

(1986) 08 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1400 of 1986

Miss Anita Mittal

APPELLANT

Vs

Sukhadia University, Udaipur and Another

RESPONDENT

Date of Decision : 18-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1987 Raj 48 : (1986) RLW 677 : (1986) 2 WLN 743

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Advocate : Ramakant Pareekh, for the Appellant; H.M. Pareekh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has challenged the order dated 4-7-1986 whereby the petitioner was debarred from appearing in the papers of Chemistry and Zoology of Pre-Medical Test held in 1986. It has further been prayed that she must be awarded marks on the basis of the marks obtained by her in Physics and Botany in the Pre-Medical Test or that the non-petitioners may be directed to conduct Special Examinations for the papers of Chemistry and Zoology of Pre-Medical Test 1986 and to declare the result accordingly.

2. The petitioner has appeared in the Pre-Medical Test, 1986, at Dungar College Centre Bikaner. Her roll number was 3243. It is alleged that she is a first class student. She appeared in the P.M.T. Examination 1986 on 2-7-1986 in the paper of Physics and on 3-7-1986 in the paper of Botany. On 4-7-1986 when she was solving the paper of Chemistry a flying squad came to inspect the conduct of examination and searched the objectionable material from the candidates. At 8.45 A.M. when they asked the petitioner to show her hands, it was found that something was written on her palm. The members of the flying squad took her in the office of the Central Superintendent and seized her paper and answer book. The petitioner tried to persuade the Central Superintendent and the members of

the flying squad that whatever she has written on her palm was not visible nor it can be used for solving the paper concerned. The petitioner's entreaties did not persuade authorities and she was informed that she would not be allowed to appear in the said paper as well as in the future papers which were due to be held on 5-7-1986. Whatever symbols written on the palm were reduced on the paper. Next day i.e. 5-7-1986 the petitioner appeared along with her parents to solve the paper of Zoology, she was informed by the Central Superintendent that she has been debarred from the examination. The petitioner suspected some foul play on account of Shri C. K. Bohra. Lecturer in Zoology in Dungar College, Bikaner. It is alleged that she was taking private coaching but she left Shri Bohra. Therefore, whole thing has been done on account of the ill will of Shri Bohra. It is in these circumstances the petitioner has approached this Court by filing the present writ petition.

3. A return has been filed by respondent 1 and the facts averred by the petitioner in the writ petition are more or less accepted. It has been submitted that the petitioner never contested and whatever symbols" she has written on her palm do not relate to the subject matter of her examination. It is stated that she only submitted that she did not make use of it and she assured that such mistake will not be committed in future. It is submitted that the very fact that she has written some thing on her palm shows that she has brought objectionable material with the intention to use it which the petitioner was not supposed to do. It is submitted that bringing something objectionable in the examination hall indicates certain purpose otherwise no candidate would bring such things in the examination hall. This was found to be an objectionable material under Clause 14 of the Instructions issued to [he students. This was treated as unfair means. The Central Superintendent who is authorised to decide this, cancelled the examination of the petitioner and sent it to the Controller of the Examination and the Vice-Chancellor, Sukhadia University, Udaipur. This action of the Central Superintendent was approved and the petitioner's examination was cancelled. The so-called allegations against Shri Bohra have been denied.

4. The instructions which have been issued to the P.M.T. students and which are relevant for our purpose are Clauses 14 and 15. Clause 14 reads as under : --

"14. The invigilators, the Flying Squad and the examination Supervisory staff shall be competent to take search of any candidate to find out whether the candidate possesses any objectionable material. Refusal by the candidate to be searched would raise the presumption that he/she is in possession of objectionable material. A candidate possessing objectionable material or resisting search shall be punishable as per rules concerning unfair means."

