
(1987) 03 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 1543 of 1985

Jayesh Bhupatri Parikh

APPELLANT

Vs

University of Bombay

RESPONDENT

Date of Decision : 10-03-1987

Acts Referred:

Bombay University Act, 1974 — Section 87
Constitution of India, 1950 — Article 226

Citation : (1987) MhLj 483

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : T.N. Subramaniam and Ishwar Begaria, instructed by Bharat Joshi and U.D. Shukla, for the Appellant; S. Radhakrishnan, for the Respondent

Judgement

1. This petitioner under Art. 226 of the Constitution seeks a writ to quash Ex. F, being an order passed by the respondent, treating petitioner's appearance at the examination of April, 1985 as null and void and further debarring him from appearing for any University examination till the end of the first half of the year 1986.

2. Respondent, the University of Bombay, conducts examinations for various faculties, instructions wherein is imparted by different colleges affiliated to the University, one such college being the K.J. Somaiya Engineering College of Vidyavihar, Bombay. Petitioner appeared for the second semester examination, which began on April 12, 1985 and was over in April 29, 1985. On April 17, 1985, he together with one Parikh Milan, appeared for the Applied Chemistry paper. Petitioner's seat number was 1192, whereas Milan who sat directly behind him, was at seat No. 1193. On 12-6-1985, petitioner was served with Ex. B which is a show cause notice calling upon him to appear before the Unfair Means Enquiry Committee on 14-6-1985, the charge against him being specified as -

"..... Your answers to questions Nos. 2(a), 3(a), (b) and (c) of Section I are identical and some parts of Q. Nos. 4(a), 6(b) and (c) of Section II are identical

with the answers of candidate No. 1193 in the subject of Applied Chemistry. You have thereby practised unfair means when you appeared at the F.E. (Sem. II) examination held in the first half of the year 1985 in the subject of "Applied Chemistry".

The said Committee will meet on 14th day of June, 1985 at 2.00 p.m. in the Executive Council Room, University Buildings, First Floor, Fort, Bombay-400032."

In response to Ex. B. petitioner appeared before the Committee on June 14, 1985 after first submitting a statement in writing which is at Ex. C. In this reply it was first pointed out that the allegations in Ex. B. were vague, totally false and baseless. Petitioner professed not to understand what was meant by the accusation that he had "practised unfair means" at the examination. He disclaimed the charge of copying from Milan, pointing out that that person was sitting behind him. In relation to the charge of copying the answer vis-a-vis question NO. 3(b), petitioner pointed out that he had not attempted that question. The probable similarity in the answers to the other questions, he explained as being due to Milan and him both, having crammed their answers from cyclostyled notes purchased from the College library, What transpired at the enquiry has been detailed at paras 10 to 15 of the petition. On 20th or 30th of July, 1985, the respondent communicated an order purporting to have been passed by the vice-Chancellor in exercise of the powers vested in that dignitary under S.87, Bombay University Act, 1974. The decision was that the accusation of petitioner having adopted unfair means stood proved, and as a measure of penalty, his appearance at the examination was to be treated as null and void and he was to be debarred from appearing for any University examinations till the end of the first half of the year 1986.

3. Petitioner questions all the material events leading up to and culminating with the order incorporated in Ex. F. It is argued that Ex. B. was not specific, that in any case it was served just a day or two prior to the date fixed for holding of the enquiry, that adequate time had not been given to the petitioner to prepared for his defence, that the conduct of the members constituting the Enquiry committee was bereft of and contrary to principles of fairness, that far from the enquiry being fair, two of the members of the Enquiry committee had practised inquisitorial tactics and that he had been abruptly asked to leave the room where the enquiry was being conducted. His request to get papers connected with the enquiry before the passing of the final order had not been complied with. The order at Ex. F was bereft of particulars and showed non-application of mind Ex. F deserved to be quashed and that is the relief claimed by the petitioner. The respondent has filed an affidavit-in-reply through one V.D. Shinde who is the Deputy Registrar of the University's Examination Section. He says tht the affidavit is based on information provided to him by the "Examination Section". In para 4, it is averredthat a full loppportunity was provided to the petitioner by the Enquiry committee. The said Committee made a report to the Vice-Chancellor. The finding of the Committee that petitioner and Milan were guilty

was borne out by the material examined. I identical answers had been given by both the candidates to various questions appearing in the question paper 10 of Shinde's affidavit, in which it is alleged that the petitioner was allowed to scrutinise the answer paper submitted by him as also that of Milan and that petitioner had no explanation regarding the "startling similarity" in the answers.

4. The short question that has to be answered is whether petitioner establishes violation of his rights and is he therefore entitled to the relief sought by him? I find in the affirmative and allow the petition for the reasons given below.

5. Let me first state the basic position governing writ petitions of this nature. The principle applicable is set out in a judgment of the Supreme Court reported way back in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, . Mr. Justice Gajendragadkar speaking for the bench observed thus :--

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them.

In the matter of the adoption of unfair means direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which education institutions have to face from time to time is a serious problem and unless there is jurisdiction to do so, Courts should be slow to interfere with the decision of domestic Tribunals appointed by educational bodies like the universities. In dealing with the validity of the impugned orders passed by Universities under Art. 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt be fair and students cases must, no doubt be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law."

