
(2007) 04 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3962 of 2007

Kumar Gyanendra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : (2007) 04 PAT CK 0057

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the State.

2. Petitioner is the student of Mithila Minority Dental College, Darbhanga, a college recognized by the Lalit Narayan Mishra University, Kameshwarnagar, Darbhanga (hereinafter referred to as the "University") pursuing Bachelor of Dental Surgery Course (hereinafter referred to as the "Course") which commenced in the year 1999 and earlier he was registered for such course by the University vide Registration No. 28931 of the year 2001. Pursuant to such registration, he appeared in the 1st, 2nd and 3rd Bachelor of Dental Surgery Examination (hereinafter, referred to as the "Examination") 2000, 2001 and 2002 and passed those examinations, as is evident from the mark-sheet granted by the University, as contained in Annexures 1, 2 and 3 to this application. Presently he was appearing in the final examination for which he was given Admit-Card, Annexure-5, perusal whereof indicates that his Roll Number for the said examination is 252 and the examination centre is at C.M. Science College, Darbhanga. In the 1st paper he appeared on 21.03.2007 and for the 2nd paper he appeared on 26.03.2007 and having written the answer-book he submitted the same to the Invigilator present in the examination hall and thereafter went outside the examination hall. At the main gate he was stopped by the policeman present there who asked the petitioner to confirm whether he has submitted the answer-book to the Invigilator in the examination hall. When the petitioner replied in affirmative then the policeman brought him back in the examination hall to confirm the said fact from the Invigilator. The Invigilator then replied that

the fact whether petitioner has submitted his answer-book after writing the same in regular course shall be confirmed by the Controller of Examination and the petitioner was, accordingly, taken to the Controller of Examination, who told the petitioner that he was caught using unfair means during the examination and he has been expelled from the examination, whereafter petitioner was arrested and taken to the Sub-Divisional Magistrate, Darbhanga who imposed a fine of Rs. 2,000/- in terms of the provisions contained in Sections 3 and 10 of the Bihar Conduct of Examination Act, 1981, which amount was also paid by the petitioner, as is evident from the receipt dated 26.3.2007, Annexure-4. Petitioner thereafter filed the present writ application on 28.3.2007 as 27.3.2007 was a holiday and the matter was considered by this Court on 30.3.2007 when counsel for the University, was granted time to file counter affidavit and matter was directed to be considered on 4.4.2007 at 2.15 P.M. with further direction to the University authority to permit the petitioner to appear in the 3rd paper of the Examination scheduled to be held on 2.4.2007. On 04.04.2007 the counter affidavit was filed, copy whereof was served on the counsel for the petitioner on that day itself at 11.50 A.M. In the circumstances, the matter was again adjourned to 8.4.2007 so as to enable counsel for the petitioner to file rejoinder. Meanwhile, petitioner was also permitted to appear in the 4th paper scheduled to be held on 6.4.2007. Petitioner having filed the rejoinder, the matter was considered today in the light of the averments made in the writ petition, counter affidavit and the rejoinder affidavit.

3. From the averments made in the counter affidavit as also the Annexures appended thereto it appears that the petitioner while appearing in the 2nd paper on 26.03.2007 was found copying from a chit possessed by him which was seized by the Invigilator and having seized the chit the Invigilator put his initials over the same alongwith Roll Number of the petitioner and thereafter reported the matter to the Centre Superintendent, C.M. Science College, Darbhanga Centre on 26.03.2007 itself which report is Annexure-A to the counter affidavit, whereafter the Centre Superintendent on the same day reported the matter to the Officer-in-Charge Town P.S., Darbhanga as also to the University alongwith the Invigilator's report and the chit and further proceeded to expel the petitioner from appearing in the subsequent papers of the Examination and notice to that effect as contained in Annexure "C" to the counter affidavit was pasted on the Notice-Board.

