
(1971) 03 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 1603 of 1970

Krishna Chandra Prasad Singh	Vs	APPELLANT
The Vice Chancellor, Bhagalpur University and Others		RESPONDENT

Date of Decision : 23-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) PLJR 449

Hon'ble Judges : U.N. Sinha, C.J; K.B.N. Singh, J

Bench : Division Bench

Advocate : Balabhadra Prasad Singh and Shyama Prasad Mukherji, for the Appellant; Ramanand Sinha, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, C.J. and K.B.N. Singh, J.—The petitioner has filed this application under Articles 226 and 227 of the Constitution of India praying that the cancellation of the examination and consequently the result of the petitioner of B.Sc. (Final) 1969 Annual Examination held in the months of August--September 1969 be quashed and the Bhagalpur University be directed to publish the petitioner's result of the aforesaid examination. The relevant facts are these. The petitioner was a student of B.Sc. (Final) of Sir Ganesh Dutt College, Begusarai, under the Bhagalpur University and he appeared at the B.Sc. (Final) Annual Examination of 1969 and was allotted Roll Begu. No. 87. The examination was held in the months of August and September 1969 and on the 20th April, 1970 the result of B.Sc. (Final) Annual 1969 examination was published, but the petitioner was not shown to have passed his examination. Thereafter the petitioner received a notice to show cause dated the 29th April, 1970, a copy of which has been given as Annexure 1. It was mentioned in that notice that it had been reported that the petitioner had adopted unfair means in answering some questions in papers no. I and II of Botany and he was directed to give his explanation. It was also mentioned that if the petitioner wished to appear in

person to give further clarification he might do so. In reply to the show cause notice the petitioner had shown cause in writing, a copy of which has been given as Annexure 2. In substance the petitioner had mentioned therein that he had not adopted unfair means at all and that whatever he had answered; he had so done fairly, as he had prepared himself from his notes with the help of text books and other notes available in the market. Ultimately the petitioner appeared before the Unfair Means Scrutiny Committee constituted by the Bhagalpur University, assisted by experts, on the 1st June, 1970. According to the petitioner, the Unfair Means Scrutiny Committee, had not found anything wrong with the petitioner's answer books and had, therefore, given a report in favour of the petitioner with respect to the charge of use of unfair means at the above-mentioned examination. According to the petitioner, even thereafter he has not been shown to have passed the examination in question and hence this writ application has been filed with the prayers mentioned above. A counter-affidavit has been filed on behalf of respondents no. 1 and 2, namely, Vice-Chancellor of the Bhagalpur University and the Registrar, sworn by Sri Moses, an Assistant of the Bhagalpur University, in which the facts and circumstances, in which the examination by the Unfair Means Scrutiny Committee and experts had taken place, have been mentioned. The specific case against the petitioner is to be found in Paragraph 7 of the counter-affidavit, which states that the petitioner had appeared before the Unfair Means Scrutiny Committee and experts in Botany on the 1st June, 1970 and the experts were Dr. Tarkeshwar Prasad and Sri S.K. Verma, Lecturers in Botany in T.N.B. College, Bhagalpur. It is mentioned that the experts had put questions to the petitioner in respect of answers in respect of which use of unfair means was alleged and also generally to test the knowledge of the petitioner in Botany. According to the counter-affidavit, the experts had come to the conclusion that the student represented by Roll Begu. No. 87 had not satisfied the experts. Thus, according to this counter affidavit, the Examination Board had accepted the recommendation of the experts and had debarred the petitioner from appearing at any University examination prior to the Annual examination of 1970. This counter-affidavit has been supported by another affidavit sworn by Sri Hirdai Narain Rai, who was the Deputy Registrar (Examinations) of Bhagalpur University at the relevant time. Sri Rai has stated that Sri Moses, the Assistant who swore the counter-affidavit referred to above, used to deal with the cases where reports were made about adopting unfair means and that in that capacity Sri Moses was present at the meetings of the Examination Board. Sri Rai has stated that he was also present at various meetings of the Unfair Means Scrutiny Committee and the meetings of the Examination Board. In this affidavit, Sri Rai has stated that the experts had put specific questions to the petitioner relating to the questions in respect of which use of unfair means were alleged to be used and questioned him generally with the idea of ascertaining as to whether he had elementary and basic knowledge of Botany or not. One of the experts, namely, Dr. Tarkeshwar Prasad, has himself sworn an affidavit and he has stated that he was an expert to test whether Roll Begu. No. 87 used unfair means in Botany examination or not and in order to

