

(1998) 08 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Writ Petition No. 390 of 1998

Dr. P.K. Nanda

APPELLANT

Vs

Himachal Pradesh University and Others

RESPONDENT

Date of Decision : 07-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Himachal Pradesh University First Ordinance, 1973 — Ordinance 6.35, Ordinance 6.37

Citation : (1998) 2 ShimLC 488

Hon'ble Judges : D. Raju, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : B.N. Misra, for the Appellant; S.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petition has been filed seeking for the issue of writ of a mandamus to direct the second Respondent, who is the Controller of Examinations, H.P. University, to refer the complaints of the Petitioner filed as Annexures P-1, P-2 and P-3 dated 16.4.1998, 27.4.1998 and 28.4.1998, respectively, to Respondent 3, to inquire into the complaints as per law and submit its report in this Court within a specific time frame, empowering also the third Respondent to seek assistance of Government Investigating Agency in case it is so desired in view of its limited powers of inquiry.

2. The Petitioner claims that he is working as Associate Professor in the Department of Physiology, Indira Gandhi Medical College, Shimla (for short, I.G.M.C., Shimla), that it is necessary for him to file the writ petition on account of failure of the Respondents to discharge their statutory obligation in spite of written complaints regarding use of alleged unfair means by the students and examiners in the first professional M.B.B.S. examination, April 1998 and that such failure has resulted in violation of the Petitioner's fundamental rights under Article 14 of the Constitution of India, besides putting the other students to an academic disadvantage. The further plea of the Petitioner is that I.G.M.C., Shimla

is affiliated to the first Respondent-University for the purpose of medical education and awarding of degrees, that the first professional M.B.B.S. Annual examination were held in April 1998 by the University at I.G.M.C. Centre which included theory and practical as well as oral examination of the concerned students and that the Petitioner was appointed by the University as a Second Internal Examiner in the subject of Physiology and, therefore, he had personal knowledge regarding the various stages of conduct of the said examination. According to the Petitioner, during the conduct of the said examination, he detected that one particular candidate/ student bearing Roll No. 3415, had sufficiently befriended and influenced two examiners, one in the subject of Bio-Chemistry and the other in the subject of Physiology and that it also came to his notice that the said candidate had conspired and connived with the said examiners in order to be evaluated favourably in the said examination. The Petitioner claims to have reported the matter to the Controller of Examinations by his letter dated 16.4.1998 with copies to the Chancellor and the Vice-Chancellor of the University and his strong apprehension about the collusive attitude of the examiners with the said student with a request to depute some neutral outside examiner in order to ensure fair and impartial conduct of the examination. It is further stated that during the said examination the Petitioner witnessed shocking and blatant instances of favouritism by one of the examiners, who had said to have gained over by the said student and the details of which the Petitioner said to have again reported to the second Respondent in his letter dated 27.4.1998 with copy of the Vice-Chancellor of the University. It is further stated that the Petitioner came to know that the said candidate was trying to exert undue influence on the examiners in the subject of Bio-Chemistry in order to get undue favours in the examination and that this promptly reported to the second Respondent in the letter dated 28.4.1998. After narrating such facts, the Petitioner states that the normal practice in the conduct of M.B.B.S. examination is that final result is prepared on the last date of the examination by all the concerned examiners who sign the completed result sheet and thereafter the result-sheet is put under sealed cover in order to ensure that there is absolutely no scope for manipulation and delivered to the University, but this year, according to the Petitioner, there was undue delay of at least one week in delivery of the result-sheet of Bio-Chemistry to the University, which leads to strong suspicion in the peculiar background as mentioned by the Petitioner and that such irregularities and unfair practice involving the students and examiners of professional examinations by using unfair means assume greater significance as it is bound to affect the quality of medical education and morale of the other students. It is the further case of the Petitioner that he has irrefutable and convincing evidence in his possession to prove most of the complaints and circumstantial evidence to prove the other aspects of the complaints as and when required to do so by the Respondents. Aggrieved against the fact that there was no positive response to the communications sent by him, he appears to have met the Controller of Examinations on 4.5.1998 and despite the alleged verbal assurance said to have been given to him to look into the complaints and

take appropriate action, there was no such active response and this necessitated the Petitioner to come to this Court. It is stated that the complaints submitted by him constitutes unfair means under Clause (m) and (n) of Ordinance 6.35 of the First Ordinances of Himachal Pradesh University, 1973, as amended up to March 1993, and, therefore, it was the statutory duty and obligation of the second Respondent to refer the allegations regarding use of unfair means as contained in the complaints of the Petitioner to the Examination Discipline Committee under Ordinance No. 6.38 (a) and inasmuch as the second Respondent failed to discharge such duties, the reliefs, as prayed for, may be granted.

