

(1962) 07 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 458 of 1962

Harish Chandra Sharma

APPELLANT

Vs

The Vice Chancellor, University of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1962

Acts Referred:

Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960
— Section 28
Constitution of India, 1950 — Article 226

Citation : AIR 1963 Patna 295

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Basudeva Prasad and K.N. Keshava, for the Appellant; Govt. Advocate and S. Mustafi, for the Respondent

Final Decision : Dismissed

Judgement

1. The case of the petitioner in this case is that his younger brother, Ramanand Prasad Singh, who was a student of Langat Singh College, Muzatfarpur, had appeared at the 1962 Annual B. Sc. Examination with Honours course in Mathematics of the University of Bihar. The examination commenced on the 14th March, 1962, but on the 29th March, 1962, a notice was issued by the Centre Superintendent of the examination cancelling the examination in Mathematics Honours Paper V for the B.A. and B.Sc. (Hons) examination. A copy of the notice is annexure A to the application and reads as follows:

"Annual University Examination, 1962,

L. S. College Centre, Muzatfarpur.

2. The examination in Mathematics Honours Paper V for B.A. and B.Sc. (Hons) 1962 is cancelled. The date of examination will be announced later on.

Sd. B. N. Singh,

Centre Superintendent, Annual Examination,
1962, L. S. College Centre,
Muzaffarpur.

The 29th March, 1962".

It is also alleged that in the issue of the newspaper "The Searchlight" dated the 8th May, 1962, a communique of the University of Bihar was published to the following effect:

"Universty of Bihar

Muzaffarpur.

Communique.

The examinations in B.A. and B. Sc. Mathematics (Honours) annual 1962 which were held earlier have been cancelled by the order of the Vice-Chancellor.

A fresh examination in all the six papers will commence on the 1st June, 1962. The detailed programme can be had from the Centre Superintendent concerned. The Centres and Roll Numbers of the examinees shall remain the same.

Sd. A. P. Sinha,

Assistant Registrar".

The allegation of the petitioner is that the Vice-Chancellor of the University of Bihar had no authority to cancel the examination in question. It was prayed that a writ in the nature of mandamus may be issued directing the University of Bihar to publish the results of the 1962 B.Sc. Mathematics (Hons) examination according to law.

2. There was also a prayer made on behalf of the petitioner for issue of an injunction restraining the University of Bihar from holding the B.Sc. Mathematics (Hons) examination from the 1st June, 1962, which was the adjourned date. The prayer of the petitioner was refused and it appears from the counter-affidavit of the respondents that the re-examination of the candidates was actually commenced on the 11th of June and was completed on the 19th of June, 1962. It also appears from the counter-affidavit that the total number of candidates appearing in the re-examination was 75.

3. Cause has been shewn on behalf of the Vice-Chancellor of the University of Bihar, respondent No. 1, and the other respondents to whom notice of the rule was ordered to be given.

4. On behalf of the respondents a preliminary objection was taken that the petitioner has no locus stands to maintain the present application for writ of mandamus. It was submitted that the aggrieved student Ramanand Prasad Singh should have filed the writ application, and his elder brother, who is the present

petitioner, is not competent to present this application. It was submitted, on behalf of the respondents that the aggrieved, student Ramanand Prasad Singh has attained majority, it was submitted by the petitioner in paragraph 15 of his application that he was the guardian of Ramanand Prasad Singh and had, therefore, sufficient interest to file the present application challenging the validity of the decision of the Vice-Chancellor.

In the counter affidavit the respondent has clearly stated that Ramanand Prasad Singh is more than 20 years of age and there is no question of the petitioner having any legal guardianship over Ramanand Prasad Singh. In view of the statement in the counter-affidavit we are satisfied that the petitioner has no legal interest which entitles him to make this application for a writ on behalf of Ramanand Prasad Singh. The legal position is fully covered by a recent decision of the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, where Subba Rao, J. has clearly laid down that though Article 226 does not in terms describe the classes of persons entitled to apply thereunder, yet it is implicit in the exercise of extraordinary jurisdiction that the relief asked for must be one to enforce a legal right, and the existence of that right is the foundation of the exercise of jurisdiction of the High Court under Article 226. It was further observed in that case that the legal right that can be enforced under Article 225 must ordinarily be the right of the petitioner himself who complains of infringement of such right and approaches the Court for relief, and the right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. Applying that principle to the present case it follows that the petitioner, Harish Chandra Sharma, is not competent to maintain the present application for writ for mandamus.

