

(1991) 03 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 321 of 1991

Institution of Engineers (India), Calcutta and others	APPELLANT
Vs	
Anil Kumar and others	RESPONDENT

Date of Decision : 19-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 9
Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 34

Citation : AIR 1992 P&H 55

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : R.K. Chhibbar, A.K. Sil and Anand Chhibbar, for the Appellant; V.K. Bali and Anil Khetarpal, for the Respondent

Judgement

1. This judgment disposes of R.F.A. No. 321 of 1991 (Institution of Engineers (India) and others v. Anil Kumar) and others and R.F.A. No. 322 of 1991 (Institution of Engineers (India) and others v. Mohinder Singh and others). The appeals were transferred from the files of Shri M. C. Aggarwal, Additional District Judge, Karnal to this Court.

2. Suits bearing No. 795 of 1988 (Anil Kumar v. Institution of Engineers (India) and others) and No. 796 of 1968 (Mohinder Singh and others v. Institution of Engineers (India) and others) were filed in the Court of the Senior Subordinate Judge, Karnal. In these suits the decision of the Education, Examination and Accreditation Committee (for short, the EEA Committee) taken in its meeting held on April 8, 1988 by which it was proposed that the result of the winter 1987 Examination of the plaintiffs be cancelled and they be debarred from appearing in the coming three/five examinations of the Institution, respectively, was challenged. These suits were decreed by Shri J. B. Sharma, Senior Subordinate Judge, Karnal by judgment and decree dated June 8, 1990. The Institution feeling aggrieved against the judgment and decree passed in the suits filed appeals before the District Judge, Karnal, who assigned them to the Additional

District Judge, Karnal, for disposal.

3. During the pendency of the appeals, the Institution filed Transfer Petition (Civil) Nos. 569-572 of 1990 in the apex Court and the same were disposed of on December 12, 1990, with the following observations:--

"Heard Dr. Shankar Ghosh, learned senior counsel for the petitioners. The grievance of the Institution of Engineers (India) appears to be such which deserves examination under S. 24 of the Civil P. C. by the High Court. The transfer petitions are permitted to be withdrawn with liberty to the petitioners to approach the High Court for appropriate relief under S. 24 of the Civil P. C. However, as a stepnay we direct that further proceedings in the appeals and executions shall be stayed for a period of one month to enable the petitioners to approach the High Court. The petitions are dismissed as withdrawn."

In the light of the observations made by the apex Court, the Institution filed Civil Misc. No. 550-C.II of 1991 and Civil Misc. No. 553-C.II of 1991 in this Court on January 22, 1991 for the transfer of the aforesaid civil appeals pending in the Court of Shri M. C. Aggarwal, Additional District Judge, Karnal. These applications came up for motion hearing before me on January 23, 1991. With the consent of the parties, the following order was passed:--

"Learned counsel for the petitioners states at the Bar that it is not necessary to serve respondents Nos. 2 and 3 for the purpose of disposal of this application.

Notice.

Mr. Anil Khetarpal, Advocate, accepts notice on behalf of respondent No. 1. Without expressing think it proper to withdraw Appeal No. 2 of 1990 titled Institution of Engineers (India) v. Anil Kumar, from file of Mr. M. C. Aggarwal, Additional District Judge, Karnal and transfer the same on the file of this Court. Registrar (Judicial) is directed to summon the records of the appeal forthwith and post it for final hearing on 7-2-1991."

In Civil Misc. No. 553-C.II of 1991, similar order was passed and Civii Appeal No. 3 of 1990 titled Institution of Engineers (India) v. Mohinder Singh Chandel was ordered to be withdrawn from the files of Mr. M. C. Aggarwal Additional District Judge, Karnal to the files of this Court. This is how these appeals were transferred on the files of this Court.