3. After issue of notice, the Respondents filed a common reply contending that for the conduct of examinations, Internal and the External Examiners are appointed by the Vice-Chancellor on the recommendations of the Clean of Medical Faculty, who is invariably Senior Professor of I.G.M.C., Shimla out of panel of names suggested by the concerned Heads of Departments and the Principal of I.G.M.C. and the Dean of Medical Faculty conduct the examinations on behalf of the University. It is also averred that there was no such incidence, as referred to by the Petitioner, and no such case was submitted by the Centre Superintendent to the University and consequently there is no cause for action on the part of the Respondent-University. While admitting the receipt of letter dated 16.4.1998 on 20.4.1998, the letter dated 27.4.1998 on 2.5.1998, the letter dated 28.4.1998 on 18.5.1998, the Respondents state that no action could be taken on the letter dated 16.4.1998 since it was only an apprehension expressed by the Petitioner and that with reference " to letters dated 27.4.1998 and 28.4.1998, they were forwarded to the Principal seeking for a report from him. It is stated that with reference to letter dated 27.4.1998, the Principal informed that the complaint had been enquired into and found to be baseless and so far as the letter dated 28.4.1998 is concerned, the Respondents state that the awards in the subject of Bio-Chemistry had been received in the University duly signed by the External (Dr. H.C. Mehta) as well as Internal Examiners (Dr. R.M. Pathak) in sealed covers and no cutting, overwriting or erasing was found in the award-sheet. The Respondents also submit that the University was satisfied on the basis of the reply received from the Principal and the materials received, it called for no further action particularly because no acts of use of unfair means noticed by the Centre Superintendent and the question of referring the same to the Examination Discipline Committee does not arise. While claiming that the Respondents have discharged their duties in accordance with law and the relevant procedure, it is stated that many of the averments of the Petitioner are figment of imagination and that there are absolutely no merits whatsoever in the grievance of the Petitioner.

4. Mr. B.N. Misra, learned Counsel appearing for the Petitioner, while reiterating the stand taken in the petition invited our attention to annexures filed and the relevant clauses of the Ordinances of the University to substantiate his claim. The learned Counsel also contended that as one of the examiners, he is also entitled to make such complaints and it is not necessary that the complaint

should be only in the form of a report from the Centre Superintendent for taking further action in the matter and consequently, the Respondents have committed default in carrying out their obligations. Adverting to the action of the Respondents in calling for the remarks from the Principal of the College on the complaints submitted by him, it is stated that it was not the correct procedure to have been adopted and that the only course of action available for the second Respondent was to place the matter before the third Respondent without obtaining any remarks from the Principal and without taking a decision thereon in the matter. In substance, the claim put forward on behalf of the Petitioner by the learned Counsel appearing seems to be that once a complaint is received, there is no discretion left with the second Respondent to drop action on his being satisfied or otherwise on the complaint, but his only obligation and duty is to refer the matter to the third Respondent.

5. Per contra, Mr. S.S. Mittal, learned Counsel appearing for the Respondent, while reiterating the stand taken in the reply filed, submitted that what could be normally and legitimately expected of the Respondents on complaints of the nature submitted by the Petitioner, has been done and that he has no right to compel the second Respondent to refer the matter to the third Respondent for further course of action. It was also contended for the Respondents by the learned Counsel that the Petitioner has no right to make such complaints -and such complaints cannot be claimed to fall under the relevant Ordinance so as to warrant any action, as claimed by the Petitioner, and that at any rate not only the action taken already as disclosed in the reply, is sufficient in law but the second Respondent cannot be denied of its lawful right and discretion to drop action without any such reference to the Examination Discipline Committee when on the face of it, it does not call for any such action, consequently, the learned Counsel for the Respondents submitted that there are no merits in the writ petition and the same is liable to be dismissed.

