
(1985) 07 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No 3253 of 1985

Eira

APPELLANT

Vs

The Guru Nanak Dev University, Amritsar

RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Citation : AIR 1986 P&H 12 : (1985) 88 PLR 364

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

1. This writ petition is by a minor girl seeking a direction against the guru nanak Dev University to declare her result of Pre-Medical Examination held in April/May, 1985 and further suitable reliefs.

2. Having appeared in the aforesaid University examination, the petitioners awaited her result but instead received a notice dt. June 18, 1985 from the University-respondent to appear before its standing Committee to answer charge that she had deliberately made distinctive marks in her answer books in two of her physics papers and one chemistry paper in order to disclose her identity. she appeared before the standing Committee at the stipulated time and date, owned the writings on her answer books but denied having deliberately made any distinction in the answer books in order to disclose her identity. The stand Committee vide order Annexure R. 1 took the view that identification marks, reference to which would be made shortly, were made by the petitioners deliberately and, therefore, she was held guilty for contravening the provisions of Ordinance 11 (r) of the Ordinances relating to Unfair Means cases. As a result thereof, the result of the examination of the petitioners was withheld in the first instance and then later, giving her no marks at all in the aforesaid papers, she was declared fail. It is to challenge that order and the consequential result that the petitioners has approached this court.

3. The relevant Ordinance 11(r) is in the following terms:--

"11. The use of unfair means, or in relation to, the examination shall include the following acts or omission on the part of the candidate, viz;

XX XX XX (r) deliberate disclosing one's identity or making any distinctive mark in the answer book for that purpose."

Punishment for such offence is prescribed in Ordinance 12.1(a) which is the disqualification from passing that examination in which found guilty and from appearing in the supplementary bi-annual examination. In the first instance, the offence defined need be understood in its correct perspective. The opening word "deliberately" lays emphasis that the act of the offender should be wilful, conscious, intended and volitional. The act must be in order to disclose one's identity. In the alternative, it must be of making any distinctive mark in the answer book for that purpose; that is to say for the purpose of disclosing his/her identity. When culled out, the operative portion said to apply to the petitioner is that she deliberately made distinctive marks in the answer book for the purpose of disclosing her identity. At this stage, the alleged distinctive marks may be explained and described, especially when the answer books of the petitioners as well as the file of the Unfair Means Committee, as ordered by the Motion Bench, have been placed before me.

4. The first distinctive mark is said to be the use of a sketch-pen to title answers to each question like " Answer to Question No. 2" and the like, Additionally, Page-markings have been done on the main answer books with the same sketch pen. It is also noticeable that the blanks on the opening sheet of the answer books have also been filled in by a sketch pen. But attempts to answers, however, have all been made by a fountain-pen using blur/blue-black ink. Thus, the controversy narrows down to this--Whether the use of a sketch-pen to spotlight beginning of answers books is a distinctive mark, and that too deliberately so as to hold the petitioners guilty under Ordinance 11(r), or is it a peculiarity or an oddity, without any element of distinction, whereby the identity of the petitioners was never intended to be disclosed.

5. The Unfair Means committee on examination took into account, besides the Ordinance, the instructions issued to candidates in writting, ex facie available on the opening-sheet of the answer-book, one of which forbade the candidate to make any identification mark. It also took into account that before the start of the examination, it pointed attention is always brought to the candidates by the Superintendent of the Examination Centre who is duty bound to read out the instructions to the candidates before hand. It is in these circumstances that the Committee observed that the intention of University to forbid the candidates from making any identification mark was to ensure that no candidate approaches the Examiner by making such identification marks, and yet the petitioners was held, without any evidence of a liaison with the Examiner, to have chosen to make the aforesaid identification marks in order to disclose her identity. It is on these observations that the committee abruptly came to the conclusion that such like distinct marks are for bidden under under Ordinance 11(r) and that those are

made by the candidate deliberately. yet in the end the Committee observed that it shall not involve any moral turpitude when they had ordered the results of subjects of Physics "A" and "B" and Chemistry "A" to be cancelled.

