
(2002) 04 AHC CK 0134
In the Allahabad High Court
Case No : C.M.W.P. No. 37756 of 2001

Lal Chandra

APPELLANT

Vs

Vice-Chancellor, Allahabad University and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Allahabad University Ordinances — Ordinance 1.2, Ordinance 1.4

Citation : AIR 2002 All 208 : (2002) 3 AWC 1897

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Lal Mani Bind and B.D. Nishad, for the Appellant; A.K. Goel, S.C., for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—Heard.

2. Perused the materials available on record.

3. In the present case on 6.3.2002, the learned counsel representing contesting respondent Nos. 1, 2 and 4 was directed to produce relevant record of the petitioner. Pursuant to the order dated 6.3.2002, the learned counsel representing contesting respondents has produced the original record relating to cancellation of LL.B. Part 1 Second Examination of 1997 of petitioner.

4. The learned counsel Sri A. K. Goel, representing contesting respondents invited my attention to Chapter XXVIII of Ordinances of Allahabad University relating to Ordinances on the use of unfairmeans and causing disturbances in examination, (hereinafter referred to as Use of Unfairmeans Ordinances). He also Invited my attention to Ordinance 1.2 Definitions of "Unfairmeans" and "Possession of unauthorised material". He brought to my notice the amendment approved by Academic Council on 8.1.2001 wherein it is provided that a candidate found using unfairmeans in an examination shall be required to offer his explanation/reply in the examination hall itself on the U.F.M. form supplied by

the Centre Superintendent/ Head Invigilator/ Invigilator or any Officer authorised by the University. In case the examinee refuses to fill up the form, it will be deemed that he has no explanation to offer and the U.F.M. Committee mentioned in Clause (1.5) shall consider his case on the basis of the material and the report submitted by Centre Superintendent/ Head Invigilator.

5. With the assistance of Sri Goel, I examined the original record produced before me. From perusal of U.F.M. form supplied to him in the examination hall, it is revealed that he has denied recovery of unauthorised material from his possession. The petitioner has also denied in U.F.M. form supplied to him in the examination hall that he has not used so called unauthorised material alleged to have been recovered from his possession. Denial of the petitioner relating use of alleged unauthorised material is accepted by the Examiner in his report while marking his answer book. Thus, only allegation relating to recovery of unauthorised material from possession of the petitioner remains which is to be proved with definable material within the meaning of "possession of unauthorised material" defined under the Use of Unfairmeans Ordinances of Allahabad University.

6. A pointed question is asked to the learned counsel representing contesting respondents asking definable material in support of allegation of alleged unauthorised material recovered from the possession of the petitioner. The learned counsel , Sri Goel invited my attention towards the report of Invigilator relating to recovery of unauthorised material from the possession of the petitioner. The report of the Invigilator is as follows :

"Printed two pages."

7. It is to be noticed that under amended U.F.M. Ordinances, the U.F.M. Committee is to decide the dispute relating recovery of unauthorised material from possession of the petitioner on the basis of material and report submitted by Centre Superintendent/ Head Invigilator. In case on hand, neither Centre Superintendent nor Head Invigilator and submitted report relating recovery of alleged unauthorised material from possession of the petitioner. The report submitted by Invigilator quoted hereinabove has no reasonable nexus with the unauthorised material alleged to have been recovered from possession of the petitioner.

8. The learned counsel Sri Goel representing contesting respondents failed to bring to my notice any report as required under the Use of Unfairmeans Ordinances to be submitted by Centre Superintendent/ Head Invigilator/ Invigilator or any Officer authorised by the University indicating recovery of unauthorised material from the possession of the petitioner within the meaning of "Possession of Unauthorised Material" as defined under the said Ordinance. From the perusal of original record of the case on hand, it is nowhere mentioned that alleged unauthorised material was recovered either from his person or desk of chair or table or at any place within reach in the examination hall and its

