
(1974) 01 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1485, 1523 to 1540, 1762 to 1771 of 1973

Indra Methi and Others

APPELLANT

Vs

Board of Secondary Education, Rajasthan, Ajmer and Others

RESPONDENT

Date of Decision : 31-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Secondary Education Regulation, 1957 — Section 3

Citation : AIR 1975 Raj 116 : (1974) RLW 230 : (1974) 7 WLN 158

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Advocate : M.B.L. Bhargava, assisted by Arun Kumar Bhandari, for the Appellant; M.D. Purohit, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joshi, J.—These 29 writ petitions by respective 29 petitioners are directed against a "vigypati" dated 24-6-1973 of the Board of Secondary Education, Rajasthan, hereinafter called the Board, cancelling the examination of the petitioners for the year 1973 and further debarring some of the petitioners to appear at the ensuing Secondary Examination to be held in the year 1974. They shall be decided by a common order.

2. The material facts which, are almost identical and are also not in dispute in all these petitions briefly stated are these : The Examination for the Secondary Arts was held by the Board at its various centres in March/April, 1973, one of the centre for the aforesaid examination being the Rajkiya Kanya Uch Madhyamik Vidhyalaya, Beawar, which shall be hereinafter referred to as the Beawar centre. The result of the said examination was declared on 14th of July, 1973, but the result of the petitioners was withheld and not announced. On 16-7-1973 a show cause notice in identical terms was served on the petitioners whose result was earlier withheld. Under the show cause notice it was averred that from the examiner's report and other sources it has been found that the students

appearing at the Beawar centre had resorted to unfair means at the examination.

It was further averred that from the answer books of the elementary arithmetic of the aforesaid petitioners it is evident that the petitioners had resorted to unfair means at the examination. Under the terms of the said notices the petitioners were called upon to submit their reply to the show cause notice before 21st of July, 1973, and further to appear before the "Jaanch Adhikari" on 24th/25th July, 1973, in the premises of Rajkiya Patel Uch Madhyamik Vidhyalaya Beawar. It is also not in dispute that before the show cause notice was issued, the Board had received the examiner's report complaining of the unfair means used by the petitioners. On 4-7-1973 the results committee, a competent body under Rajasthan Secondary Education Regulation (hereinafter called the Regulation) to deal with the disciplinary matters on the ground of unfair means had appointed an expert Shri M. C. Goyel the senior teacher in the mathematics to submit his report on the answer books in the arithmetic paper to the committee. The expert submitted his report on 4-7-1973 wherein he had opined that the petitioners are guilty of unfair means by either copying from the copy of another or allowing another to copy from her copy.

The petitioners submitted their reply to the aforesaid show cause notices which were sent by registered post. In the reply the petitioners repudiated the allegations levelled against them in the show cause notice and inter alia asserted that they had never indulged in unfair means. It was further complained therein that the show cause notice did not specify the charges and the same are vague. On 24/25th July, 1973, some of the petitioners appeared before the enquiry officer who recorded their statements. In the statement each of the petitioners appears to have been asked as to whether many of the answers in arithmetic tallied with the answer of another examinee. The answers of the petitioners were obtained after showing them the answer book of another candidate with whose answer the petitioners' answer tallied and the petitioners had admitted that many of the answers did tally with those of the another examinee. Each of the petitioners denied that they had copied or allowed any person to copy. It was further stated that the petitioners have nothing to say further. On 24-8-1973 each of the petitioners received a cyclo-styled copy of a "vigypati" purporting to have been issued by the Pariksha Niyantrik (the controller of the examination) whereby she was informed that her examination result of the Secondary Examination has been cancelled. In cases of petitioners Indra Methi (99183), Resham Babel (99282), Kum. Pushpalata (99266), Tripta Joshi (76285), Kaushalya Gupta (99199), Geeta Chaudhary (99174), Indra Gupta (99162), Suman Jain (99319) and Narbada Gehlot (76268) a further penalty was imposed debarring them from appearing in the ensuing examination to be held in the year 1974. This "vigypati" was published in pursuance of the decision of the results committee, competent body under the Rajasthan Secondary Education Regulation, 1957.

On receiving this intimation each of the petitioners issued & notice to the

Chairman of the Board complaining against the vague nature of the charges and denial of the reasonable opportunity of being heard and prayed for reconsidering the decision. On 4-9-1973 the petitioners asked for the furnishing of the copies of various documents which seem to have been used by results committee but the copies were denied by the non-petitioners. The petitioners have therefore come up in this Court by way of an application under Article 226 of the Constitution of India principally contending that the order of the Board is void being violative of principles of natural justice as the petitioners were never informed of the precise charge and were denied of reasonable opportunity inasmuch as the materials which were used against them were not confronted/disclosed to them and further that the petitioners were never made aware of the precise case which they had to meet. On these grounds the petitioners have, therefore, asked for quashing the impugned order.