4. The parties have been referred in the body of this judgment as these were described in the plaints. Briefly put, the facts of the cases are:--

Defendant No. 1 is Institution of Engineers (India) incorporated under the Royal Charter issued by the King's Majesty in Council on August 13, 1935. Institution of Engineers (India) (hereinafter referred to as the Institution) has classes of companions, affiliated members, graduates, students and subscribers as its non-corporate members. The plaintiffs are non-corporate members of the Institution. They were granted studentship Associated Membership of the Institution of

Engineers (hereinafter called "A.M.I.E."). The examination of A.M.I.E. consists of Sections "A" and "B". The plaintiffs were enrolled as senior technicians. They appeared in winter 1987 Examination Section B of A.M.I.E. in 8 papers (except Anil Kumar, plaintiff, who appeared in 6 papers). On April 25, 1988, the plaintiffs received letters from the Director (E.E.A.) of the Institution informing them that they had used unfair means while answering question papers in the following subjects:--

- (a) Anil Kumar in paper Industrial Electronics.
- (b) Mohinder Singh in paper Water Resources Engineering and Structural Design.
- (c) Hoshiar Singh in paper Foundary Engineering, Production Technology and Mechanical Engineering Design;
- (d) Raghbir Singh in papers Construction and Foundation Engineering and Structural Design.

The plaintiffs filed representations, but to no avail. They learnt that E.E.A. Committee had resolved in its meeting held on April 8, 1988 that their result of winter 1987 examination be cancelled and they be debarred from appearing in the coming five examinations (except in the case of Anil Kumar, plaintiff, who was debarred from appearing in three examinations). The decision of the E.E.A. Committee was to be submitted for approval by the Council of the Institution. The decision of the E.E.A. Committee has been challenged on various grounds that it was arbitrary, violative of principles of natural justice and based on no evidence. A direction was also sought to the defendants to declare their result.

5. The defendants contested the suits on numerous grounds, namely, that the suits were not maintainable; no rights of the plaintiffs were infringed; the suits were barred by the principle of waiver and estoppel and that the contractual obligations could not be specifically enforced. In addition, the defendants gave in detail the manner and procedure of conducting the examination, checking of answer books and declaration of the result. It is stated that the standard answer books are printed, stapled, numbered, marked and punched for identification by confidential press and despatched as per instructions of the Head Office of the Institution to the various Examination Centres where they are kept under safe custody. Prior to the examination each and every answer book is code stamped making them useable only for a specific session and distributed to the candidates keeping the record of the serial numbers of the answer books against their roll numbers. Immediately after each day's examination, the answer books are sealed and sent to the Head Office at Calcutta by the officer-in-charge of the examination centre. These are then opened, rebundled subjectwise and sent to the respective examiners for evaluation. The examiners after evaluating the answer sheets return them to the Head Office at Calcutta under sealed cover. In the Head Office these answer books are scrutinised by the scrutinisers and overviews appointed for that purpose. The overviewer, while doing at random checking of the answer books of the plaintiffs, observed as under: --

Sr. No. Name of the plaintiff/ Roll Number Name of paper/ Subject Nature of discrepancy

1. Anil Kumar - 7067 Industrial Electronics One of the two original staple pins has been found removed from the main answer books. Two duplicate staple pins of smaller size have been placed instead of it. The other original staple pin has been tampered with. It therefore appears that the candidate has taken assistance unfairly from outside by detaching the inside pages from the front cover.

2. Mohinder Singh - 919 B Structural Design Original staple pins from the main answer book have been found removed. Duplicate staple pins of smaller size have been placed. It therefore appears that the candidate has taken assistance unfairly from outside by detaching the inside pages from the front cover.

Water Resources Engineering (C-7) Staple pins from the main answer book have been removed. Front cover perforation do not match with those on other pages. It therefore appears that the candidate has taken assistance unfairly

Year

Amount of income returned in original return

Amount of income returned in revised return

Amount of income finally assessed

Rs.

Rs.

Rs,

1979-80

20,070

1,49,909

1,69,620

1980-81

50,000

1,48,894

2,00,910

1981-82

50,040

1,94,787

3,61,890

1982-83

71,805

3,42,552

3,94,920

1983-84

10,425

5,97,855

9,16,510

1984-85

62,170

7,26,732

9,19,790

1985-86

2,46,109

-

6,63,570

From this, an inference was drawn that the plaintiffs used unfair means in the examination. Apart from this, there is no other evidence regarding the alleged use of unfair means.

