

(1965) 11 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2506 of 1965

Mohinder Lal Jain

APPELLANT

Vs

The Vice-Chancellor, Punjab University

RESPONDENT

Date of Decision : 04-11-1965

Acts Referred:

Citation : (1965) 11 P&H CK 0047

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Jagmohan Sethi, for the Appellant; D.S. Nehra with Mr. K.S. Nehra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—An order, dated April 3, 1965 (communicated by the Registrar of the Punjab University to the Principal of the Punjab Engineering College, Chandigarh, on May 4, 1965), disqualifying Mohinder Lal Jain petitioner from taking the Final Engineering (Part I) Examination of the University under Regulation 12 (b) (at page 89) of the Punjab University Calender 1962 (Volume I) "for the years November 1964 to April 1966" on a finding to the effect that the petitioner had been guilty of using unfair means at the examination held in November, 1964, has been impugned in this writ petition under Articles 226 and 227 of the Constitution by Shri Jagmohan Sethi, Advocate, on the following three grounds:

(i) That the external examiner's first report dated December 11, 1964, and his subsequent detailed report, dated March 3, 1965, were not shown to the petitioner before he was punished. The said reports were admittedly used against the petitioner and in so far as copies of the same were not furnished to the petitioner, the rules of natural justice were violated;

(ii) That on merits punishment has been inflicted on the petitioner on mere suspicion without there being any direct evidence against him for having had free

consultations with the other candidate or of having copied any part of the paper from the other candidate; and

(iii) That even if the facts said to have been found against the petitioner are deemed to be correct, his case would at the maximum fall within the mischief of Regulation 12 (a) and not Regulation 12 (b) at page 89 of the Punjab University Calender 1962 (Volume I) In order to appreciate the above contentions of the learned counsel for the petitioner, it is necessary to set out in some detail the relevant facts leading to the filing of this writ petition.

2. When the result of the final Engineering (Part I) Examination held in November 1964 was announced, the petitioner's result was not declared and was withheld by the University. Letter, dated January 2, 1965 (copy Annexure R. 1) to the written statement, was received by the petitioner on January 4, 1965, informing him that a complaint had been received against the petitioner to the effect that he had used unfair means while taking the above-said examination. The petitioner was advised to see the Deputy Registrar (Examinations) in his office on January 11, 1965, between 9 a.m. and 12 noon in connection with an inquiry which was to be conducted by the Deputy Registrar on that day. In the said communication the petitioner was further informed that at the time of the inquiry all the accusations against the petitioner and the material, on which each accusation was based, would be brought to the petitioner's notice in writing and he would be given a reasonable and adequate opportunity to explain his position.

3. The petitioner admittedly appeared before the Deputy Registrar on January 11, 1965, and was given a questionnaire containing nine questions which he was expected to answer. Copy of the questionnaire and the answers given by the petitioner has been produced as Annexure R-2 attached to the written statement of the University. In answer to Question II the petitioner admitted that he was sitting to the right side of Jagdish Dhingra, the other candidate from whose paper the petitioner was alleged to have copied certain answers. Questions Nos. VI and VII put to the petitioner were in the following words:

VI. The examiner in Mechanical Machine Design Paper II after scrutinising the scripts of Roll Nos. 183 and 176 in his report (page) 1 read out to you has observed that the examinee Roll No. 176 seems to have copied answers to questions Nos. I, IV and VI from the script of Roll No. 183 and their answers to these questions are also word for word and line by line the same. What have you to say in this connection?

VII. The report of allegation and the evidence thereof has been shown to you. You are now at liberty to explain your position in the light of these allegations to your entire satisfaction.

To the above questions the petitioner gave the following answers:

VI. I do not know anything about anyone else. I have solved all the questions myself.

VII. I cannot think of how the allegations have been made. I want no explanation but know this thing that allegations must be baseless.