5. On the merits of the case also we are of opinion that the petitioner has made out no case for grant of a writ under Article 226 of the Constitution. The argument put forward on behalf of the petitioner is that the vice-Chancellor had no authority in the circumstances of this case to order cancellation of the examination in B.A. and B. Sc. Mathematics (Hons) of 1962. It was argued by learned Counsel on behalf of the petitioner that the power of cancellation lay with the Academic Council under Regulation I), paragraph 16, of the Bihar University Regulations, and the power of the Academic Council in this respect has not been delegated to the Vice-chancellor under the provisions of paragraph 5 of Bihar Ordinance No. 1 of 1962. We do not accept the argument addressed on behalf of the petitioner as correct. Paragraph 16 of Regulation II is to the following effect :

"16. If it is proved to the satisfaction of the Examination Board that the questions in any subject are such as candidates could not reasonably be expected to answer within the time allotted, or have not been fairly distributed over the whole course in that subject, or do not conform to the regulations laid down for the examination in that subject, or show a marked change of standard or that

from any other cause injustice has been or is likely to be done, the matter will be referred to the Academic Council for such direction as may be necessary".

In our opinion the provisions of this paragraph, have no application to the present case and the question of cancelling the examination on account of leakage of question paper does not fall within the purview of this paragraph. We are of opinion that the power of cancellation of examination on account of leakage of question paper falls within the powers of the Examination-Board u/s 28 of Bihar Act XIV of 1960, which reads as follows;

"28. The Examination Board. - (1) Subject to the provisions of the Regulations, all arrangements for the conduct of examinations shall be made by an Examination Board consisting of the Vice-Chancellor as Chairman and the Deans of Faculties as members.

(2) The Examination Board shall be responsible for conducting the examinations and making all arrangements for the appointment of examiners, setting and moderating question papers, moderating and preparing and publishing results of examinations and reporting such results to the Academic Council and generally for formulating ways and means for the purpose of improving the machinery for the true assessment of the attainments of the students of the University."

It is manifest that the power of cancelling the examination on account of leakage of question papers is one which relates to the conduct of examinations within the meaning of Section 28(1) and (2) of Bihar Act XIV 01 1960, and it is, therefore, a power granted to the Examination Board under the provisions of that statute. Now Section 35 of Bihar Act II of 1962 makes provisions for the exercise of powers and duties by the Vice-Chancellors of the various Universities after the dissolution of We Senate, Syndicate and Academic Council functioning prior to the commencement of the Act. This Section reads as follows:

"35. Dissolution of the Senate, Syndicate and Academic Council functioning prior to the commencement of this Act and constitution of new Senate, Syndicate and Academic council in their place. -- Notwithstanding anything contained in the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act 1950 (Bihar Act XIV of 1960), the Senate, Syndicate and Academic Council of the University of Bihar, Bhagalpur University and Ranchi University established u/s 3 of the said Act and functioning prior to the commencement of this Act shall stand dissolved on the commencement of this Act and thereafter, as soon as may be, they shall be reconstituted and pending their reconstitution the Vice-chancellors shall exercise their powers and perform their duties under the said Act for a period not exceeding six months from such commencement."

Paragraph 5 of the Bihar Ordinance No. 1 of 1962, however, provides that the Vice-Chancellors shall not exercise the powers or perform the duties conferred u/s 35 of Bihar Act 11 of 1962, except with the previous approval of the Chancellor. Paragraph 5 of the Ordinance states as follows:

"5. Vice Chancellors of the University of Bihar, Bhagalpur University and Ranchi University not to act in certain matters except with the prior approval of the Chancellor. -- Notwithstanding anything contained in Section 35 of the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) (Second Amendment) Act, 1961 (Bihar Act II of 1962) the Vice-Chancellors referred to in that Section shall not exercise the powers or perform the duties in accordance with the provisions thereof except with the prior approval of the Chancellor"

