstain from preventing the petitioners from appearing at the T.Y. B.Com. examination which was to be held from 26th April, 1993. It is common ground that these petitioners were allowed to appear at the said T.Y. B.Com. examination by an order of this Court made in this petition on 23rd April, 1993 and their results were to be declared only after further orders. Accordingly, these petitioners appeared at the T.Y. B.Com. examination held by the respondent-University from 26th April, 1993 the results of which have been withheld till now.

2. The petitioners' result of the S. Y. B.Com. examination at which they appeared in May, 1992 was initially withheld. They were called upon to submit

their explanation by communication dated 28th/29th August, 1992 at Annexure-A collectively to this petition in respect of unfair means allegedly adopted by them. The allegation was that petitioner No. 1 (Seat No. 4751) and petitioner No. 2 (Seat No. 4750) had copied or allowed to be copied certain answers in their "answer books. Similar allegation was made against the petitioner No. 3 (Seat No. 4758) and petitioner No. 4 (Seat No. 4759). The petitioners were issued notices on 1st October, 1992 as per Annexure B by the University stating that "ACHHAR Committee" thereafter referred to as "the Committee") constituted by the University was to convene on 9th October, 1992 and the petitioners may appear before the Committee to show cause against the irregularities and malpractices which were alleged against them. It appears that the Committee which convened on 9th October, 1992 considered the case of the petitioners and found them not guilty. Thereafter, the University declared the results of these petitioners by its Notification No.750/ 92 dated 14th October, 1992 at Annexure-C to this petition declaring petitioner No. 1 (Seat No. 4751) as having passed in second class, petitioner No. 2 (Seat No. 4750) and petitioner No. 4 (Seat No. 4759) as having passed in pass class and allowing the petitioner No. 3 (Seat No. 4758) to keep terms for T. Y. B.Com. examination though he was an unsuccessful candidate. All the petitioners thus, joined T.Y. B.Com. class for further studies and filled up their terms. However, they were once again required to appear before the Committee on 6th March, 1993. This was done pursuant to the decision of the Syndicate dated 1st March, 1993 by which the Syndicate remanded the case of the petitioners to the Committee for recommendation while accepting the earlier report in respect of two other candidates (Seat Nos. 4755 and 4756) against whom" similar allegations "were made. According to the petitioners a partisan approach was adopted in favour of these two students because one of them was a professor's son. After the remand the Committee reconsidered the matter by giving a fresh opportunity to the petitioners and was once again of the view that these petitioners were not found to have adopted unfair means at the examination in question and that their results should be declared. Out of 5 members of the Committee, only one member dissented. Thereafter, the matter came up before the Syndicate again and the Syndicate by its decision dated 22nd April, 1993 resolved by a majority view not to accept the recommendations of the Committee and to impose punishment on the petitioners. It was clarified that if the petitioners filled in their terms they would be allowed to appear at the examination after the expiry of the period of punishment during Which they were debarred from appearing at any University examination.

3. It was strongly contended by the learned counsel for the petitioners that this was a case of "no evidence" and barring the answer books there was no material on the basis of which it could be said that the petitioners Nos. 1 and 2 or petitioners Nos. 3 and 4 copied any answers from each other or from other sources. It was contended that the Committee after careful consideration of the allegations against these students found that the allegations of their having adopted unfair means at the said examination were not established. The

Syndicate without giving any opportunity to the petitioners took a contrary view violating the principles of natural justice and punished the petitioners. It was also contended that the Syndicate adopted a partisan approach against the petitioners by accepting the recommendations of the Committee which were in favour of two students (Seat Nos. 4755 and 4756) against whom the allegations were similar, because, one of them was a professor's son. Therefore, according to the learned counsel, the petitioners were treated with unequal hands. It was contended that because of groupism in the Syndicate the petitioners had suffered and the decision of the Syndicate was mala fide. It was finally contended that the University was estopped from punishing the petitioners having declared the results earlier after the report of the Committee exonerating the petitioners. After their results were declared, they pursued further studies, invested time and energy and now are told, suddenly, that their earlier results were cancelled.