4. It is submitted with reference to the Rules for the Guidance of Examinees, as contained in Annexure-F and the Rules Governing Punishment. For Unfair Means at the Examination, as contained in Annexure-G that if a candidate is found copying from any paper then he shall be debarred from the examination in that year and appreciating the allegations as reported by the Invigilator in his report, dated 26.3.2007, the Centre Superintendent has expelled the petitioner from the examination for using unfair means on 26.3.2007 and he has been debarred from appearing in subsequent papers of the examination, as is evident from the notice. Annexure-"C", which expulsion and debarment is certainly subject to the

final decision of the Unfair Means Committee and the Examination Board which shall take final decision in the matter with the approval of the Vice Chancellor.

5. Learned Counsel for the petitioner has assailed the notice, Annexure-C expelling the petitioner from appearing in the subsequent papers of the Examination as violative of natural justice as according to him without serving a notice as to why he should not be expelled from the subsequent papers, the final order expelling him from appearing in the subsequent papers is not only violative of principles of natural justice but also arbitrary and violative of Article 14 of the Constitution of India and should be set aside by this Court, in support of such submission he has relied on various judgments in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , Phul Kumari Vs. Sheodahin Tiwary and Another, , Mohd. Rauf-UI-Azam Vs. The Vice-Chancellor, Aligarh Muslim University, Aligarh and others, , Master Puran Chandel Vs. Himachal Pradesh Board of School Education, and Rakesh Kumar Thakur v. The Union Public Service Commission and Anr. reported in 1985 PLJR 69.

6. Learned Counsel for the University has opposed the aforesaid submission as according to him, present case, is not a case in which principles of natural justice has been violated as no sooner petitioner was found cheating by the Invigilator on 26.3.2007, he not only seized the slip and put his initials over the same but also reported the matter to the Centre Superintendent vide his report dated 26.3.2007, Annexure-A and forwarded the chit, Annexure-8 who thereafter reported the matter to the Officer-in-Charge as also to the University on 26.3.2007 itself, as is evident from Annexures- D and E to the counter affidavit and thereafter proceeded to expel him from the subsequent papers of the Examination and notified the expulsion vide notice, Annexure-"C" and the petitioner having appreciated the correctness of the allegation himself deposited the amount Rs. 2,000/- as fine imposed in terms of Sections 3 and 10 of the Bihar Conduct of Examination Act, 1981 and thus the assertion of the petitioner that he has not been given opportunity to defend the allegations that he was found cheating is absolutely misconceived.

7. It was further submitted that the order expelling the petitioner, as is evident from notice dated 26.3.2007, Annexure-"C", from the subsequent papers of the examination is subject to the final orders of the Unfair Means Committee and the Examination Board, which is also subject to further approval by the Vice Chancellor and the petitioner shall be given opportunity of being heard by the Unfair Means Committee/Examination Board before any final order in terms of Rule-8 of the Rules Governing Punishment for Unfair Means at the Examination is passed.

8. Having heard counsel for the parties, I am of the view that when the Invigilator found the petitioner cheating from a slip/chit and seized the same and put his initials over the chit alongwith Roll Number of the petitioner and reported the matter to the Centre Superintendent and the Centre Superintendent being

satisfied with the report further reported the matter to the Officer-in-Charge as also to the University and thereafter expelled the petitioner from the present examination from appearing in the subsequent papers vide notice dated 26.3.2007, Annexure "C" and petitioner having already deposited the fine of Rs. 2,000/- imposed in terms of Bihar Conduct of Examination Act, 1981, as is evident from Annexure-4 on 26.3.2007 itself, then this Court should not intervene in the matter at this stage until the matter is considered by the Unfair Means Committee and the Examination Board as also the Vice Chancellor of the University, who are the competent authorities in terms of the Rules for the Guidance of the Examinees as also for granting Punishment for Unfair Means at the Examination. In facts and circumstances of this case, prayer made in this writ application has no merit, which is, accordingly, dismissed.