
(1995) 01 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6532 of 1989

Mahabir Prasad Pandey

APPELLANT

Vs

Secretary Pariksha Committee, Lucknow and Another

RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:

Citation : (1995) 01 AHC CK 0084

Hon'ble Judges : B.M.Lal, J and S.Rafat Alam, J

Final Decision : Allowed

Judgement

S. R. Alam, J.—By means of this writ petition under Article 226 of the Constitution, the sole petitioner has challenged the impugned order dated 911989 (contained in Annexure 1 to the writ petition) whereby his examination of the IInd year Polytechnic (Electrical Engineering) of the year 1988 has been cancelled on account of adopting unfair means in Maths. IInd paper in solving question No. 5(b).

2. The facts of the case lies in a very narrow compass. The petitioner was a student of Handia Polytechnic, Handia, Allahabad, who appeared in the IInd year Polytechnic Examination and was given Roll No. 23669. A show cause notice dated 5101988 was served on the petitioner to show cause as to why his examination should not be cancelled and necessary orders be not passed against him in accordance with law for using unfair means while solving question No. 5(b) of Maths IInd paper on 1051988. The petitioner was said to be sick during that period and therefore, on his behalf his father submitted reply to the show cause notice on 23121988 and thereafter the petitioner himself filed his reply to show cause on 30121988 denying the allegations of adopting unfair means. The petitioner further in his reply to show cause stated that he did not appear in Maths IInd paper on 1051988 as alleged in the notice but in fact, he appeared in the said paper on 3041988 and, as such, the whole allegations appears to be based on suspicion.

3. Learned counsel appearing on behalf of the petitioner submits that on account

of vagueness of the show cause notice, the petitioner has been subject to prejudice and it cannot be said to be a proper notice in the eye of law. Nobody is present on behalf of the respondents nor any counteraffidavit has been filed, although vide order dated 6/4/1989 one month's time was granted to file counteraffidavit. In the absence of counteraffidavit we have no option but to accept the averments made in the writ petition and the submissions made by the learned counsel appearing for the petitioner based thereon.

4. That apart in the said examination similar allegations of using unfair means against some other students of the institution was levelled which was challenged before this Court in Civil Misc. Writ Petition No. 23502 of 1988 and other connected cases. A Division Bench of this Court while allowing the writ petition quashed the cancellation order and charge sheet served upon them and directed the respondents to declare results forthwith. A copy of the judgment has been annexed by the petitioner (as Annexure 1 to the writ petition).

5. It was submitted that the charges mentioned in the show cause notice dated 5/10/1988 were vague and did not indicate as to in what manner, he was using unfair means while appearing in the Maths IInd paper. Further more, even the authorities have mentioned the date of examination as 10/5/1988, although the petitioner in fact, appeared on 30/4/1988.

6. It is evident from the show cause notice that the authorities without applying their mind in a most mechanical manner issued the notice without indicating the specific charges against the petitioner, and as such, in our view, the show cause notice suffers from the vice of vagueness and on this score alone the whole proceeding conducted on the basis of the aforesaid show cause notice cannot be sustained.

7. It is an elementary principle of law that no order to the prejudice of a person should be made without giving him proper opportunity of making his defence and if such proper opportunity is not afforded, the whole order would be invalid on this account alone. In the instant case, the notice issued to show cause is vague and does not indicate the charges and the manner how the petitioner has adopted unfair means, and, therefore the petitioner while giving reply to the show cause notice clearly stated that his Maths IInd year examination was held on 30/4/1988 and he appeared in it on 30/4/1988 and not on 10/5/1988 as stated in notice, even then the respondents did not issue another notice giving the details of the charges which in our view vitiated the entire action against the petitioner.

8. Having heard learned counsel for the petitioner. We are of the view that the show cause notice (contained in Annexure 2 to the writ petition) suffers from vagueness. It does not disclose as to how and in what manner the petitioner was copying and what material was found. Even the impugned order (contained in Annexure 1 to the writ petition) whereby his examination has been cancelled, does not disclose any material or gives any reasons on the basis of which the authorities have arrived to the conclusion that the petitioner was copying and

had actually adopted unfair means. It is a settled principle of law that where an authority is passing an order affecting somebody's vested right, must contain reasons justifying the action. In the instant case the impugned order dated 911989 does not give any reasons and evidence holding the petitioner guilty of adopting unfair means, necessitating the cancellation of his examination.

9. In view of the aforesaid discussions, this writ petition succeeds on the ground of vagueness of the charges levelled against the petitioner in the show cause notice whereupon a nonspeaking order has been passed.

10. In the result, the petition is allowed and the impugned order dated 911989 (contained in Annexure 1 to the writ petition) is quashed. However, it would be open to the respondents to proceed against the petitioner for using the alleged unfair means in accordance with law after complying with the principle of natural justice. However, if the authorities decide to proceed afresh against the petitioner, the final decision in the matter be taken by the authorities within a period of two months from the date of production of a certified copy of this order. In the event of respondents arriving at the conclusion that no action is to be taken against the petitioner, his result of IInd year examination be declared within two months.

11. In the result, the petition is allowed but without costs.