It appears from annexure B of the counter-affidavit of the respondents that the Chancellor has "given general" approval to the Vice-Chancellor with regard to discharge of duties of an Examination Board. Paragraph 1 of the annexure states;

"Chancellor's general approval for the exercise of the following powers by the Vice-Chancellor for day to day working of the University :

(1) To constitute an ad hoc committee consisting of the following members for assisting the Vice-Chancellor to discharge the duties of the Examination Board :

All the present members of the Examination Board excepting Principal Bhola Prasad Singh, Rajendra College Chapra, because he is not a teacher of Commerce hence his continuance will be against the provisions of the new Act. In his place the Head of the Department of Commerce at C. M. College, Darbhanga, (now a constituent College) be included."

Paragraph 17 of the counter-affidavit also states that the powers of the Academic Council and Senate vest in the Vice-Chancellor who has further obtained the approval of the Chancellor for the exercise of powers for carrying on the work of the University with the aid of the Ad hoc Board and an Advisory Board pending constitution of the Senate, Syndicate and the Academic Council. For these reasons we are satisfied that the Vice-Chancellor had the power in this case to cancel the examinations in B.A. and B.Sc. Mathematics (Hons) course, 1962, on account of leakage of question papers, and hold those examinations afresh.

6. Another argument was addressed on behalf of the petitioner that the action of the Vice-Chancellor cancelling the examination was arbitrary and mala fide and against the principles of natural justice. In our opinion--there is no substance in this argument, it was alleged, by the petitioner in his application that Rameshwar Prasad Agarwal first made a complaint to the University about the leakage of the question papers on account of pressure of the rival group of teachers of Langat Singh College but later on he withdrew his complaint, this allegation is denied in paragraph 5 of the counter-affidavit of the respondents. It appears also from the counter-affidavit of the respondents that on the 26th March, 1962 at 8.45 A.M. the Principal of Langat Singh College handed over to the Vice-Chancellor an anonymous letter addressed to the Vice-Chancellor, mentioning therein that some questions were divulged by Professor P. Prasad, who was a member of the Moderation Board, to certain students, and several questions were set forth in the anonymous letter itself. The Principal reported to

the Vice-Chancellor that five out of the six questions mentioned in the letter had leaked out.

The same afternoon an emergent meeting of the following persons was called: (1) Vice-Chancellor, (2) Dr. B. N. Singh, Principal, L S. College, Muzaffarpur (3) Snri, O. P. Sinha, Principal, Muzaffarpur Institute of Tecnnology, Muzaffarpur, (4) Shri Kishore Narain, principal, S.K.J. Law College, Muzaffarpurr, and (5) Dr. R. Shukla, Head of the University Department of Mathematics. The Registrar deputy Registrar and Assistant Registrar of the University were also present at the meeting. It was decided at the meeting that an inquiry should be held as to (1) whether the questions set for Mathematics (Hons) examination for 1962 had leaked out, and (2) if so, through whose agency ana from which source. A Sub-Committee consisting of Shri D. P. Sinha, Principal, Muzaffarpur Institute of Technology, and Shri S. K. Mukherji, Principal, Tirhut College ot Agriculture, was ordered to make an inquiry into the matter, and on the 2nd May, 1962, the Committee submitted a report that questions of all papers in Mathematics (Hons) had leaked out and the leakage occurred through shri P. Prasad, Lecturer, Langat Singh College, who had undertaken private tution of a large number of Honours ana Post-Graduate students. The report was later on placed tefore the Vice-Chancellor and the Ad hoc Board, which after due consideration decided that the examination ot all the six papers should be cancelled and a fresh examination should be conducted in all the six papers.

In view of the statements made in the counter-affidavit we are satisfied that there was a proper inquiry held by the University authorities into the matter of leakage of question papers. In our opinion, Counsel for the petitioner has been unable to make good his point that the decision of the Vice-Chancellor is in any way vitiated in law. For these reasons we hold that the petitioner has made out no case for grant of a writ under Article 226 of the Constitution against the respondents. The application accordingly fails and must be dismissed with costs, Hearing fee Rs. 100/- payable to respondent No. 1.