3. The writ petitions have been opposed by the non-petitioners. The case of the Board is that the charges conveyed in the notices are not at all vague. There is a specific mention of using unfair means in the subject elementary arithmetic and there is also reference that this allegation was levelled on the report of the examiners. According to the non-petitioners the notices gave sufficient information as to the precise nature of the charge levelled against the petitioners. It has been further alleged that in any event at the time when the petitioners were examined by the enquiry officer the answer of another candidate with which the answer book of the petitioner tallied was shown to each other and, therefore, sufficient information as to the case which each of the petitioners had to meet was given and therefore no prejudice whatsoever was caused to the petitioners.

It has also been alleged that in para. 8 of the reply that after the receipt of the complaint the copies of the candidates against whom there was a charge of resorting to unfair means were sent to the expert who after going through the answer books had opined that the unfair means have been resorted to by the concerned candidate. It was on the receipt of the report of the expert that the results committee examined the whole case of all the concerned candidates and after due deliberation had come to the conclusion that the petitioners had used unfair means.

4. Mr. M. B. L. Bhargava contended that no reasonable opportunity to meet the case against the petitioners was ever afforded to the petitioners and there was thus a violation of principles of natural justice. It was submitted that the charge levelled against the petitioners was wholly vague and no adequate notice of the case which was to be met by them was given to them so that they could adequately defend themselves. In this connection Mr. Bhargava urged that beside the charge being wholly vague the materials which were used against the petitioners, namely, the examiner's report, the expert's report and the complaint referred to in the reply of the Board were not disclosed to any of the petitioners and, therefore, it cannot be said that a reasonable opportunity of

being heard was given to them. He relied upon *Dipa Pal Vs. University of Calcutta*, ; *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, ; *Sonpal Gupta v. University of Agra* AIR 1958 All 192 ; *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, ; *Ahmad Kabir v. Principal Medical College, Kozhikode* AIR 1967 Ker 121 ; *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, ; *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, ; *Subhas Chandra Paul Vs. University of Calcutta and Others*, ; *Mushtaq Hussain and Another Vs. The Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others*, .

5. As against this, Mr. M. D. Purohit contended that adequate reasonable opportunity had been given to the petitioner to meet the case and there has been no violation of principles of natural justice. It was submitted that the charge was not vague and even if there was any vagueness that was clarified in course of examination by the enquiry officer and, therefore, it was not open to the petitioners to raise a grievance in that behalf. It is said that the petitioners did not ask for any further clarification inasmuch as they said in their statements that they had nothing to say further and therefore it hardly lies in their mouth to make a grievance out of it as the petitioners have also not shown that any prejudice has been caused on account of the procedure adopted by the non-petitioners.

6. The question that emerges for consideration is as to whether there is a violation of principles of natural justice. Generally speaking natural justice implies fair hearing. The authority deciding the dispute should be free from bias and the parties concerned should have adequate notice of the case which the concerned person has to meet and should also be shown all relevant material evidence to be used against the person and further should be given a reasonable opportunity of meeting the case. To what extent the various components of fair hearing are to be observed in a specific situation is a matter which is some what flexible, and no invariable standard of reasonableness in the matter of hearing can be fixed. The question ultimately depends upon the specific facts and circumstances of each case. Basically the contents of fair hearing will vary according to the law under which the authority is constituted and the nature and seriousness of the subject-matter to be dealt with by the domestic tribunal.

To put it differently reasonable opportunity of being heard or fair hearing requires that: (i) the adjudicating authority should give all the information as to the nature of the case which the party has to meet; (ii) should disclose all information, evidence or material which the authority wishes to use against the individual concerned in arriving at its decision; (iii) to receive all the relevant materials which the individual wishes to produce and (iv) it should give to the individual concerned an opportunity to rebut such information or material. In this connection it will be useful to discuss *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, wherein it has been held that the rules of natural justice are

not embodied rules. What particular rule of natural justice should apply in a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the tribunal appointed for that purpose. Whenever a complaint is made before the court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. In the same case it has been held that the aim of rule of natural justice is to secure justice or to put it differently to prevent miscarriage of justice.