6. We have carefully considered the submissions of the learned Counsel appearing on either side. In our view, there are absolutely no merits, whatsoever, in the writ petition and the Petitioner cannot also claim to have any right to seek for the relief of the nature, prayed for in this case, particularly, on the basis of such vague allegations and submissions made in the letters said to have been sent by him and filed as annexures in this writ petition. Whatever may be his locus standi or right to send such letters of complaint, thereafter, it is for the authorities to take appropriate and necessary action and the Petitioner cannot claim to have any personal interest or legally protected rights of such nature as entitles him to approach this Court, directly with a petition under Article 226 of the Constitution of India. Such attitude and conduct exhibited on the part of the Petitioner would make anyone feel that he is acting with personal bias, malice and vendetta against a particular person, though some vague and general statements are made as if many such things have happened without pointing out any concrete materials in support of such allegations. The letter filed as Annexure P-1, in our view is bald, vague and as rightly stated by the

Respondents could not be the basis of any serious enquiry or follow-up action. On the other hand, it appears to expose some personal, possible prejudices of the Petitioner not only with the student concerned but also against his father and that what is sought to be vindicated is merely a personal vendatta. The claims made in Annexures P-2 to P-4 also do not deserve, in our view, any serious consideration. Viewed in the context of the statement of the Respondents in paragraph 9 of the reply and the further factual statement made at the time of hearing by the learned Counsel for the Respondents that even the Petitioner has signed the results of the examination without any demur, for which he was chosen as Second External Examiner, and when such factual statement also could not be disputed at all by the learned Counsel for the Petitioner, we see no merit in the grievance now sought to be projected.

7. Apart from the said conclusion of ours on the nature of allegations made by the Petitioner and the course of action it deserved, we may also advert to the relevant clauses of the Ordinance on which strong reliance has been made, in appreciating the rights of the Petitioner as also the powers of the Respondents in this regard. Clauses (m) and (n) of Ordinance 6.35 read as follows:

6.35 The following shall be deemed to be unfair means:

(m) Approaching or influencing directly or indirectly, a paper-setter, examiner, evaluator, tabulator or any other person, connected with the University examinations, with the object, directly or indirectly, of inducing him to leak out the question paper or any part thereof, or to enhance marks, or to favourably evaluate, or to change the award in favour of the candidate.

(n) Undue influence, that is to say any direct or indirect interference or attempt thereof, on the part of the candidate, or of any person on his behalf, with the discharge of the duties of a member of the supervisory or inspecting staff of an examination centre before, during or after the examination:

Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who:

(i) abuses, insults, intimidates, assaults any member of the supervisory or inspecting staff, or threatens to do so;

(ii) abuses, insults, intimidates, assaults any other candidate or threatens to do so;

shall be deemed to have interfered with the duties of the supervisory and the inspecting staff within the meaning of the clause.

Ordinance 6.37 (a) and (d) reads as follows:

(a) The Senior Superintendent/Superintendent of the examination centre shall report to the Controller of Examinations without delay and on the day of the occurrence, if possible each case where use of unfair means in the examination is suspected or discovered with full details of the evidence in support thereof and

the statement of the candidate concerned, if any, on the forms supplied by the Controller of Examinations for the purpose.

(d) All cases of use of unfair means specified in Clauses (d), (e), (f), (m), (o), (p) or (r) of paragraph 6.35 shall be reported immediately to the Controller of Examinations by the examiner, paper-setter, evaluator, tabulator or the person connected with the University examination, as the case may be, with all the relevant materials.