environs or having such material on him in the urinal/toilet or passage thereto or therefrom at any time from the commencement of the examination till its end. There is no material whatsoever to show from where the alleged unauthorised material was recovered and how it is established that it belongs to the petitioner specially when it is admitted by Examiner that alleged material is not used by the petitioner. As a matter of fact, the learned counsel representing contesting respondents failed to demonstrate before this Court any report of the Centre Superintendent/ Head Invigilator/Invigilator or any Officer authorised by the University relating to possession of alleged unauthorised material as defined under Clause 1.2 (B) of Use of Unfair means Ordinances or any other link material on record which may even indicate that alleged unauthorised material belongs to petitioner specially where more than hundred students were present in the examination hall. This Court takes Judicial notice of the fact that Invariably in other cases where recovery of alleged unauthorised material is denied by a student in U.F.M. form supplied to him in the examination hall, separate show cause notice is given but it is not understandable in the Instant case under what circumstances the committee constituted under clause 1.4 of the Use of Unfairmeans Ordinances made a departure.

9. Indisputably the order cancelling the result of the petitioner passed by the committee appointed under Clause 1.4 of Use of Unfairmeans Ordinances is amenable to writ jurisdiction. Once it is held that the cancellation of the result of the petitioner is amenable to writ jurisdiction, the petitioner is entitled to demonstrate before this Court that the order cancelling the result of the petitioner on the ground of recovery of alleged unauthorised material from his possession is based on non existent ground.

10. It is revealed from perusal of the order impugned passed by Committee appointed under Clause 1.4 of the Use of Unfairmeans Ordinances cancelling the result of the petitioner that it is in printed form and the dotted lines are filled in by handwriting. In the printed stereo type form only, filling in gap of the name of the petitioner, his roll number, the paper in which he was appearing and the result which was cancelled is done by the Committee appointed under Clause 1.4 of Use of Unfairmeans Ordinances with closed mind. There is no reference whatsoever in the order impugned cancelling the result of the petitioner of LL.B. Part I Second Examination, 1997, what material has been considered to arrive at a conclusion that unauthorised material was recovered from the possession of the petitioner as defined under Clause 1.2 (B) of the Use of Unfairmeans Ordinances. I am objectively satisfied that stereo type order has been passed filling in the gap without application of mind and without disclosing the definable material in support of the order. At least some definable material is required to be referred by the Committee appointed under Clause 1.4 of Use of Unfairmeans Ordinances for cancelling the result of the petitioner. The aforesaid Committee has not disclosed what has persuaded it to reject the denial of the petitioner that no unauthorised material was recovered from his possession.

11. I am of the view that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the quasi judicial power. In the present case, order cancelling the result of the petitioner of LL.B. Part I Second Examination, 1997, is ex facie arbitrary and is liable to be quashed on this ground alone.

12. An Identical question came up for consideration in the case of Travancore Rayon Ltd. Vs. Union of India (UOI), The relevant extract of paragraph 11 of the aforesaid decision is reproduced hereinbelow :

"..... When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

13. I am of the view that proposition of law propounded by Apex Court in case of M/s. Travancore Rayons (supra), is extendable to the facts and circumstances of the given case. The Committee appointed under Clause 1.4 of the Use of Unfairmeans Ordinances has arbitrary and illegally cancelled the result of the petitioner on non-existent ground with closed mind which is not sustainable in the eye of law.

14. In my humble opinion, nothing corrodes the human heart more than feeling of injustice. In the present case, the petitioner who was appearing in LL.B. Part I Second Examination of 1997 denied the recovery of alleged unauthorised material from his possession, but the Committee, appointed under Clause 1.4 of the Use of Unfairmeans Ordinances most unsatisfactorily cancelled the result of the petitioner of LL.B. Part I Second Examination of 1997 by filling the dotted lines of a stereo type printed order. Although It is mentioned in the stereo type printed order that the Committee appointed under Clause 1.4 of the Use of Unfairmeans Ordinances has considered the material but the Committee did not disclose the materials which were considered by it while arriving at the conclusion that unauthorised material was recovered from the possession of the petitioner. The learned counsel for the contesting respondents fails to bring any other definable material in support of order impugned. The report of the Invigilator is silent about the recovery of unauthorised material from the possession of the petitioner. The place of recovery is also not disclosed. The Invigilator was not summoned by the Committee to be examined after giving opportunity of hearing to the petitioner.

