

(1995) 04 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6825 of 1995

Mahipal Singh

APPELLANT

Vs

Vice-Chancellor, Chaudhary Charan Singh University Meerut
and others

RESPONDENT

Date of Decision : 13-04-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1996 All 14 : (1995) 3 UPLBEC 1368

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : A.K. Yog, for the Appellant;

Final Decision : Disposed Of

Judgement

1. The petitioner is a 1992 batch student of M.B.B.S. Course at Lala Lajpat Rai Medical College, Meerut. He appeared in the first professional examination of 1992 batch for which the examination was also held in Sept., 1994. It has been said that at the fag end of the examination of 2nd paper Anatomy. Shri V.K. Pratap, Head of Pathology Department who was invigilating asked the petitioner to leave the examination hall on the allegation that a slip was found from behind the desk of the petitioner. It is said that the petitioner had objected to it and had informed the invigilator that the slip found behind the petitioner's desk is neither in his handwriting nor he was aware of its contents. It is also said that he was not shown the said slip. The petitioner stated in the writ petition that he had neither fitted any form with regard to the alleged incident nor any endorsement was made on his copy of examination. The result of the first professional examination was declared in the month of Oct. 1994 and it was declared that his result was withheld due to the use of unfair means. After declaration of the result the petitioner met the respondents Nos. 2 and 3 and requested them to declare the result since he has not used unfair means while appearing in the examination. No fruitful result was communicated to him.

2. The petitioner narrated in the writ petition about his brilliant academic performance earlier. The petitioner submitted a form for supplementary examination but when he went to deposit the fee for the supplementary examination the same was not accepted and he was told that by the impugned order dated 18-2-1995 the result of the petitioner was cancelled and he was debarred from appearing in any examination of the University till 1996.

3. The main ground for challenging the order is that the same was passed mechanically without application of mind and also in violation of principles of natural justice. No enquiry was conducted, no charge sheet was given to the petitioner and the order debarring the petitioner and cancellation of the result was passed.

4. Supplementary affidavit was also filed by the petitioner. Counter affidavit has been filed on behalf of the respondent-University.

5. On 20 March, 1995 this Court had directed the respondents to produce the answer books of the petitioner before the Court. After second order of the Court dated 27-3-1995 the answer books have been produced before the Court today. I have examined the answer book produced by the learned counsel for the respondent. The answer book is without any rubber stamp fixed thereon it is written on it in Hindi. The following writing in Hindi reads as under:

"Maine yeh copy bathroom se utha kar laya houn aur is per maine roll number likha hai".

Further on the right side of the said writing it is written in Hindi as under:

"Maine yah galti kari hai mujhe jo dand diya jayega, mujhe swikar hai"

6. Learned counsel for the respondents also produced the original records which contained photo copy of the representation dated 28-2-1995 addressed to, His Excellency The Governor of Uttar Pradesh Lucknow. It has been said in Anatomy paper the answer book was sealed and sent to the University as use of the unfair means. When the result was announced it was known that the result of the examination was withheld. A letter was received by the petitioner in which it was said that the petitioner will not be permitted to appear in any examination up to 1996.

7. It has been stated in the said representation that the application form for the examination to be held in March has been filled in and submitted. The petitioner is said to have stated in the representation that the mistake committed by him in appearing in the examination be pardoned. He assured that he would not repeat such mistake in future. He has also disclosed that he is a brilliant student having first class in High School and Intermediate and his previous records and character have been good. He prayed for pardoning him and ask for granting permission to appear in the examination.

8. In the counter affidavit filed by the respondents, the respondents have stated

that the petitioner had used unfair means in replying the answer of Anatomy first paper. It is said that the petitioner had torn the pages of his copy of the Anatomy first paper and deposited only three pages of the copy, which was detected at the time of arranging the copies of the examination. This matter was reported by the invigilator. The petitioner was caught with "A" copies in Anatomy second paper examination and original "A" copy on which there was proper seal and signature of the invigilator and on the other "A" copy there was neither any seal nor any signature of the invigilator. The second "A" copy was containing the answers of all the five questions which examinee was required to write. The petitioner told the invigilators that he found this copy from the Bathroom and wrote his roll number on it to secure good marks. He also wrote the same on the copy and signed it in the presence of the authorities and the matter was reported to the University.

9. The fact that no formal charge sheet was prepared and served on the petitioner has been explained by the respondents in para 15 of the counter affidavit by saying that since the petitioner had admitted his fault of using unfair means. After this admission it was not necessary to afford any other opportunity of showing cause to the candidate. The examination copy of the petitioner itself proves the use of unfair means. This charge is said to have established as it is intrinsic evidence, moreover in his representation to the Vice Chancellor and also to the Chancellor he has admitted his fault, An Unfair Means Committee were constituted having an expert from the faculty as its member and after examining the copies of the petitioner and the report of Assistant Examination Superintendent awarded the category-II i.e. cancelling the result of 1994 examination and debarring him from appearing in any examination of the University up to 1996.

10. Learned counsel for the petitioner argued that the observance of rule of natural justice is not a mere formality, it has a sense of justification behind it.

11. Learned counsel for the petitioner further submitted that it was necessary for the Examination Committee and the respondents to have given an opportunity before actually passing the impugned order of cancelling the result and debarring him from appearing in the examination of 1996. The learned counsel for the petitioner submits that the petitioner was under coercion and Head of Department and Senior Professors coerced him to write on the answer book, and such writing on answer book cannot be said to be voluntary writing and the petitioner should have been given an opportunity in what circumstances this writing was made by him on the answer books. Learned counsel for the petitioner no doubt could not say anything about the facts stated in the representation before the Chancellor and the Vice Chancellor in which he has prayed for pardoning him. It is well settled the principle of law that the rule of natural justice is to be complied with in its true sense and spirit unless it is shown complying with it would not be safe to rely on the conclusion drawn by the authorities. At least an opportunity should have been given to the petitioner to

explain in what circumstances the said writing mentioned above was written by him. The principle that justice is not only done but should appear to have been done is a maxim which is always to be borne in mind before any such order which may affect the career of the student. In view of the facts and circumstances stated above I consider appropriate to direct the Examination Committee to frame a formal charge and give an opportunity to the petitioner of showing cause before passing the orders in the matter of use of unfair means alleged to have been committed by the petitioner. The impugned order of cancelling the petitioner's result and debarring him from appearing in examination up to 1996 is hereby quashed. The Examination Committee and the Vice Chancellor may consider the matter afresh after giving due opportunity to the petitioner as indicated and pass appropriate order within a period of one (sic) from the date of presentation of the certified copy of this order. With these observations the petition is disposed.

12. A copy of this order may be given within one week on payment of usual charges.

13. Order accordingly.