4. In question No. VIII the petitioner was clearly informed that disciplinary action was sought to be taken against him under Regulation 12 (b) of the University Regulations referred to above. Question No. IX, to which the categorical answer of the petitioner was in the negative, was in the following terms:

Have you anything else to say in connection with your case of unfair means?

5. After having given answers to the nine questions, the petitioner appended his declaration about his answers being correct.

6. As there was some discrepancy between the answers given by the petitioner and by Jagdish Dhingra, against whom also similar proceedings were being taken by the University, a clarification in that respect was sought on a reference to the records of the University. It is admitted by the petitioner that he was again called and told about the material on which the arrangement of seating in the examination hall centre had been found to indicate that Dhingra and the petitioner were sitting side by side. The petitioner did not even at that stage ask for any further information or any additional opportunity. The University authorities seem to have taken further precaution by forwarding the two answer-books of the two respective candidates and the opinion of the examiner to an expert Shri J.N. Bhatnagar, of the Department of Chemical Engineering and Technology, Punjab University, Chandigarh. Though Shri D.S. Bedi, the external examiner, had in his original report, dated December 11, 1964 stated that he had noticed that the two candidates in question had either copied answers to three questions, namely questions Nos. I, IV and VI, word by word and line by line from each other, or had otherwise free consultation between them, Mr. Bhatnagar in his written opinion, dated March 10, 1965 (copy Annexure R-5), observed that the candidates did not seem to him to have copied "word by word" and "line by line" as reported by the external examiner, but that both the candidates in question had been freely consulting each other as it was clear from the various facts detailed in his said written opinion. After obtaining the written opinion of Shri Bhatnagar the petitioner and Dhingra were again called by the University authorities and the opinion of Shri Bhatnagar as well as the detailed opinion, dated March 3, 1965, which had in the meantime been given by Shri Bedi, were shown to the petitioner on March 15, 1965. The proceedings of the inquiry held on that day were also reduced to writing and a copy of the same has been filed as Annexure R-7 to the written statement of the University. Questions Nos. 2 and 3 put to the petitioner at that confronted inquiry and the replies given to the same by the petitioner may be quoted verbatim-

Questions Answers

"Question No. 2 Your case was referred to the external examiner, whose detailed report running into 12 handwritten foolscap pages if shown to you and read to you. The exhaustive report leaves little doubt that you along with Roll No. 176

used unfair means during the course of examination in Mechanical Machine Design paper held on 12th November, 1964. What have you to say? I have been shown the report. In my opinion the report is baseless. I have done all the questions myself.

Question No. 3. Your scripts and that of Roll No. 176 along with the first report of the external examiner were sent to a University expert for his independent opinion. His report is shown and read to you. He has concluded his report with following words:—"In my opinion both candidates have freely consulted each other." What have you to say? There is nothing of this sort. I do not want to say anything, but am fully confident that this is quite baseless."

In question No. 5 put to the petitioner on that day he was again asked as to why action under Regulation 12 (b) should not be taken against him. He stated that he had not used any unfair means and no question of disciplinary action to be taken against him could, therefore, arise. Even on that occasion he did not ask for being shown any other documents or being afforded any further opportunity in connection with the action proposed to be taken against him. The entire material thus collected against the petitioner and against Dhingra was then put together by the Registrar of the University and placed before the Standing Committee constituted for deciding cases of suspected unfair means. The Committee in this case consisted of Shri G.L. Chopra, a retired Judge of this Court, and Bakhshi Sher Singh a retired District and Sessions Judge of this State. Unfortunately both the candidates involved in this episode were otherwise reported to have had a bright career. Even that aspect was not kept back by the Registrar and he had referred to the same in the following words:

Taking into consideration the fact that these two candidates have been quite brilliant, the offence committed by them in rendering help to each other during the Mechanical Machine Design paper which was held on 27th November, 1964 assumes a good deal of seriousness, though their past brilliance adds a tragic touch to the case. It is a pity that in our country such brilliant students who could be a great asset to the society should have taken recourse to such methods which bring little credit to them or to their institution.