Clause 15 reads as under : --

"15. Candidates resorting to the use of unfair means shall be turned out of the examination hall/room and the examination shall be treated, and cancelled as a whole. The Centre Superintendent shall be the sole judge to determine whether

unfair means have been resorted to. He will submit the report stating full facts of the case to the Controller of Examinations for further necessary action." On the admitted facts the question is whether such action of the candidate of writing some symbols on her palm amounts to unfair means or not. Secondly, whether the action taken by the respondents is in consonance with the principles of natural justice or not. Clause 14 authorises the invigilators, the flying squad and the supervisory staff of the examination to search any candidate to find out any objectionable material. It further contemplates that refusal by the candidate to be searched would raise a presumption that he/she is in possession of objectionable material. In the event of possessing objectionable material and resisting the search both have been made punishable as an unfair means. Clause 15 contemplates that a candidate resorting to unfair means can be turned out of the examination hall and his examination may be treated as cancelled as a whole. In this connection a discretion has been conferred on the Central Superintendent and he has been made the sole judge to determine whether unfair means have been resorted to or not. He will submit his report stating full facts to the Controller of Examinations.

5. In the present case, the report has been submitted by the Central Superintendent which does not disclose proper application of mind. The report is on record as Ex. R.1. When a sole authority has been conferred on the Central Superintendent then it becomes all the more necessary that that authority should exercise his discretion with great amount of circumspection. It is an admitted fact that the petitioner had written something on her palm and which are only some abbreviations. The petitioner was caught. She admitted that something was written on her palm but at the same time she submitted that she did not make use of it. The Centre Superintendent in his report while forwarding the papers only said that material found is objectionable, thereby he cancelled the examination and recommended the same to the Controller, instead of giving a detailed reason that the abbreviations which were written on her palm are capable of being used or were used in the paper like Chemistry. The report is absolutely vague. Simply writing or repeating a parrot like expression that the material found is objectionable as written in the instructions will not serve the purpose. As observed above that when a sole authority is conferred on one individual then he is required to take little more care and his action is required to be judged very strictly. The exercise of such discretion by a Central Superintendent would mean depriving a candidate of whole of the examination and it has very serious repercussion. Thus, such authority should before taking such a serious action apply its mind consciously and with all amount of care. Here in the present case, the Central Superintendent has only recorded that the material found is objectionable. He did not elaborate that these so-called abbreviations could have any relevance to the subject or not. The Central Superintendent has not mentioned in his report that the abbreviations appearing on the palm of the petitioner have been used or not or whether they are capable of being used in the paper of Chemistry. This only shows that the Central

Superintendent has not applied his mind properly.

6. Learned counsel for the petitioner has invited my attention to a decision of this Court in *Narendra Gupta v. University of Raj.* 1986 Raj LR 190. But in that case the expression "unfair means" was defined and the learned single Judge while interpreting the expression unfair means observed that unauthorised material should be read with relevance to the examination and after examining the matter on facts found that it has not been shown whether the material was relevant to the paper concerned or not. It was observed as under: --

"It should undoubtedly be emphasised that the use of unfair means by students at the examinations needs to be curbed with a strong hand and those found guilty of using or trying to use unfair means should be severely dealt with, but what is to be taken care of in doing so is that merely because of a highly technical interpretation of the relevant provisions, punishment should not be imposed upon those candidates who do not deserve to be punished or the brilliant academic career of some bright students may not be marred in our zeal to eradicate the evil of using unfair means."

Thus, the learned Judge observed that without showing that the objectionable material had any relevance with the paper, the petitioner's examination has been cancelled and a very hypertechnical approach has been resorted to. Learned counsel further invited my attention to the judgment of this Court in *Dilip Kumar Patni v. State of Rajasthan* 1986 Raj LR 314 and *Shyam Sunder Pathak v. University of Raj.* 1986 Raj LR 498 and specially drawn my attention to (he observations made in *Shyam Sunder Pathak's* case, wherein a direction has been issued by the Court for holding special examinations in the paper concerned and declaration of the candidate's result on the basis of the marks obtained in such special examinations.