7. Mr. M. D. Purohit, however, argued that the enquiries in cases of such nature should not be equated to criminal trials in the ordinary courts of law and the probabilities and circumstantial evidence may in the circumstances of the case be sufficient to pass verdict against the delinquent examinee, In this regard he Laid stress on The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, ; The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, . Prem Parkash Kaluniya Vs. The Punjab University and Others, and Blaise Louis and Others Vs. The Nagpur University, Nagpur and Another, . It was further urged by Mr. Purohit that the court should be slow to interfere with the decisions of the domestic tribunals appointed by the educational bodies like the Board as the High Court in such cases is not sitting in appeal over the decision in question and its jurisdiction is limited. It is true that the enquiry before the domestic tribunal cannot be and should not be equated with the trial in the courts of law. It is also true that the High Court does not sit in appeal over the decisions of the educational bodies and its jurisdiction is rather limited. But at the same time it is to be remembered that the enquiry before the domestic tribunals in the matter of disciplinary actions is of a quasi-judicial character and has to be undertaken in accordance with the principles of natural justice vide, Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . What is the extent of operation of this principle has to be decided on the test as to whether the observance of the rule was necessary for a just decision on the facts of that case. Indeed as stated earlier the aim of rule of natural justice is to secure justice or to prevent miscarriage of justice

At this stage it will be profitable to notice some cases which have bearing on the point before me. In Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, it has been held that the educational body dealing with the disciplinary matter against the examinee must follow the principles of natural justice and give adequate notice to the delinquent examinee of the case which he has to meet. In that case no notice was at all given to the delinquent examinee and, therefore, the order cancelling the examination was quashed. In The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, it has been held that the enquiry committee set up by the Education Boards to enquire into unfair means adopted by the examinee at a particular examination has to decide all relevant

questions in the light of evidence adduced before them. It has also been said in that case that direct evidence in such cases might not be available and the question will have to be considered in the light of probabilities and circumstantial evidence. It has also been observed that the problem which the educational institutions have to face from time to time is a serious problem and the court should be slow to interfere with the decisions of the domestic tribunals. At the same time it has been emphasized that the tribunals in such cases must be fair and students against whom charges are framed must be given adequate opportunity to defend themselves and in holding such enquiries the tribunals must scrupulously follow rules of natural justice although it would not be reasonable to import into these enquiries considerations which govern criminal trials in the ordinary courts of law.

In AIR 1967 Ker 121 it has been laid down that the institutions like college conducting domestic enquiry are under obligation to disclose to the delinquent student as to what materials authorities are going to use against the delinquent student. The disclosure of material and confrontation of the same to the student is the integral part of the defence in absence of which the delinquent cannot make an effective defence. This case of course does not relate to the adoption of unfair means at the examination but nonetheless relates to disciplinary action against a student and the principle of natural justice imported therein is equally applicable to the disciplinary cases against the examinee also. In Subhas Chandra Paul Vs. University of Calcutta and Others, it has been laid down that the specific charges should be informed to the student and further the evidence to be used against the student is to be disclosed to him. To the same effect is the dictum laid down in Mushtaq Hussain and Another Vs. The Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, . In Ranjeet Singh v. University of Rajasthan 1966 RLW 275 : (AIR 1966 Raj 223) the Division Bench of this Court has held that the examinee must be given an opportunity of presenting his case before that organ of the University who has to award the punishment.

I need not deal with other authorities cited by Mr. Bhargava as they are not to the point. As regards the authorities cited by Mr. M. D. Purohit I may say at the outset that the authorities The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, and Blaise Louis and Others Vs. The Nagpur University, Nagpur and Another, are of no assistance as they relate to the case of mass copying where it is not necessary to give specific charges to each of the delinquent examinee. This brings me to the consideration of Prem Parkash Kaluniya Vs. The Punjab University and Others, cited by Mr. Purohit. In that case also it has been held that an examinee must be adequately informed of the case he has to meet and should be given full opportunity to meet it. In proper cases if the information given is not adequate, examinee should ask for further information and normally if he makes a request in this behalf the University would supply him the necessary particulars or details of the evidence.

8. From the foregoing discussion it would appear that firstly, the person affected should be apprised of the charges of unfair means against him as in the absence of a clear notice of the charges against him the person affected is placed at a great handicap to defend himself and such a procedure falls below the accepted standard of procedure of fair hearing; secondly, it cannot base its decision on materials unless the person against whom they are sought to be utilised has been given an opportunity to the delinquent to explain the circumstances appearing against him.