4. The learned counsel appearing for the respondent-University defended the impugned action and contended that there was material in form of the papers of inquiry which was conducted by the Committee put up before the decision was based on that material which disclosed that common mistakes appeared in the answer-books of the petitioners. It was submitted that existence of such mistakes in answers to questions Nos. 3, 4 and 5 of the paper 2 which occurred in the answer books of petitioners Nos. 1 and 2 as-also petitioners Nos. 3 and 4 clearly indicated that these students had copied their answers from one or the other or from a common source. It was submitted that the Court should not interfere with the inference that the Syndicate has drawn on the material before it, because, sufficiency of material cannot be gone into by this Court and such process involved sitting in appeal over the decision of the Syndicate.

. 5. It is trite thing to say that Court exercising writ jurisdiction is not required to reappreciate the evidence and come to a different finding of fact than the one arrived at by the concerned authority. However, if the findings are perverse or based on no evidence, the Court can interfere with them. When there is a total lack of evidence which can reasonably support the conclusion arrived at by the authority, it would be a case of no evidence. Mere presence of material on record which is not relevant to the finding will not preclude the Court from interfering with a finding, which is based on irrelevant material on the ground that there is no evidence in support of the conclusion arrived at. In case where direct evidence is not available, circumstantial evidence if available would also constitute material for the finding if it is capable of rationally leading to that finding.

6. Heavy reliance was placed on behalf of the petitioners on the decision of this Court in *S. M. Sharma v. South Gujarat University*, reported in 23 (1) GLR 233, wherein there was an allegation against the student based substantially on circumstantial evidence of apparent similarity of admitted handwriting in the answer-book of that student and disputed handwriting in the "answer-book of another student who had admitted having not appeared at the examination and

had stated that the answer-book purported to be his was not in his handwriting. The Court observed that there is left in the field "sole circumstance consisting of the apparent similarity of handwriting perceived on visual inspection". In that background the Court considered that the case fall within the mischief of "no evidence" rule. After reviewing the authorities, the Court found that it was imprudent to base the conclusion of guilt solely on the bare comparison of disputed and admitted handwritings especially when it is made without the aid of evidence of expert opinion or microscopic enlargements or without guidance from some authoritative text books and without any experience or knowledge on . the part of the persons making the comparison. It was observed that apparent similarity of handwriting in the answer-books perceived on a bare visual comparison by untrained, uninitiated and inexperienced eyes may be sufficient to sustain a suspicion but it cannot, without something more, constitute evidence reasonably capable of supporting the finding of guilt especially when there was a clear defence of denial based on the plea of alibi and the lack of any acquaintance with the candidate allegedly personated. It will be at once noticed that the decision in S. M. Sharma's case (supra) turns on a finding of "no evidence". In the present case the facts are entirely different. There is an allegation against the petitioners Nos. 1 and 2 and also against petitioners Nos. 3 and 4 that one had copied from the other or allowed the other to copy questions Nos. 3, 4 and 5. The answer-books were on the record before the Committee. Report of the Committee which was given on 9th October, 1992 and which is placed on record shows that the answer-books were shown to the students when they were questioned by the Committee. The answer-books can constitute important material while considering the allegations of copying made against the students. The act of copying is usually done clandestinely and there cannot be direct evidence but there can be intrinsic evidence in the manner the answers are written which could be clearly a pointer to the conclusion that copying was done by the concerned students. The proximity of the students while appearing at the examination is also an important material. Depending upon the nature of questions and possible answers that can be given to them, there may be material in form of common mistakes in the answer-books of two students who are suspected of copying and such common mistakes can constitute important circumstantial evidence to show that unfair practice of copying is done from a common source or by the two candidates from each other would be an eloquent evidence against such students adopting unfair means. Any conclusion reached on such evidence by the Academic Authority cannot ordinarily be re-examined by the Court.