7. After having gone through the entire record of the case the members of the Standing Committee held that both the candidates in question, including the petitioner, be disqualified for a period of two years, as referred to in an earlier part of this judgment. The decision of the Standing Committee, which was the decision of the University, was communicated by the Registrar to the Principal of the Punjab Engineering College, Chandigarh, on May 4, 1965, and was in turn conveyed by the Principal to the petitioner by a communication, dated May 31, 1965, of which Annexure "A" to the writ petition is a copy. On receipt of the above-said communication the petitioner submitted a "mercy petition" to the Vice-Chancellor of the University, of which copy is Annexure "B" to the writ petition. In the said mercy petition the petitioner emphasised that there was no direct evidence against him and that it was not a case where he had been caught

red-handed in the examination hall. He also suggested that the distance between his seat and that of Dhingra, the other candidate, did not suggest the use of any unfair means. He then referred to his earlier brilliant academic career and ended the petition in the following words:

Keeping in view the facts mentioned above and in the absence of any evidence it is prayed that he may be exonerated honestly. Needless to say that there has been already a great mental torture to him as well as to his parents since the day when it was first brought to his notice and the day of the receipt of the above orders and a punishment like the one only suggests to crush him both financially and academically.

8. It is significant to note that the petitioner did not make even the slightest grievance against the manner in which the charges against him had been enquired into or of the lack of any possible opportunity having been afforded to him by the University authorities. Nor did he ask for any papers or documents being shown to him in order to enable him to make effective representation to the Vice-Chancellor. After the submission of the above petition, letter, dated June 13, 1965 (copy Annexure "C" to the writ petition, is said to have been sent by the petitioner to the Registrar of the University requesting for being supplied with copies of the following documents:

1. Letter, dated May 4, 1965, from the Registrar of the Punjab University to the Principal of the Punjab Engineering College, Chandigarh;
2. Report of the Examiner;
3. Final order passed by the Standing Committee; and
4. Opinions given by different experts in connection with the petitioner's case.

9. By letter, dated July 21, 1965 (copy Annexure "D" to the writ petition), the petitioner was informed by the Registrar of the Punjab University that the Vice Chancellor had rejected his appeal but that if the petitioner wanted to have copies of certain documents in connection with his case, he was advised to call at the office of the University on any working day during office hours and copy out those documents him self.

10. It is in the above circumstances, that this writ petition was filed on September 20, 1965, and was admitted on September 27, 1965.

11. The University has filed a detailed affidavit, dated October 26, 1965, in reply to the writ petition. In the reply it has been sworn to by the Assistant Registrar (Examinations IV) that on March 15, 1965, the petitioner as well as Dhingra named above were shown the entire record, including the 12 page report of Dr. Bedi and the written report of Dr. Bhatnagar. It has also been sworn to on behalf of the respondents that when the petitioners was asked if he wanted to say anything more, the petitioner's reply was in the negative. It is further stated on behalf of the University that the Standing Committee after going through the

entire relevant record came to the above-said conclusion and similar action has been taken against Dhingra also.

12. The law relating to the scope of the jurisdiction of this Court under Article 226 of the Constitution to interfere in orders of this type is by now well-settled. In *Board of High School and Intermediate Education, U.P. and another v. Bagleshwar Prasad* 1963 A.I.J. 676 it has been authoritatively laid down by their Lordships of the Supreme Court as follows:

In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But 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. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no mala fides have been pleaded. The enquiry has been fair and the respondent has had an opportunity for making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent.