9. In the light of above principles I have now to see whether reasonable opportunity was afforded to the petitioners to meet the case against them. From the reply it appears that a complaint was received by the non-petitioners against the petitioners and it was on that complaint that show cause notices were issued to the petitioners. It is further apparent from the reply that the matter was referred to the expert in the subject who had given opinion against the petitioners even before the enquiry officer examined the delinquent examinee. The enquiry officer did not disclose the gist of the complaint nor the report of the expert which were in existence prior to the date when he embarked upon enquiry. The show cause notice also did not specify the particulars of unfair means alleged to have been resorted to by the petitioners in the subject of arithmetic. The enquiry officer merely inquired as to whether the petitioner copied from the another candidate or whether she allowed the another candidate to copy from her answer books but did not ask whether they copied from a common source.

All that can be gathered from the statement of the petitioners before the enquiry officer is that information was elicited from her as to the fact whether her answer tallied with another candidate's answer and whether she allowed copying or had copied from the answer book of the another candidate. This in my opinion is not at all sufficient specification of the charge and it is difficult to hold that the petitioner could make out from the queries of the enquiry officer the real case which she had to meet. The results committee had relied upon the report of the enquiry officer but that report was also not confronted to the petitioner. Mr. M. D. Purohit seriously contended that it was not necessary to disclose or confront all the materials used by the results committee to the petitioner under the principles of natural justice. I am unable to agree. It is a basic requirement of principle of natural justice that the materials which are sought to be used against a particular individual are to be disclosed to him before any adverse order is passed against him. It was then contended by Mr. Purohit that the petitioner could have asked for furnishing the further materials which she had failed to do and in the statement before the enquiry officer she had categorically stated that she had nothing to say further. According to the learned counsel for the non-petitioners, there was therefore sufficient compliance of the principles of natural justice.

In this connection he has placed strong reliance upon Prem Parkash Kaluniya Vs.

The Punjab University and Others, . It is true that in Prem Parkash Kaluniya Vs. The Punjab University and Others, their Lordships of the Supreme Court have observed that the examinee can ask for more information and details with regard to the material evidence which may be sought to be used against her/him. From these observations Mr. Purohit urges that the petitioner having not asked for the further information she cannot make a grievance in regard to failure to supply particulars as to charge and evidence to be used against her. The observations of their Lordships are to be taken in the context of the facts of that case. The necessary documents were supplied in that case to the delinquent and all the necessary certified copies of the documents including the order of the standing committee were supplied to the candidate. In that case delinquent was also given an opportunity to answer a questionnaire and the standing committee also gave him a hearing and put certain questions to him. As stated earlier what will be the extent to which the principle of natural justice will be imported in a case depends upon the facts and circumstances of each case. In that case the student had asked for the copies also and was made aware of the case which he had to meet. In that context their Lordships in para. 9 of the judgment observed that the copies of the reports of the examiners were supplied to the appellant ,as also the questions which were put to him in the questionnaire by the standing committee when he personally appeared before it and all these facts fully established that he was informed of the charge against him.

It was in these circumstances that their Lordships did not allow the objection of the delinquent in that case. But as regards apprising the nature of the charge and the disclosure of materials sought to be used against the delinquent in my opinion is the responsibility of the Board. The reason is how could the delinquent examinee ask for the incriminating materials to be used against her unless apprised of it. The results committee availed of the examiner's and expert's report without confronting it to the concerned petitioner nor did it give any opportunity to the petitioner for giving explanation. In these circumstances it is difficult to hold that the reasonable opportunity was given in the instant case and consequently there was a violation of principles of natural justice.

10. Mr. Purohit argued that there was no scope for importing the concept of natural justice in such cases inasmuch as the decision of the results committee has been made final u/s 3 of Chapter X of the Regulation. It was, therefore, urged that by implication the statute had left no room for importing the principle of natural justice. I have considered this argument carefully. There is no statutory exclusion of the principle of natural justice expressly or by implication as contended by the learned counsel. Merely because the decision of the results committee has been made final is hardly a ground for saying that there is no room for importing the concept of natural justice in such a case. The statute has nowhere done away with the concept of natural justice either expressly or by implication and, therefore, it is evident that the principles of natural justice are applicable to this case also.

11. As a result of the foregoing discussion it cannot be held that the petitioners were afforded reasonable opportunity. The decision taken against them is thus contrary to the principles of natural justice and cannot be sustained in law.

12. In the result all the twenty-nine writ petitions succeed and are allowed. As in the present cases proper procedure was not followed and no opportunity was afforded to the petitioners to present their case, the impugned notification dated 24-8-1973 has to be quashed and the same is hereby quashed. It will be open to the Board to institute fresh enquiry after following a proper procedure if it so desires. Looking to the circumstances of the case there shall be no order as to costs.