7. In *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, the Supreme Court held that identical incorrect answers which were given by the two candidates could not have been either by accident or by co-incident. Some of the incorrect answers and particularly the manner in which they were given clearly suggested that they were the result of either one candidate copying from the other or both candidates copying from a common

source. Thus identical incorrect answers can constitute significant material and such case cannot be said to be a case of no evidence merely because direct evidence on the allegation of copying is not available. In the matter of adoption "of such unfair means at the examination where direct evidence is not available the question is required to be considered in the light of probabilities and circumstantial evidence and the case where the probabilities and circumstantial evidence lead to a conclusion of guilt, cannot be said to be a case of no evidence. Therefore, there is no substance in the contention that the present case is of no evidence at all. If the course as suggested on behalf of the petitioners is adopted in deciding such matters the Court would be compounding the falling academic standards at the examinations. The Hon''ble Supreme Court has poetically voiced its concern in the case of Controller of Examinations v. G. S. Sunder, reported in 1992 (2) GLH 140, against the vice of copying at the examination and described the un-healthy practice as poisonous weeds in the field of education which needs to be rooted out in order that the innocent and the intelligent students do not suffer. In para 10 of the judgment the Supreme Court expressed as under:

"The hour has come
when we must clear the educational fields from
poison arid from fear;
we must remould our standards
build them higher,
And clear the air as though by
cleansing fire
Weed out the damning traitors to
education, Restore her to her ancient
place of awe."

This we should do so that posterity does not blame us and learning is not ridiculed.

8. As regards the contention that two students (Seat Nos. 4755 and 4756) have been let off by the Syndicate because father of one of them was a professor, it would not be sufficient to note that the Syndicate is a large body comprising of various members and it will not be proper to infer that the Syndicate had accepted the recommendation which was in favour of those students only because father of one of them was a professor, Furthermore, the petitioners cannot argue that because those two students were found not guilty by the Syndicate even the petitioners should be found not guilty. Such argument is not open on the basis of Article 14. Even if the other decision was wrong that was no good ground for repeating a wrong decision. A wrong decision in favour of a particular party does not entitle any other party to claim the benefit on the basis

of another wrong decision. Moreover, facts of each case differ and there is no reason to assume that the other two students had in their answer-books given identical answers and committed identical mistakes. Therefore, there is no reason to draw any comparison between, the petitioners and those two students, in the matter of allegations made against them regarding copying at the examination. Even the allegations of mala fide action made against the Syndicate do not inspire confidence.

9. However, there is much substance in the contention that no opportunity was given to the petitioners by the Syndicate before taking the decision adverse to them. The Committee had twice opined that it was not established that the petitioners had indulged in any unfair practice. In the opinion given by the Committee pursuant to the reconsideration of the matter on 6th March, 1993 as regards these, petitioners it was found that their earlier recommendation dated 9th October, 1992 was "required to be confirmed In the earlier recommendation dated 9th October, 1992 as regards the petitioners Nos. 1 and 2 it was found by the Committee on comparison of their answer-books that the figures in the sums which were said to have been copied were differing. One student had made total while the other student had not, and therefore, the suspicion had no basis. As regards the petitioners Nos. 3 and 4 also the; Committee on fresh consideration on 6th March, 1993 reiterated its earlier stand as reflected in their recommendation dated 9th October, 1992 wherein it was stated that on comparison of the answer-books of these two candidates it appeared that in the suspected sums figures were different, the style of writing was different and there was no basis for the suspicion against these students. Thus, when there was a positive finding by the Committee on 9th October, 1992 and reiterated on 6th March, 1993, it was incumbent upon the Syndicate to have given an opportunity to the petitioners of having their say in the matter before taking any decision adverse to them by disagreeing with the findings of the Committee. The Notification of the University dated 17th April, 1993, refers to the Resolution of the Syndicate passed at the Meeting held on 6th/7th/22nd April, 1993, a copy of which is placed on record. In that Resolution the proposal of a member to accept the recommendation of the Committee dated 6th March, 1993 was considered and a majority of members rejected that proposal. It is recorded that the contrary proposal of member Hoshang Mirza was accepted by majority. It was then observed that in this case it was found on detailed inquiry that the students were guilty and the opinion of the member who had dissented in the Committee on 6th March, 1993 was taken note of. There is no, indication as to whether the Syndicate made any other inquiry. Only inquiry that was made, was by the Committee and the result of the inquiry by the Committee did not hold the petitioners guilty. On the contrary it was held that there was no basis for the allegations made against the petitioners. The Resolution does riot indicate any application of mind to the factors which were considered by the Committee in favour of the petitioners as reflecting from their decision dated 9th 6ctober, 1992 which was reiterated on 6th March, 1993. The examinee is entitled to be