15. It is true that principle of natural justice is not a cast iron formula but it was

to be made applicable in the present case where the petitioner has denied the recovery of unauthorised material from his possession. It was necessary for the Committee appointed under Clause 1.4 of the use of Unfairmeans Ordinances to have issued fresh show cause notice to the petitioner and ought to have examined the Invigilator, who has failed to give a report relating to recovery of unauthorised material from the possession of the petitioner. The statutory Committee constituted under aforesaid clause ought to have passed speaking order after giving reasonable opportunity of hearing to the petitioner as he has not refused to fill up the U.F.M. form supplied to him in examination hall. The procedure adopted by the aforesaid Committee in disposal of the present case cancelling the result of the petitioner of LL.B. Part I Second Examination of 1997 is most unsatisfactory, arbitrary, illegal and-against principle of natural justice and fair play. If the order Impugned is allowed to stand, it will encourage the tendency of arbitrary order in cancelling the result of students without disclosing the material in support of the cancellation of their results.

16. I am of the view that at least disclosure of some definable material in support of cancellation of the result of the petitioner was necessary. It is made clear that if some definable material is disclosed in support of the cancellation of the result of a student, then this Court in exercise of its power of judicial review under Article 226 of the Constitution will not enquire into the sufficiency of definable material in support of the cancellation of the result of a student but in those cases where no definable link material has been considered in support of the order cancelling the result of a student on the ground of recovery of unauthorised material, then in such a situation, the order of cancellation of the result is to be quashed.

17. It is held that in the Instant case, procedure adopted by U.F.M. Committee is manifestly unjust and unfair which attracts the vice of unreasonableness. The order passed by U.F.M. Committee in the given case is to be within the scope of the authority conferred upon it by law and secondly it must be reasonable. If any action taken by U.F.M. Committee is found to be unreasonable due to unfair procedure adopted by it, it is to be quashed. The substance of law cannot be divorced from fair procedure which is expected to be adopted by U.F.M. Committee in such cases in future.

18. In abundant caution, it is held that if a student to whom U.F.M. form is supplied by Centre Superintendent/ Head Invigilator/ Invigilator or any Officer authorised by the University in this behalf and he either refuses to fill up the said form or did not deny the recovery of unauthorised material from his possession, then in such a situation it shall be presumed that-unauthorised material was recovered from his possession. In such cases, the U.F.M. Committee constituted under Clause 1.4 of the Use of Unfairmeans Ordinances is not required to give fresh notice calling explanation of such student and adducing evidence in support of the fact that unauthorised material was recovered from possession of the student is not needed for cancelling his result. It is true that if it is found that

unauthorised material was used by the student, then he can be debarred from appearing in corresponding subsequent examination and recovery of unauthorised material from his possession can also be inferred.

19. Upshot of the aforementioned discussion is that the instant writ petition is allowed. The order dated 26.8.2001 produced before me cancelling the result of the petitioner of LL.B. Part I Second Examination of 1997 is hereby quashed with a direction to the respondents to declare the result of the petitioner forthwith.

20. The cost is made easy.

21. Office of the Registry of this Court is to send a copy of this order to the Vice-Chancellor of Allahabad University for Information and placing the same before the Academic Council for laying down proper, just and reasonable guidelines for U.F.M. Committee to decide the controversy relating to unfairmeans adopted by the students keeping in view the doctrine of principle of natural Justice and observations made hereinabove in the body of this order so that innocent, examinee may not suffer either for cancellation of his result of the year in which he was appearing or debarment from corresponding subsequent examination and unscrupulous students adopting unfair-means may not escape punishment.