6. The sensitivity of the question on first impressions brings to the fore the rule of utmost caution advising the court to refrain from entering an area in which the University has to reign supreme. But in a society governed by the rule of law, wedded to the principles of natural justice, a higher principle comes to the fore as to whether the action is fair, just and reasonable. is it not unjust, perverse and arbitrary? Fairness is antithetic to arbitrariness. But despite being conscious of these principles, this court cannot usurp to itself the powers of an appellate body to review the evidence and substitute its own opinion to the opinion of the University authorities except where there is an utter failure of justice and fair play. In any given set of fact, wherever a peculiarity occurs, say for instance style of writing, the slant adopted, the titling of topics, the odd use of the colour of the ink, the shortness or largeness of the alphabets, the University, if it is allowed to go unchecked can term that peculiarity as a distinctive mark. when a person writes in his own hand, his handwriting by itself is distinctive in character. Barefacedly, one person's handwriting cannot be of another unless it is a clean forgery. But even if the university is to reign supreme in that arena, the purpose of the Ordinance 11(r) cannot be forgotten. It is that the effort of the candidate, was to deliberately and consciously disclose was to deliberately and consciously disclose his identity by means of the distinctive marks, for the purpose of establishing or laying room for establishing rapport with the Examiner. If the University could further gather evidence that by means of those distinctive marks, rapport with the Examiner was attempted, or could be spelled out from the result given by the Examiner, then the university could straightway come to the conclusion that the distinctive marks had been made deliberately for the purpose of disclosing identity by the candidate. But here no such thing happened for the result of the Examiner was never scrutinised. The answer-books were in order and the petitioners was given her rightful marks. No prohibition has been pointed out to me which puts a bar to the candidate to use a sketch-pen or the use of more than one pen, sketch or otherwise, or even to the colour of the ink. No bar has been pointed out to me that one could not have page-marked the answer-book. No bar has been pointed out to me that one could not have page-marked the answer-book. No bar or instruction has been pointed out to me that the candidate could not have started her answer by mentioning "answer to Question No.1" and the like. This is one of the way of many ways in which a candidate can, for the sake of clarity and lucidity, express himself/herself. At best, it is a peculiarity or even an oddity which someone may or may not indulge in. The test adopted by the University that why something has been done what it by itself should not have done is hardly a test for deciding unfair means cases. In particular, the observations of the committee "the candidate should have after numbering the question answer the questions without making any further symbols or drawing the aforesaid marks but she has not done so and made the

aforesaid distinctive marks to disclose her identity" is reflective of a mind hardened by prejudices and of stagnant breath. The young folk on the contrary breathe freedom. Even the question writings by the candidate could not in any event be said to have no nexus or connection with the process of answering. Besides a distinctive mark, to my mind, is something which must glaringly distinguish itself in isolation, prominently to be off the mark-something which stands apart from the answer books. To illustrate, the examples of drawing a flower or writing "Jai Hind" or "Thank" are distinctive marks unconnected with the purpose of answering. The distinctive mark must be something striking out by itself so that the Examiner can without much ado say that it was meant to invite his pointed attention. No such thing is present there. The particular remarks pointed out by the Examiner were to the effect "written with sketch-pen and pages marked on the answerbook". These may have appeared peculiar to that particular Examination, and yet may not have appeared peculiar to another, but in any case these could not be said to be distinctive marks in the context of the answer-books. If this is the view-a view reasonable, just and proper, then without being a court of appeal, I will not let the arbitrary and stale order of the University sustain, especially when the markings of the answer-books have not got to influence the result.

7. Other contentions advanced by the learned counsel need not be adverted to.

8. Resultantly, this petition succeeds. The impugned order of the standing Committee is hereby quashed directing the University to declared the result of the petitioners forthwith. In the circumstances of the case, however, there shall be no order as to costs.

9. Petition allowed.