satisfy whether the candidate had used unfair means or not, he had put specific questions to the candidate relating to the questions in respect of which use of unfair means were alleged to be used and he had put general questions as to whether the candidate, namely, the petitioner, used to have elementary and basic knowledge of Botany or not and he had come to the conclusion that the petitioner had not been able to satisfy him, inasmuch as he had no basic and elementary knowledge of this subject. It may be stated that the petitioner has filed replies to the original counter-affidavit sworn to by Sri Moses to the one sworn to by the Deputy Registrar and to the one sworn to by the expert. The substance of these replies are more or less the same and in the last reply the petitioner has stated that it was not a fact that any specific and definite questions were put to him regarding the question papers in Botany. We have heard learned counsel for the petitioner and the learned counsel for the two respondents and we are of the opinion that the principles which would govern this case are more or less settled earlier by two decisions of this Court in (1) Civil Writ Jurisdiction Case No. 1516 of 1970 and analogous (*Deonandan Tiwary V. The Vice-Chancellor*) decided on the 22nd December, 1970 (1971 P.L.J.R. 428) and (2) Civil Writ Jurisdiction Case No. 1143 of 1970 and analogous (*Badri Narayan Thakur V. Bhagalpur University*) decided on the 18th February, 1971. We now deal with the principal matter for consideration in this case. According to the petitioner, the Unfair Means Scrutiny Committee had not found the petitioner guilty of the charge levelled against him of using unfair means at the above mentioned examination. We have already indicated, that, the petitioner had been examined by experts in Botany on the 1st June, 1970 and the experts were of the opinion that the petitioner had not satisfied them that he was blameless. According to the counter-affidavit, the experts had put questions to the petitioner in respect of the answers, in respect of which use of unfair means was alleged and also questions generally to test the knowledge of the petitioner in Botany. According to the affidavit of one of the experts, namely, Dr. T. Prasad, he had tested the petitioner in the light of the allegation that he had used unfair means in the Botany examination in question. According to the expert, also, he had put specific questions to the petitioner relating to the questions in respect of which use of unfair means was alleged to have been used and he had also put general questions to test the petitioner's elementary and basic knowledge of Botany. According to the expert, the petitioner had not been able to satisfy him that he had basic and elementary knowledge of the subject. Therefore, the petitioner's contention reiterated in his reply to the counter-affidavit of the expert, that, he had correctly answered all the questions put to him at the examination by the Unfair Means Scrutiny Committee or by the expert cannot be accepted. His assertion to the effect that he had not failed to satisfy the Unfair Means Scrutiny Committee or the expert with respect to the questions put to him cannot also be accepted as correct. In substance, the University has proceeded on the experts' opinion, according to which the petitioner must have utilised unfair means at the examination in question, whatever may have been the opinion of the Unfair Means Scrutiny Committee. This is the stand that has been taken in the counter-

affidavit filed by respondents no. 1 and 2, wherein it has been stated in Paragraph 12 that the recommendation of the Unfair Means Scrutiny Committee is not binding on the Examination Board. This matter has been dealt with in (1) Civil Writ Jurisdiction Case No. 1516 of 1970 in Paragraph 31. It was held therein that on a difference of opinion between the members of the Scrutiny Committee and the experts, the decision of the Examination Board could not be challenged if it has accepted the conclusion of the expert or experts. Same view was expressed in (2) Civil Writ Jurisdiction Case No. 1143 of 1970 in Paragraph 9, by another Bench of this Court, of which Sarwar Ali, J. was a common member. It was held in both these cases that the proper authority for coming to a conclusion was the Examination Board and it could base its opinion on the experts' opinion, disagreeing with the opinion of the Unfair Means Scrutiny Committee. Therefore, in this case on the facts and circumstances mentioned above, the petitioner is not entitled to an order for the publication of the result of the examination. The learned counsel for the petitioner has referred to Paragraph 7 of the counter-affidavit of respondents no. 1 and 2 and has argued that all that the experts had concluded after examining the petitioner on the 1st June, 1970, was that, the petitioner had not been able to satisfy the experts and it is argued that that opinion of the experts was too vague on the question in issue. According to the learned counsel, the mere conclusion that the petitioner had not been able to satisfy the experts on the 1st June, 1970 was quite irrelevant to the question in issue namely, whether the petitioner had used unfair means or not in the examination held in August-September 1969. But, in our opinion, there is hardly any substance in the contention, in view of other materials on record, including the actual opinion given by the expert in his affidavit. As stated earlier, according to the expert's affidavit he had examined the petitioner with a view to test whether he had used unfair means in the Botany examination of 1969 or not, and, in order to satisfy whether the petitioner had used unfair means or not, the expert had put specific questions in relation to the questions in and answers of the relevant examination. The expert had also put general questions to test the petitioner's knowledge in Botany. Therefore, clearly, the opinion of the experts is that the petitioner must have used unfair means in the examination, otherwise he would not have fared as he did in his oral examination by the experts on the 1st June, 1970. Therefore, it is not possible to hold that the conclusion of the experts was not germane to the question in issue. For these reasons, in our opinion, the petitioner is not entitled to an order in terms of the prayers made by him in the writ application. The writ application must, therefore, fail and it is dismissed. In the circumstances, however, the parties are directed to bear their own costs of this Court.