informed of the allegations which are made against him and the case that he is required to meet and he ought to be given full opportunity of meeting such case. The grounds for differing from the opinion of the Committee have not been mentioned in the decision of the Syndicate. The petitioners admittedly have not been heard before taking a different decision and the Syndicate sprung a surprise on the petitioners after the University having declared their results of S. Y. B. Com. pursuant to their being held to be not guilty in the opinion of the Committee. The decision of the Syndicate, therefore, clearly contravenes the principles of natural justice and cannot be sustained.

10. The argument that the Syndicate is estopped from cancelling the result of S. Y. B.Com. cannot be accepted. Under the South Gujarat University Ordinance 157 the Syndicate is empowered to cancel the result of an examinee or to punish him for misconduct by exclusion of such examinee from any University or College examination. It was, therefore, open for the Syndicate to take its own decision. It was urged that such decision could not be: taken to the detriment of the students after two months from the declaration of the result in view of the provisions of the Ordinance 156. This contention cannot be accepted. The provision that result of no candidate shall be altered to his detriment after two months from its declaration applies in cases which do not fall under Ordinance 142 and 157. Ordinance 157 is a specific provision dealing with the result of an examinee affected by a malpractice, fraud or improper conduct .whereby he has benefited and in the opinion of the Syndicate he was party or privy to or connived at such malpractice, fraud or improper conduct. Thus since the allegation made against the petitioners fell within the purview of Ordinance 157, the time limit of two months for exercise of powers by the Syndicate of altering the result as contemplated under Ordinance 156 was not attracted in the case of the petitioners. Thus, when the Syndicate could have exercised its powers under Ordinance 157 of the said Statutory Ordinance and altered the results even beyond two months it could not be said that the University was estopped from altering the results because it was once declared and the petitioners were allowed to join terms of T. Y. B.Com. under the interim orders of this Court.

11. Under the above circumstances, the petitioners will succeed only on the ground that the Syndicate has given its decision differing from the Committee without giving any opportunity to the petitioners of being heard in the matter. The impugned decision of the Syndicate and the impugned Notification dated 17th April, 1993 are, therefore, hereby set aside. Rule is made absolute accordingly with no order as to costs. It has been pointed out that the petitioners had appeared at the T.Y. B.Com. examination in May, 1993 and their results have been withheld till now which, means the intervening period of two years after their appearing at the T.Y. B.Com, examination has been wasted and the petitioners stand sufficiently penalised and, therefore, the University may not reopen the matter after this decision. It appears that the period of two years after the petitioners have appeared at the T.Y. B.Com. examination in 1993 will be a period of (sic) wasted since the petitioners could have pursued further

studies if the results of T. Y. B.Com. were declared in time in 1993. Even if any of them had failed he Could have appeared at the examination again. Therefore, the University can, in view of these facts, treat the Chapter as closed.