6. On the pleadings of the parties, the trial Judge framed the following issues:---

1. Whether the order dated 8th April, 1988 passed by the Director (EEA Committee), Institution of Engineers (India) by which it was recommended to cancel the result for the Winter 1987 examinations of plaintiffs and further debarring the plaintiffs from appearing in the five examinations is illegal null and void, inoperative and as such not binding on the rights of the plaintiffs OPP.

2. Whether the suit is not maintainable u/ S. 9 of the C.P.C. and S. 34 of the Specific Relief Act? OPD

3. Whether the suit is barred under the principles of waiver and estoppel? OPD

4. Whether the suit is not maintainable being not based on any legal character and right to any property? OPD

5. Whether no declaratory relief could be granted as prayed for? OPD

6. Whether this court has no jurisdiction to try and entertain/dispose of the suit?
OPD

7. Whether the plaintiffs have cause of action to file the present suit against the defendants? OPD

8. Relief.

7. Issue No. 1 was decided in favour of the plaintiffs and the remaining issues were decided against the defendants. Issue No. 1 was in different terms in suit No. 795 of 1988 since the plaintiff therein was debarred from appearing in examination for three years only. The correctness of the decision of the trial Judge under issues Nos. 2 to 7 was not assailed by either of the parties to the appeals.

8. The only question which arises for determination is whether the inference of use of "unfair means" in the examination by the plaintiffs can be deduced from the stapling of the answer-books by a staple other than the one used by the priming press while stapling the answer books. Concededly, during the course of examination no complaint was received by the invigilator of the Centre Superintendent or by the officials of the Institution connected with the conduct of the examination to the effect that any of the plaintiff has used unfair means while answering the question papers. The examiner while evaluating the answer-books of the plaintiffs did not notice that the examinees had copied or got outside help while answering the question papers. There is even no allegation of copying at the examination centre. The officers/officials of the Institution, who were in charge of the examination centre did not receive any complaint either during the course of examination or thereafter that any of the plaintiffs was found copying or taking help from outside in answering the question papers. The E.E.A. Committee only on the basis of report submitted by the overviewer hastened to conclude that the plaintiffs might have added the embossed sheet in the answer-books and thereafter stapled them with different staples and in different manner. This inference is too farfetched and in fact not deducible on the proved facts of the case on the grounds enumerated below:--

(i) If the sheet had been received from outside with the solved question, it ought to have been in different ink and if it was not so then the examinee must have gone outside copies out the answer and brought the sheet inside the examination hall. In the latter eventuality, the invigilator must have reported that any of the plaintiffs had gone outside the examination hall, but there is no such allegation;

(ii) There is no evidence that any of the loose embossed answer sheet could be procured by any of the plaintiffs;

(iii) The plaintiffs did not obtain extraordinary high marks in the papers in which it is alleged by the defendant that they had used unfair means in the course of examination. The following was the score of each plaintiff in the respective question papers:--

plaintiffs name and Roll Number

Paper/subject

Marks obtained

1. Anil Kumar 7067-B

Industrial Electronics

52

2. Mohinder Singh 919-B

Structural Design

60

Water Resources Engineering

66

3. Hoshiar Singh 8663-B

Production Technology

62

Mechanical Engineering Design

59

Foundry Engineering

62

4. Raghbir Singh 976-B

Structural Design

56

Construction & Foundation Engineering

59

The defendants did not produce on record the answer-books of other question papers and the marks obtained therein by the plaintiffs to highlight that in those papers the plaintiffs had poor performance. Perusal of the award is not suggestive of the fact that the plaintiffs had attempted to use unfair means in the examination. The allegation of use of unfair means is unsubstantiated and is based on assumption alone.

(iv) The overviewer at whose report the foundation of the case of unfair means was laid was not examined at the trial in this behalf. The overviewer in his report stated this:--

"Staple pins from the main answer-book have been removed, Duplicate staple pins of smaller size have been placed. It therefore appears that the candidate has taken assistance unfairly from outside by detaching the inside pages from the front cover."

On the basis of this statement, the inference as to the use of unfair means was deduced by him. Failure to examine him renders the entire version of the defendants not only improbable but substanceless. Even if he was unwell as alleged, the Court could have been moved to examine him on commission, but no such attempt was made in this behalf.

