

(2006) 04 AHC CK 0145
In the Allahabad High Court
Case No : Writ Petition No. 5590 of 2005 (M/S)

Devendra Kumar Sharma

APPELLANT

Vs

Vice-Chancellor, Ram Manohar Lohia Avadh
University, Faizabad & Ors.

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Citation : (2006) 04 AHC CK 0145

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Feeling aggrieved with the cancellation of result on account of alleged use of unfair means by respondent Nos. 1, 2 and 3, the petitioner has approached this Court under Article 226 of the Constitution of India.

2. Brief facts of the case is that the petitioner is a regular student of Gayatri Vidyapeeth Post Graduate College Risia Bahraich of B. Com. 1st year course. While appearing in B. Com. 1st year examination of the subject Business Economics the petitioner was caught by Flying Squad. He was found with certain incriminating materials. It has been endorsed by the members of Flying Squad that petitioner had misbehaved with the member of Flying Squad and also abused them. On the report of Flying Squad, the matter was considered by the Unfair Means Committee on 12/7/2005. The Unfair Means Committee had recommended for cancellation of result of B. Com. 1st year course as well as depriving the petitioner to appear in 2006 examination.

3. Submission of the petitioner's Counsel is that a notice dated 3/6/2005 was received by the petitioner on 26/7/2005 but the impugned order has been passed on 12/7/2005. According to the petitioner Counsel the impugned order has been passed without prior service of notice which is not permissible under law and is violative of principles of natural justice. On the other hand, Sri Manik Sinha submits that notice was dispatched on 3/6/2005 and admittedly the punishment

order was passed on 12/7/2005 in pursuance to order passed by the Controller of Examiner who is present in person alongwith record. From the copy of the subject in question namely, Business Economics it appears that the petitioner has received 26 marks. However, on account of the cancellation of examination in pursuance the impugned order, the petitioner's result of 2005 has been cancelled.

4. The Controller of Examination had produced before this Court, a register containing the report Unfair Means Committee which has not been properly numbered and paged are detached from original binding and is in very bad shape. However, the petitioner's name found place at serial No. 112 of the said register and adjacent to his name it has been marked with a rubber seal, "(2005 Hejer#ee efvejmlle, 2006 Jeebef<215>ele nmlee#ej?)". Learned Counsel for the respondents submits that the impugned order has been passed by the Unfair Means Committee after considering the report of Flying Squad as well as Head Examiner. However, the report is neither speaking one nor disclose the grounds for cancellation of examination.

5. It is settled law that every order should stand on its own leg vide *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi*, 1978 (1) SCC 405. The manner and method adopted by respondent or its unfair means committee while deciding the controversy relating to use of unfair means is highly arbitrary. It appears that in a mechanical manner, adjacent to the name of each and every student who were alleged to involved in unfair means a finding has been recorded with the use of rubber seal.

6. A perusal of register produced before this Court indicates that the Unfair Means Committee had without applying its minds had decided the fate of young students by putting a rubber seal adjacent to their name disclosing the fact that the result have been cancelled or they have been debarred to appear in the future examination. The manner in which the unfair means committee of the respondents university had acted and decided the controversy relating to the use of unfair means is not only highly arbitrary but it is deplorable. The carriers of hundreds of students who were alleged to involve in use of unfair means have been dealt with mechanically by use of rubber seal, which discloses the final outcome of the inquiry. The unfair means committee had made the mockery of system by using rubber seal instead of deciding the individual cases of the students on merit. It was incumbent upon the Unfair Means Committee to consider each and every case on merit on the basis of allegations on record keeping in view the reply given by a charged student but it has not been done. The Apex Court right from *A.K. Kraipak & Ors. v. Union of India & Ors.*, AIR 1970 SC 150, followed by *Menka Gandhi v. Union of India & Anr.*, 1978 (1) SCC 248, and in plenty of cases had consistently ruled that wherever the civil rights of a person is involved, the authorities while adjudicating a dispute must apply mind to the controversy involved therein after considering the reply submitted by person concerned. It is horrible to think that respondent university or its

committee had tried to decide the fate of students who were involved in the alleged use of unfair means with the aid of rubber stamps in a register containing the names of students in a serialim.

7. Learned Counsel for the petitioner while relying upon the judgment in *Lal Chandra v. ViceChancellor Allahabad University, Allahabad, 2002(1) LBESR 981 (All) : 2002(47) ALR 355*, had rightly submitted that the Unfair Means Committee was discharging a quasijudicial duty hence it was necessary for it to decide the individual each and every case of the students on merit on the basis of allegations at individual level. The Unfair Means Committee should have recorded reasons may be in brevity while considering the allegations relating to use of unfair means. Atleast the record must disclose the reasons for holding a student to be guilty for use of unfair means so that, in case the decision of unfair means committee is challenged in a Competent Court then it may be subjected to scrutiny.