7. Mr. Pareekh, learned counsel for the respondents has also invited my attention to a decision of their Lordships of the Supreme Court in *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, and submitted that in dealing with matters relating to orders passed by authorities of educational institutions under Article 226 of the Constitution the High Court should ordinarily be reluctant to issue a writ of certiorari where regulation is capable of two constructions and the construction given by the educational authorities should be adhered to. He also invited my attention to the decision of their Lordships of the Supreme Court in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*,

8. I have examined both these authorities and I am constrained to say that both the cases referred to above do not provide any assistance to him. So far as *Kalyan Srinivas Raman's* case is concerned it related to interpretation of regulation and it did not relate to the case of unfair means. It can only be observed that normally the decision of the educational institutions should not be disturbed lightly. That is not the case before me.

9. Similarly Bagleshwar Prasad's case was a case in which an enquiry committee set up to deal with the problem posed by candidates by the adoption of unfair means in examination and the examination results were cancelled. In this case, it has been observed that in matter of cancellation of examinations where the same is based on a quasi judicial enquiry then the High Court sitting under Article 226 of the Constitution should not interfere as it is not sitting in appeal over the decision in question. However, it was further emphasised that the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. In the peculiar facts of that case the Hon''ble Supreme Court held that the High Court should not have interfered with the cancellation of the student's results. But the peculiar facts of the present case are wholly distinguishable with the facts which persuaded their Lordships of the Supreme Court to uphold the order of cancellation of the student's result. In the present case as mentioned above there is no time lag left for issuing a show cause notice to the candidate asking her to show cause why examinations should not be cancelled. In the present case, the Central Superintendent was the sole judge. But he has to examine the matter and pass the order of cancellation of one paper or whole of the examination on the spot. Thus, where such blanket power has been conferred on the Centre Superintendent it is expected from him to at least pass an order showing the application of mind. It is also expected of him to record that the papers or the material which has been found from the candidate was objectionable for good, bad or indifferent reason. But in the present case nothing of that kind has been shown and the Central Superintendent has only rest contented by saying that objectionable material was found. He has not shown in what respect the material was objectionable. It is just possible that something might be inadvertently written on the palm which does not have any relevance either with the paper or the syllabus; then such a material cannot be treated as objectionable material so as to cancel the examination. Thus, when such sole power has been vested on the Central Superintendent of cancelling the candidate's examination, resulting in a great setback to the candidate then such kind of slipshod action cannot be permitted. When higher power is conferred then it involves a higher responsibility in its discharge. In this view of the matter I find that the report of the Examiner Ex. R.1 on which the petitioner's examination has been cancelled by the respondents is highly arbitrary, illegal and deserves to be quashed. 10. Now the next question is what relief can be granted in the present case when the P.M.T. Examinations are already over. In this connection I would like to refer to the useful observations made by Hon''ble S.C. Agrawal, J. while disposing of the case of Shyam Sunder Pathak's case (1986 Raj LR 493). In that case, Hon''ble S. C. Agrawal, J. referring to the other case reported in Heeralal v. State of Rajasthan, (W.P. No. 2174 of 1984 decided on 27-8-1985 at Jodhpur) observed as under : --

"In these circumstances the Court directed the University to hold a special examination in the subject in which the said petitioner was declared to have

failed and to declare the result of the petitioner on the basis of the marks obtained in the special examination."

In the present case when I have found that the report of the examiner is wholly laconic and it does not disclose the application of mind at all, therefore, the only alternative left with me is to direct the conduct of special examination for the petitioner for P.M.T. Examination of 1986 in subjects of Chemistry and Zoology which has been cancelled by the order of the Central Superintendent and confirmed by the Controller of Examinations.

11. In the result, the writ petition is allowed. The respondents are directed to hold special examination of P.M.T. for the subjects Chemistry and Zoology for petitioner. After holding such examinations of these two papers the total marks obtained by the petitioner in the two subjects i.e. Physics and Botany should be counted and after that her result should be announced. If she succeeds in the examination then she should be admitted to M.B.B.S.

12. The parties are left to bear their own costs.