8. Though the Respondents would contend that it is only on the report of Senior Superintendent/Superintendent of the Examination Centre, the Controller is obliged to take further action and that the Petitioner cannot himself submit any such report directly to the Controller of Examinations, we find from Clause (d) of Ordinance 6.37 that cases of use of unfair means specified in Clauses and enumerated therein of which (m) is one, can be reported to the Controller of Examinations by the examiner, paper-setter, evaluator, tabulator or the person connected with the University examination, as the case may be, with all the relevant material. The Petitioner being second Internal Examiner in respect of the subject of Physiology he would, by virtue of Clause (d) of Ordinance 6.37 could in respect of an unfair means envisaged under Clause (m) of Ordinance 6.35, report directly to the Controller. The further question for consideration would be as to whether the allegations of the nature made by the Petitioner even on the face of it answers the requirement of Clause (m) of Ordinance 6.35. So far as the category of cases falling under Clause (n) of Ordinance 6.35, the Petitioner will have no right to send a report directly to the Controller of Examinations in respect of, at any rate, the subject other than to which he was appointed as one of the examiners. His claim that he may come within the category of person, "connected with the University examinations" cannot be countenanced since in the context of the various clauses and the scheme underlying the Ordinance in question, it could only be referable to a person connected with the particular University examination concerned, meaning thereby the subject concerned for which examination is held though such person may not be himself the examiner, paper-setter, evaluator and tabulator. In our view, it is not that anybody who has been connected with any one examination can meddle with the conduct of the other examination by claiming a right of sending representation or complaint and compel it to be treated as one envisaged under the enumerated category of complaints, for further action.

9. Further, so far as Clause (n) of Ordinance 6.35 is concerned, the report could be of any direct or indirect interference or attempt on the part of the candidate, or of any person on his behalf, with the discharge of the duties of a member of the supervisory or inspecting staff of an examination centre before, during or after the examination, meaning thereby that such interference must be of a person, who is complaining either directly or by indirectly. The allegations made in this case do not conform to the requirements of Clause (n) of Ordinance 6.35 in this case. So far as Clause (m) of Ordinance 6.35 is concerned, the report

once again could be in respect of a candidate or by anyone else on behalf of a candidate approaching or influencing directly or indirectly a paper-setter, examiner, evaluator, tabulator or any other person, connected with the University examination with the object, directly or indirectly of "inducing him" to leak out the question paper or any part thereof, or to enhance marks or to favourably evaluate or change the award in favour of a candidate. This also will go to show that the category of unfair means envisaged for action in Clause (m) of Ordinance 6.35 should be in respect of or directed against the person, who is making the report or complainant and the report or complaint could not be that of a person of what he hears of or what Ors. have done outside or on the basis of suspicion entertained by him of the prospect of somebody doing it at the time of examination. In substance the various Clauses would refer to and enumerated and envisaged for action deal with the actual events occurred which any one was found to have positively committed and not on certain assumptions or surmises of possibility of commission or suspicion about the prospects of being committed. In our view, the grievance or the allegation made by the Petitioner in the annexures filed by him cannot answer the description of a case contemplated even under Clause (m) of Ordinance 6.35 also, for pursuing further action.

10. Even that apart, we are of the view that Ordinance 6.38 does not contemplate or compel the reference being made invariably in all case to the Examination Discipline Committee of complaints of alleged use of unfair means, whatsoever type and whenever or howsoever received, with or without basis too. On the other hand, having regard to the nature of task entrusted to the Examination Discipline Committee, the Constitution of the Committee, the procedure evolved for the function of the Committee would go to show that the discretion lies with the Controller of Examinations, who receives the report or complaint to satisfy himself as to the genuineness or bona fides of the complaint and the existence of a prima facie case for being probed into further and taking action and consequently to be referred to for the deliberations and decision of the Examination Discipline Committee. Such preliminary enquiry or preliminary investigation to find out the fact situation is also to be necessarily inferred to exist and in here in the Controller to avoid vexatious and stale claims being allowed to be inquired into and thereby prevent undue and unnecessary harassment of innocent people also. The Controller of Examinations or any other authority which would otherwise possibility refer the matter to the Examination Discipline Committee could not be assigned the role of mere Post-Office just to refer any and everything which is received under the garb of a complaint de hors the credibility and creditworthiness of such complaints or the materials or allegations contained therein, particularly, having regard to the serious consequences and damage, such inquiry by the Examination Discipline Committee is likely to cause to any student or person concerned with the student and the possibility or likelihood of such inquiry tarnishing his image and maligning him at the initial stages though ultimately he may be exculpated or exonerated of the allegation. The alleged violation of Article 14 of the

Constitution of India or if any fundamental rights of the Petitioner, pleaded is a mere myth and has no substance. Consequently, viewed from any angle, we do not find any merit whatsoever in the contentions raised on behalf of the Petitioner. The writ petition, therefore, fails and shall stand dismissed. No costs.