8. Use of rubber seal to declare the outcome of recommendation of Unfair Means Committee in a mechanical manner is against all the canons of justice. The Unfair Means Committee should have considered individual cases on merit while recording its finding. Nonrecording of reason for the final outcome shall be an arbitrary act. Right to education is a fundamental right, which has been constitutionally guaranteed. Any arbitrary act on the part of university or its committee depriving a student in unjustifiable manner shall be hit by Article 14 of the Constitution of India. The use of rubber seal itself as indicative of nonapplication of mind in a mechanical manner. Such actions are highly arbitrary unfair unjust and improper hence not sustainable under law.

9. Any order or decision whether are administrative side or a body discharging quasijudicial duties, in case affects the civil rights of a person then such order must be conformed to justness and reasonableness. The unreasoned or nonspeaking orders may always be termed as arbitrary in nature. Whether it is the young student of school, college or universities or growing up peoples anyone has got constitutionally protected right of fair treatment.

10. Right to education corelates with the right to livelihood. It is because of education a person achieves not only the source of livelihood but also a dignified life. Article 14 of the Constitution of India is the pulse beat of our Constitution. Accordingly, while deciding the matters relating to unfair means it shall always be incumbent upon the authorities or unfair means committee to act reasonably in a just and proper manner. Students have got right to know the grounds on which their results are cancelled or they are being debarred from future examination. Accordingly, it shall always be necessary for the unfair means committee while deciding the controversy to comply with the principle of natural justice and pass a reasoned order may be in brevity.

11. During the course of perusal of records this Court had taken notice of the fact that the names of all the students have been entered into register and

adjacent to name of each and every student, the Unfair Means Committee had recorded its opinion with the use of rubber seal declaring its final verdict relating to cancellation of result or debarring the students to appear in future examination. This Court is pained to note that such treatment has been imparted by the respondents university to the students who were involved in the unfair means matter. Accordingly, it should be appropriate that Unfair Means Committee of the respondents university should reconsider or rescrutinize all the cases of students who have been involved in unfair means cases and pass a reasoned order may be in brevity.

12. As discussed hereinabove inflicting of punishment to the students may be for use of unfair means or otherwise is a quasijudicial function and while passing a consequential order there should be compliance of natural justice as well as reasoned order should be passed vide ; *Pramila v. Secretary Board of Secondary Education Orissa* (Full Bench), AIR 1972 Orissa 224 ; *Gajadhar Prasad Mishra v. The V.C. of Allahabad University & Ors.* (Full Bench), AIR 1966 Allahabad 477 ; *Vidya Bhushan Pandey v. Principal K.G.M.C. Lucknow*, 1989 (15) ALR 67 (LB) (Sum) : 1988 LCD 597; *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Ors.*, 1991 (2) SCC 716 and *Mohd. RaufulAzam v. V.C. Aligarh Muslim University*, 1992 (20) ALR 1079.

13. In view of above, the impugned order cancelling the petitioner's result is not sustainable under law and is violative of Article 14 of the Constitution of India.

14. In view of above, writ petition deserves to be allowed with costs. Though respondents university deserves to pay exemplary costs but since it is the first case of its own kind, a lenient view adopted expecting that the Chancellor of the University and the State Government as well as respondent university shall issue appropriate guidelines to regulate the adjudication of dispute relating to unfair means matter in a just and proper manner.

15. In view of above, writ petition is allowed. Writ in the nature of certiorari is issued quashing the impugned order dated 12th July, 2005 as contained in Annexure1 to the writ petition with consequential benefit. The Unfair Means Committee of the respondents university is directed to reconsider the petitioner's case as well as the cases of all the students of the university in question who were involved in unfair means matter afresh on individual basis and pass a reasoned order may be in brevity which may disclose the grounds or basis relating to the final outcome or recommendation of unfair means committee. Writ petition is allowed accordingly with costs quantified to Rs. 2,000/-. Let the cost be deposited in this Court within a period of one month from day. It shall be open to the petitioner to withdraw the same.

16. Let afresh decision be taken in the case of petitioner within a period of three weeks from today. Sri Manik Sinha learned Counsel may communicate accordingly.

17. So far as the cases of other students are concerned the Unfair Means

Committee is directed to take a fresh decision within a period of two months keeping in view the observation made in the present judgment. Office is directed to send the copy of this order to the Chancellor of the Universities as well as Principal Secretary, Higher Education to issue appropriate order, direction or guidelines to check the recurrence of such incident adversely affecting the career of students.

18. Writ petition is allowed accordingly.