13. In the above-said case it has been further held by the Supreme Court that it would be inappropriate in cases like this to require direct evidence to show that a candidate could have really copied from the answers written by the other candidate who was sitting close to him. It is, therefore, clear that the merits of the inquiry and its result are entirely and exclusively within the jurisdiction of the appropriate University authorities and it is their decision based on all relevant material and not motivated by any animus or mala fides that has to be treated by this Court as final provided there has been no violation of the principles of

natural justice. The question to which this case then boils down is whether the petitioner's complaint can be said to be within item No. 5 of half a dozen points enumerated by a Division Bench of this Court (Meher Singh and Khanna, JJ.) in *Karamjit Kaur v. The Punjab University* (1964) 66 P.L.R. 674, which is in the following words:

The candidate concerned must be informed of the charge and an adequate opportunity should be given to him to defend himself.

On consideration of all the facts and circumstances of this case, referred to above, I am of the opinion that the case of the petitioner falls within the four corners of item No. 6 in the head-note of *Karamjit Kaur's* case (1964) 66 P.L.R. 674, which is to the following effect:

In case such an opportunity has been given to the candidate, and there is some material before the prescribed authority about the use of unfair means and the prescribed authority accepts that material and is not actuated by any hostile animus, the Court would not interfere with the decision of the aforesaid authority even if the Court disagrees with the conclusion of the authority.

14. The University, in this particular case, seems to have taken pains to take the petitioner into confidence regarding every piece of material collected against him at each stage. The petitioner is not an immature child, but is a grown-up educated man and is expected to have made a grievance on one or other of the occasions if he had really not had an adequate opportunity to defend himself. At least in his mercy petition to the Vice Chancellor, which he sent on June 11, 1965, after coming to know of the punishment inflicted against him the petitioner would have cried hoarse about any such grievance if it was real. Asking for copies on June 13, 1965, was wholly irrelevant for the purposes of the inquiry or the mercy petition to the Vice-Chancellor. The proceedings before the Vice-Chancellor were not in the nature of an appeal, but were confined to the scope of Regulation 19 of the Punjab University Regulations contained in Volume I of the 1962 Calender at page 92, which may here be quoted -

The Syndicate shall appoint annually Standing Committee to deal with cases of the alleged misconduct and use of unfair means in connection with examinations. When the Committee is unanimous, its decision shall be final except as given in the proviso below. If the Committee is not unanimous the matter shall be referred to the Vice-Chancellor who shall either decide the matter himself or refer it to the Syndicate for decision.

Provided that in cases of the alleged use of unfair means in connection with examination if in the opinion of the Vice-Chancellor facts have been brought to light within 30 days of the receipt of the decision by the candidate which, had they been before the Committee, might have induced them to come to a decision other than the one arrived at, then the Vice-Chancellor may order that such facts be reduced to writing and placed before the Committee.

The Committee shall then reconsider the case, unanimous decision of the Committee shall be final. But in the event of a difference of opinion the case shall be referred to the Vice-Chancellor who may either finally decide the case himself or refer it to the Syndicate for final decision as he thinks fit.

The decision of the Standing Committee was unanimous in the instant case. If the petitioner wanted to show that there was some further material in his favour which was not before the Committee he could have shown it to the Vice-Chancellor in his petition, dated June 11, 1965. It was, therefore, not possible for the petitioner to show to the Vice-Chancellor any fresh facts which might have been brought to light within 30 days of the receipt of the decision of the Standing Committee by the petitioner. In fact the material which the petitioner was asking for had already been seen by him except the letter from the Registrar of the Punjab University to the Principal of the Punjab Engineering College, Chandigarh, the contents of which had been carried over to the communication sent by the Principal to the petitioner. Nor could the copies of documents asked for by the petitioner in his letter, dated June 13, 1965, be required for making any representation to the Vice Chancellor as he had already sent the same. It is also significant to note that the petitioner did not even suggest in his mercy petition to the Vice-Chancellor that he was trying to obtain any further information or documents which he would be forwarding to the Vice-Chancellor later on.

