
(2006) 08 AHC CK 0278
In the Allahabad High Court

Ikbal Singh Chawala

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2006) 7 AWC 7733

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Impugned herein is the order dated 29.12.2004 by which the petitioner's L.L.B. Ist year examination 2004 has been cancelled on the ground that he was caught using unfair means while giving examination of V paper of L.L.B. Ist year.

2. A brief resume of necessary facts is that on 19.4.2004, while the petitioner was writing answers of VI paper of L.L.B. Ist year 2004, he was caught by the Flying Squad using unfair means in the examination. He was served with a notice on 16.9.2004 in which he was charged with adoption of unfair means. The notice also alluded that the petitioner confessed before the invigilator to using unfair means but refused to give any statement in writing on the spot and he also declined to accept the "B" copy. It was also alleged in the notice that the petitioner gulped down the crib-notes and ultimately he was required to submit his written explanation by 16th Sept 2004. In response to the said notice, the petitioner submitted his reply dated 16.9.2004 addressed to Vice Chancellor, Buhelkhand University Bareilly which was one of denial stating that he never refused to give his statement nor he refused to accept the B answer-sheet; that no unauthorized material was recovered from his possession; that he neither destroyed nor gulped down any unauthorized material; that he never threatened any one nor used any abusive language; that the entire episode appears to be an upshot or misunderstanding of invigilators/examination Supdt. Ultimately, while

giving details of his very good academic career, the petitioner described the allegations as unfounded and prayed for declaring the withheld result. On 29.12.2004, the petitioner was intimated by means of office memorandum/order about cancellation of result of all the candidates including petitioner who were found guilty of adoption of unfair means.

3. I have heard learned Counsel for the petitioner and also learned Counsel appearing for the University. I have also heard learned Counsel appearing for opposite party No. 4.

4. The learned Counsel for the petitioner canvassed that there was nothing on record to bear out that the petitioner used unfair means in the examination. He also argued that the reply submitted by the petitioner was not considered; and that the decision of Unfair Means Committee suffers from error of law and is liable to be quashed. Per contra, learned Counsel for the University contended that impugned order was based on recommendation of Examination Superintendent, Ruhelkhand University; that the petitioner gulped down the unauthorized materials and also misbehaved with the Flying Squad. Ultimately, the learned Counsel for the University tried to prop up the impugned order submitting that it was based on evidence and was passed in accordance with the relevant Rules.

5. The learned Counsel for the University has annexed charge-sheet as Annexure C.A. 1, reply of the petitioner as Annexure No. 2, the proforma containing proceeding conducted in the matter of unfair means as Annexure No. 3 and the relevant rule of the University as Annexure No. 4 Clause 3 of Annexure CA 3 embodies the comment at page 1 to the effect that the petitioner swallowed the material and misbehaved with flying squad. It would further appear from a perusal of column meant for containing statement of the candidate that the petitioner emphatically denied that there was any unfair means with him or at his desk. He also denied that he had brought with him any unfair means. He also denied that he made use of unfair means. Below this questionnaire the petitioner has subscribed his signature. In the column at page 2, there is a further comment dated 19.4.2004 recorded at 9 a.m. that the petitioner was caught by flying squad and he swallowed material and misbehaved with flying squad. This column bears signatures allegedly of the two invigilators. It would also appear that the same day, the Examination Supdt. forwarded the matter at 9 a.m. At page 3, is contained the examiner's report in which examiner has indicated that no unfair means material has been attached. Ultimately, the examiner reported that no report is possible as unfair means material has been swallowed and as such no material is attached. This report also bears the date 19.7.2004. In column No. 6, two liner order is stamped by which the examination 2004 of the petitioner was cancelled and he was further debarred from appearing in the examination 2005.

6. In this connection, norms prescribed by the University for deciding the cases of unfair-means may be noticed. Clause 5 of the Norms relied upon by the

counsel for the University is quoted below.

5. In case where material/handwritten/printed or of any type was found in possession of the candidate but the centre reports that the material was swallowed or destroyed by the candidate the examination of the year be cancelled and he be further debarred from appearing at any examination of University for one following year.

Clause 15 of the norms adopted by the University postulates that if required, the candidate may be asked to appear before the committee and explain the situation.

7. From the materials on record, it would transpire that the petitioner denied any unfair means materials to have been recovered from his possession. On the other hand, the University authorities claimed that the petitioner was found using unfair means but before the Flying squad could lay hand on the unfair means material, the petitioner gulped it down the throat. It would also appear that though it is postulated in Clause 15 of the Norms of the University prescribed for dealing with unfair means cases that the candidate may be asked to appear before the committee and explain the situation, he was afforded any opportunity of hearing. There is nothing on record to show as to what material weighed with the Committee or other university authorities to arrive at a decision of holding the petitioner guilty of using unfair means. From a further scrutiny of record, it would transpire that entire proceeding has been conducted on a questionnaire form containing no discussion nor is it eloquent what evidence was before the Committee to converge to the conclusion arrived at by it. Even the decision taking authority does not appear to have applied mind and the decision, it would appear, has been taken mechanically without observing in compliance the principles of natural justice. It is settled law that the right to life includes right to reputation and livelihood and that the individual as an entity is entitled to the protection of Article 21 of the Constitution of India and in this perspective also, the Apex Court has emphasized the imperativeness to observe of the principles of natural justice and necessity to observe in compliance the principles of natural justice cannot be whittled down.