6. It is the above passage against which petitioner's grievance has to be appraised. Forget the petitioner's complaint about the short time given to him for appearing before the Committee. Paras 10 to 15 give details as to what took place when the petitioner appeared before the Committee on 14-6-1985. Shortly

stated, the Committee consisted of three persons viz. Mr. Arunachalam, Mr. Fernandes and one person whose name the petitioner does not know and could not ascertain, despite attempts made to find out the said name from the Superintendent of the Committee. According to the petitioner, his approach to the Superintendent Mr. Chavan met with insulting rebuffs. Para 11 goes on to say that Mr. Arunachalam initiated the enquiry by seeking details about the occupation and income of petitioner's father. Next, his written reply to the show-cause notice was taken on record. The reply was read out by Mr. Fernandes who immediately remarked that the same had been prepared by a lawyer. When petitioner gave no answer to the query of Mr. Fernandes, the latter is said to have remarked that petitioner had been asked to bring his reply, that he should not have employed a lawyer unless he was a criminal and that he could put right persons like the petitioner. M/s. Fernandes and Arunachalam are said to have spoken so insultingly and oppressively, that the third member constituting the Departmental Enquiry Committee staged a walk-out, protesting the attempt to spoil the career of the bright student. Next, there was the comparison of the answer papers of petitioner and Milan. This was attended to by M/s. Fernandes and Arunachalam, who exclaimed the word "same" indicative of what has been termed as a "startling similarity" in Mr. Shinde's affidavit. Para 14 refers to Milan being called in and para 15 refers to the responses of Mr. Arunachalam and Milan as to what was the similarity or otherwise in the two answer papers. From the recitals of the petition, it does not appear that Mr. Shinde was present at the enquiry. Mr. Shinde in his affidavit does not claim otherwise. On the other hand, he makes it clear that the factual part of his affidavit rests upon information provided to him by the Examination Section. It is not clear if the Examination Section included M/s. Arunachalam and Fernandes. Of course in para 11 of the petition, there is a reference to Mr. Arunachalam being an Officer on Special Duty (Examination). I suppose there is a difference between an Officer on Special Duty (Examinations) and the Examination Section to which Mr. Shinde makes a reference in his affidavit. That apart, when sufficient details of what took place at the enquiry had been given in the petition, it was expected of the respondent to reply through one of the members of the Committee named in the petition. The least that one expected, was the affidavit to come from Mr. Chavan the Superintendent of the Committee/Department. There is the further fact that Mr. Shinde's affidavit tendered on August 12, 1985 has not been followed up by another though in the affidavit on record Mr. Shinde has taken leave to file a detailed affidavit "as and when necessary." The clear inference flowing from the non-filing of a detailed affidavit despite the many months that have passed is that respondent was not interested in acquainting this Court with the truth. Much is made of the privilege of the University not to comply with the strict rules of an enquiry, investigation or trial, as a lawyer understands these expressions. True; bodies and institutions which conduct domestic enquiries are not expected to go by the book as is the expectation from the Courts of law. This however does not mean that the basic requirements of fairness can be dispensed with. Here, the petition gives a detailed narration of facts. If that account be true, the

manner in which two members of the Enquiry Committee acted, could not have been bettered by the infamous spanish Inquisition. They had before them a stripling of 17 summers and petitioner was badgered as would be a rodent by canines. As if this was not enough, his legitimate request for documents was not even replied to. To crown all this is the failure of the Vice-Chancellor to give an opportunity to the petitioner to be heard before passing the order impugned in this petition. Section 87, Bombay University Act, empowers the vice-chancellor to pass this or that order in disciplinary matters. However, it does not relieve that dignitary from hearing the aggrieved person. To such a situation applies the following appearing in the judgment of the Supreme Court reported at Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, :--

"The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary."

7. Admittedly, the Vice-chancellor did not call upon the petitioner to show-cause against the findings of the Enquiry Committee. The mere fact that Ex. F recites the granting of a "full opportunity" and the conducting of a "detailed enquiry" and it being proved that petitioner enquiry" and it being proved tht petitioner had adopted unfair means did not mean that there had been compliance with the principles of fair play and justice expected from any authority empowered to carry out a for the person accused. I was referred to certain similarities in the answer papers of petitioner and Milan. One of the similarities is cong out of portion reading -

"glass is homogenous mixture of number of metallic nitrates which"

8. Petitioner had an explanation for the identical scoring out in both the answer papers. He says that Milan who was sitting behind him may have been copying from him without his becoming aware of the fact of copying. There is nothing unreasonable in such an explanation, though I hesitate to say that that is what must have happened. To other similarities an explanation given by the petitioner is that Milan and he both were answering from cyclostyled notes and both being crammers, there may have been a certain indetity in the answers given by them. But the so-called similarities did not exonerate the respondent from giving a fair chance to the petitioner. He certainly did not deserve to be treated in the manner in which he was by the duo conducting the enquiry. The Vice-Chancellor was not absolved from calling upon and hearing the petitioner before passing the order incorporated in Ex.P. Therefore, that order cannot be sustained.

9. The petition succeeds and the order embodies in Ex. F. is hereby quashed. It is declared as being of no consequence to the petitioner's academic career. Rule, in these terms made absolute, with parties being left to bear their own costs.

10. Petition allowed.