15. In the light of the above facts I hold that adequate opportunity had been afforded to the petitioner to show cause against the action proposed to be taken against him and the entire material on which he has been punished was shown to the petitioner. A reference to the questionable quoted above, and particularly that of March 15, 1965, leaves no doubt that the two documents of which he is making grievance now, were made available to the petitioner and on no occasion was he declined any opportunity to get them if he wanted. There is, therefore, no force in the first contention of the learned counsel for the petitioner.

16. The second argument of Mr. Sethi is not open to examination before me and the decision of matters like this has to be left to the University authorities. The entire material, as stated above, on which the petitioner has been punished, was made available to him. The prescribed authority has accepted that material as sufficient to hold the petitioner guilty. There is not the slightest suggestion that any University authority was on any occasion actuated by any hostile animus or mala fides against the petitioner. This Court cannot, therefore, sit in appeal over the decision of the University authorities on merits and whatever may be the volume or intensity of the sympathy with the petitioner on account of his earlier brilliant academic career, it cannot be translated into any permissible relief which could help the petitioner in this case. The second contention of the petitioner also fails.

17. Paragraphs (a) and (b) of Regulation 12 at page 89 of the Punjab University Calendar 1962 (Volume I) are in these terms-

12 (a) If a candidate is found talking to another candidate during the examination hours, his answer-book for that particular paper shall be liable to be cancelled.

(b) If an answer-book shows that the candidate has received help from or given help to another candidate or if he is found copying or to have copied from any paper book or note, or to have allowed any other candidate to copy from his answer-book or to have taken the examination with notes written on any part of his clothing or body or table or desk or instruments (allowed in the Engineering examination) like set squares, protractors, slide rules, etc., or is guilty of swallowing or destroying any note or paper found on him, or talking to a person outside the examination hall, while going to urinal or consulting notes or books, while outside the examination hall he shall be disqualified for two years, including that in which he is found guilty if he is a candidate for an examination held once a year, or for four examinations, including that year in which he is found guilty, if he is a candidate for an examination held twice a year.

18. It is obvious that the case of the petitioner cannot fall under paragraph (a) of Regulation 12, as the said paragraph is expected to cover a case where a candidate is found talking to another candidate during the examination hours. I think this part of the Regulation is intended to apply to cases where not only is the talking taking place during the examination hours but is also detected during those hours. Moreover it appears that this part of the Regulation is intended to apply to candidates who are found talking to one another during the examination time, but it is not certain as to whether they are talking about the question paper or the answers to be given by them or on some innocent topic. The petitioner was certainly not found talking to Dhingra or any other candidate during the examination hours. His case, is, therefore, outside the scope of Regulation 12 (a). On the findings recorded by the University authorities the case of the petitioner seems to fall squarely within Regulation 12 (b) as it was from the answer-books of the petitioner and Dhingra that the candidates in question were found to have taken and given help to each other in the matter of answering the three questions in dispute. There is, therefore, no force in the third contention of Mr. Sethi either.

19. It is a matter of regret that Regulation 12 (b) does not prima facie appear to leave any discretion in the University authorities as to the quantum of punishment. In a case like this, where the career of a candidate had been brilliant and for reasons which are difficult to guess he somehow seems to have stooped down in some weaker moment to the alleged unfair means adopted by him, surely some lesser punishment should be deemed to be adequate. The word "shall" in Regulation 12 (b) has been interpreted by the University to restrict its power as to the quantum of punishment the University can inflict. The mere use of the word "shall" should not have prevented the University in using its discretion to give lesser punishment if it otherwise chose to do so. "Shall" in the context in which the word is used in Regulation 12(b), quoted above really

means "may", and a discretion vests in the University to reduce the punishment inflicted on the petitioner if the University authorities otherwise think it a fit case for adopting that course.

20. No other point has been argued before me. I have, therefore, no choice except to dismiss this writ petition. This of course is not a case for awarding any costs against the petitioner and the parties are left to bear their own costs.