9. The defendants evidence belies their theory that in no eventuality a different staple can be used in stapling the answer-book, because in the main answer-book issued by the Institution, a standard staple had been used for stapling. D.W. 1 Bomkesh Chandra Thakurta while appearing at the trial stated in his examination-in-chief thus :--

"The answer books which remain unused are kept in our stores in the examination centres for the next examinations."

The un-used answer books are kept at the examination centres for the next examinations as deposed by this witness. The un-used answer books may be lying in the examination centres for the preceding many years and it is not unlikely that either the staples had caught rust in the store or with the passage of time they could have been loosened from the answer books and may be the supervisor in charge of the store had stapled the same afresh. Moreover, the staples used in the answer books are made of iron and iron catches rust in rainy season. There is no evidence on the record that the un-used answer-books lying at the centre if not used in successive examinations are destroyed after a particular period. Cumulative effect is that the alleged inference drawn by the defendants in the instant cases appears to be farfetched and not worthy of any credence.

10. It is not disputed that the E.E.A. Committee took the decision without affording an opportunity of hearing to the plaintiffs. The rules may not specifically provide for giving opportunity of hearing, but it has to be so construed that an order which has civil consequences can only be passed after complying with the principles of natural justice. The principles of natural justice will be so read in the Rules irrespective of the fact that there is no specific provision therein. At the time of hearing of these appeals, the counsel for the appellant made the following statement on 7-2-1991 :--

"We shall withdraw the minutes of the 121st Meeting of the Education, Examination and Accreditation Committee held on 8-4- 1988 confirmed by the Council of the Institution of Engineers (India) on May 29,1988 qua Anil Kumar, Ex.DW1/C and DW/1/D without prejudice to our contention that the examinee is not entitled to a hearing before any decision is taken by the Education, Examination and Accreditation Committee and by the Council and this will never

be cited as a precedent."

Learned counsel for the appellants also brought to my notice that the Institution has amended the Rules and the amended Rules provide that a candidate against whom allegations of use of "unfair means" are made has to be afforded an opportunity of hearing before taking any action against him on the basis of the allegations. In the ordinary circumstances, I would have relegated the plaintiffs to go and represent to the appropriate authority against the proposed action and would have directed the appropriate authority to pass the order afresh after giving adequate opportunity of hearing to the plaintiffs. But in the circumstances of the instant case, I think it would be unjust to relegate the plaintiff before the appropriate authority of the Institution. It would have an exercise in futility. The plaintiffs appear in the winter 1987 examination. More than three and a half years have passed and Sword of Damocles is still hanging on the heads of the plaintiffs. After examining the file and the evidence produced on record, I find it is a case of no evidence regarding the use of unfair means by the plaintiffs. The Institution appears to have been swayed by irrelevant matter. They drew the inference of use of unfair means merely from the use of different staple on the answer sheet than the standard staples normally used at the printing press where the answer sheets are stapled. As observed earlier, the inference sought to be drawn by the defendants with regard to the use of unfair means was not deducible on the facts of the instant case.

11. Learned counsel for the defendant-appellants was at pains to highlight that no relief could be granted to the plaintiffs in the civil suits. He pressed into service the judgment of this Court in Civil Writ Petition No. 4174 of 1973 (Shri Kaka Singh Rangi v. The Council of the Institution of Engineers (India) etc., decided on October 4, 1974 and the judgment of the Calcutta High Court in Civil Writ No. 803 of 1976 (Radha Kanta Samanta v. The Secretary Ministry of Education), rendered on March 7, 1977, where the Courts declined to issue writ of mandamus to the institution. I am afraid these authorities are not applicable to the facts of the instant case. The plaintiffs had a civil right for the enforcement of which they could maintain civil action. There is no bar under any statute by which Civil Court is debarred from taking cognizance of the suit.

12. The findings under other issues have not been assailed by either of the parties to the appeals.

13. No other point has been urged at the Bar.

14. For the reasons above, I affirm the findings of the trial Court though on different grounds. The appeals are devoid of merits. The same are hereby dismissed but with no order as to costs. Defendants 1 to 3 (now appellants) are hereby directed to declare the result of the plaintiff-respondents in respect of winter 1987 examination within a week of receipt of copy of this judgment.

15. Appeals dismissed.