8. In *Union of India v. Mohan Lal Capoor* (1973) 2 SCC 936 , the Apex Court in a Bench of two Judges held in paragraph 28 that the reasons are the links between the materials on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject matter for a decision, whether it is purely administrative or quasi judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in *Gurdial Singh Fijji Vs. State of Punjab and Others*, In *S.N. Mukherjee Vs. Union of India*, , the Constitution Bench of the Apex Court surveyed the entire case law and held in para 40 that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for its decision. In para 36 of the said decision, it was further held that recording of

reasons excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. It is not required that the reasons should be as elaborate as in the decision of a court of law. In *Mazharul Islam Hashmi Vs. State of U.P. and Another*, , the Apex Court pointed out that "Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved." In *Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others*, a Full Bench of this Court dealing with the proof of the charge of use of unfair means at the examination, held that it was the duty of the Examination committee to maintain purity of examination and if examinee is found to have used unfair means at the examination, it is the duty of the Examination Committee to take action against the erring examinees to maintain the educational standard. It was further observed that direct evidence is available in some cases but in a large number of cases direct evidence is not available. In that situation the Examination committee has of necessity to rely on circumstantial evidence which may include the answer given by the examinee, the report of the Superintendent of the center, the invigilator and the report of the experts and other attending circumstances. The Examination Committee, if it relies upon such evidence to come to the conclusion that the examinee has used unfair means in answering questions then it is not open to the High Court to interfere with the decision merely because the High Court may take a different view on reassessment of those circumstances;. While it is open to the High Court to interfere with the order of the quasi judicial authority, if it is not supported by any evidence or if the order is passed in contravention of the statutory provisions of the law or in violation of the principles of natural justice, the court has no jurisdiction to quash the order merely on the ground that the evidence available on record is insufficient or inadequate or on the ground that different view could possibly be taken on the evidence available on the record. The above decision has been cited with approval in the following decision In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , the Apex Court held as under:

The reasons are harbingers between the mind of the maker of the order to the controversy in question and the decision or conclusions arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, irrespective of the fact whether it is a quasi judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is germane and precise relevant reasons as apart of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may

not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage.

(Emphasis supplied).

9. In *Mohan Lal Goenka and Another Vs. The State of West Bengal*, the examination results of three candidates were cancelled and the Apex Court held that they should have received an opportunity of explaining their conduct. It was also said that even if the enquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity.

10. In *Board of High School and Intermediate Education U.P. v. Bagleshwar Prasad and Ors.*, a Three Judge Bench of the Apex Court while dealing with unfair means matter in Civil Appeal No. 328, held in its decision dated 27.8.1962 that in dealing with cases like those of educational institutions dealing with matters of discipline like employing unfair means, the problem faced by the educational institutions should be appreciated by the High Court and so long as the enquiry held is fair and affords the candidate an opportunity to defend himself, the matter Should not be examined with the same strictness as applicable to criminal trials in the ordinary courts of law.

11. In *R.P. Bhatt Vs. Union of India and Ors (UOI) .*, the Apex Court while interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 held that the word "consider" in Rule 27(2) of the Rules implied "due application of mind". It was further held that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. In *Ram Chander Vs. Union of India (UOI) and Others*, the Apex Court held that the duty to give reasons is an incident of the judicial process. In *Divisional Personnel officer, Southern Railway v. T.R. Chellappan* (1976) 3 SCC the essence of what has been held by the Apex court was that the terms "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. In *Barium Chemicals Ltd v. A.J. Rana* (1972) SC 591 the Apex Court reckoned into consideration the dictionary meaning of the word consider" which according to Shorter Oxford Dictionary means "to review attentively, to survey, examine, inspection, to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, bethink oneself to, reflect. Again the Court consulted Words and Phrases-Permanent Edition Vol. 9-A according to which the word consider means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; mediate upon, think or reflect with care.

12. The crux that can be squeezed out from discussions of the above decision is that although the Court must be slow in interfering with the decision of an academic authority but what has to be ensured with all religiosity is that a fair and reasonable opportunity has been afforded to the candidate who is at the threshold of his career and any hasty decision would put at stake his career while imperiling his future. The committee while considering the materials placed before it, is required to come to an objective determination on certain facts and decisions and it is the only manner in which the Committee has to carry out its duties imposed on it. In such cases it is worthy of notice, there are no two contending parties before it and that the life of the examinee may be seriously affected and he may even be subjected to criminal prosecution as a consequence, therefore, the committee should hear the examinee. Even if there may not be any regulation casting a duty on the Committee to act judicially but the manner of disposal and serious effects of the decision of the committee lead to the conclusion that the duty to act judicially is cast on the Committee.

13. It would thus be eloquent that the statutory committee, which was dealing with the matter of unfair means allegedly employed by the petitioner in attempting questions, being quasi-judicial authority was to act judicially and was bound to give reasons, the duty to give reasons being an incident of the judicial process and to decide the matter on the facts of the case, on the material before them and by applying legal norms to factual situations. There is no order at all on record, not to speak of a reasoned order-evidencing the fact that requisite material was taken into reckoning by the Committee. The pronounced view of the Apex Court contained in various decisions is that the power of review under Article 226 of the Constitution can be exercised effectively only if the order is a speaking order and reasons are given in support of it and if no reasons are given the High Court would be powerless to interfere with the decision of the Unfair-means Committee, which is a creation of statute, so as to keep it within the limits of the law and it would result in stultifying the power of judicial review by the High Court. It would thus appear that the authorities failed to act according to the principles of natural justice and therefore, the impugned order cannot be sustained.

14. As a result of foregoing discussion, the petition succeeds and is allowed. The order dated 29.12.2004 passed by Unfair Means Committee canceling examination 2004 of the petitioner and further debarring him to appear in the examination 2005 is quashed. In the facts and circumstances, it is directed that the petitioner's result would be pronounced forthwith and would be further permitted to appear in the next examination.