
(1998) 08 AHC CK 0080
In the Allahabad High Court
Case No : C.M.W.P. No. 4539 of 1997

Mohit Naman

APPELLANT

Vs

University of Allahabad and others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 50, 51, 52

Citation : (1999) 1 AWC 212

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Tej Pratap Singh and S.K. Garg, for the Appellant; Ratnakar Choudhary, for the Respondent

Final Decision : Allowed

Judgement

O.P. Garg, J.—Mohit Naman was a regular student of B.Sc. Part II. He appeared in Zoology IIIrd paper on Saturday 13th July. 1996 with Roll No. 53187 from C. M. P. Degree College. Allahabad in the aforesaid examination conducted by Allahabad University. There was absolutely no complaint or allegation against him either by the invigilators of the examination hall or that of the Centre Superintendent that he had indulged in adopting unfair means. The answer book of his Zoology IIIrd paper, it appears, was sent for examination and evaluation to Dr. R.S. Pandey. Department of Zoology, University of Allahabad. Sri Pandey informed the Controller of Examination. University of Allahabad by addressing letter dated 3.8.1996, which runs as follows :

"This is to bring to your kind notice that while evaluating the answer book bearing Roll No. 53187 of B.Sc. Part II Zoology IIIrd paper, I observed that the signature of the invigilator on the answer book does not tally with that of the other answer books and appears to be forged and inducted from outside the examination hall. Also the answers written in the answer book appears to be copied from some book. The matter presented by the examinee in the answer

book is not possible to be produced within 3 hrs. and it appears that the examinee has attempted the questions taking his own time.

"In view of above observation, I request you to look into the matter and do the needful."

On the basis of the above report, a notice dated 30.10.1996 bearing No. 3910 was issued by the Controller of Examination to the petitioner Mohit Naman who was required to furnish his explanation by 8.11.1996. According to the respondents, Mohit Naman did not furnish his explanation, and therefore, the Committee appointed under clause 1.4 of the Ordinance on the use of Unfair Means and of Causing Disturbances in Examinations of the University of Allahabad, after satisfying itself of the facts of the matter, came to the conclusion that the candidate (the petitioner) is guilty of offence stated in clause 1.6A of the Ordinance and, therefore, the punishment of cancellation of the results of the petitioner of B.Sc. Part II examination of 1996 was imposed on 1.12.1996.

2. The case of the petitioner is that the result of B.Sc. Part II was published in the newspaper on 7.10.1996 and his roll number 53187 was shown under the head "Results Not Ready". The petitioner met the authorities but was told that the matter is being looked into and ultimately, a notice dated 30.10.1996 was served upon him, which was actually received by him on 13.11.1996 while the deadline for submitting the explanation, i.e., upto 8.11.1996 had expired. The petitioner after having received the notice on 13.11.1996 moved an application before the Examination Committee as well as Superintendent Dr. K.N. Pandey, seeking one week's time to submit the explanation as he could not furnish explanation within time, i.e., by 8.11.1996 as the notice was received by him on 13.11.1996 and also on account of the fact that the Deepawali vacations had intervened. A copy of the application dated 13.11.1996 is Annexure-4 to the writ petition. The explanation submitted by the petitioner on 18.11.1996 is Annexure-5 to the writ petition, which, it appears, was put up before the Vice-Chancellor. The Vice-Chancellor made an anxious enquiry by jotting down a note on the explanation, Annexure-5 to the writ petition itself, as to whether the petitioner was apprehended or not in the examination hall while adopting unfair means. He also directed the Controller of Examination to speak in the matter. It appears that no heed was paid to the order dated 19.11.1996 passed by the Vice-Chancellor on Annexure-5 to the writ petition.

3. The record of inquiry, which contains only three papers, a report by Dr. R.S. Pandey, dated 3.8.1996 ; a copy of the notice issued to the petitioner dated 3.10.1996 and the decision dated 1.12.1996 of the Committee appointed under the Ordinance, on the printed form, has been brought, in original, before this Court for perusal. The relevant answer book of the petitioner in Zoology IIIrd paper, comprised of the A-Book besides three B-Books, has also been brought before this Court along with answer book of another candidate bearing roll No. 53188 with a view to Indicate that the signatures of the invigilator on the two sets of the answer books do not tally.

4. During the pendency of the writ petition, an interim order was passed on 21.5.1997 directing the respondent Nos. 1 and 2 to declare the result of the petitioner of B.Sc. Part II and in case the petitioner is declared to have passed in the said examination, he shall be permitted to appear in B.Sc. Part III examination in the subject of Zoology. Botany and Chemistry in C.M.P. Degree College. Allahabad. However, the result of the said examination was made subject to the result of this writ petition. In pursuance of the said order, the petitioner has been declared successful in B.Sc. Part II examination having secured the following marks :

Marks obtained

Out of

Chemistry

119

150

Physics

93

150

Zoology

88

150

300

450

Total marks received by the petitioner in B.Sc. Part II examination, thus, are 300 out of 450. In B.Sc. Part I, the petitioner had secured 288 out of 450 marks and his marks in Zoology paper were 68%. If the percentage of marks of B.Sc. Part I and II are taken together, they come to 66.7% (i.e., 588 out of 900).

5. Originally, in this writ petition, the prayer made by the petitioner was that the impugned notice dated 30.10.1996 be quashed and the respondents be directed to declare the results of the petitioner of B.Sc. Part II examination and be commanded not to prevent the petitioner from pursuing his studies. Since the result of the petitioner of B.Sc. Part II has been declared and he has also appeared in B.Sc. IIIrd year examination, it is prayed that the condition imposed by this Court while passing the interim order that the declaration of the result of the petitioner shall be subject to the decision of this writ petition, be knocked off.

6. Counter and rejoinder-affidavits have been exchanged. A counter-affidavit has been filed on behalf of the respondents and the petitioner has filed a

supplementary affidavit. Heard Sri T.P. Singh assisted by Sri S.K. Garg, learned counsel for the petitioner and Sri Ratnakar Choudhary on behalf of the respondents. The original answer books and the record of enquiry have been minutely and thoroughly perused and scrutinised by me.

7. At the outset, it may be mentioned that it is not a case in which the petitioner was found to have indulged in adopting unfair means in the examination hall. He was not caught red handed by invigilators or any other authority including the Flying Squad. The allegation of adopting unfair means against the petitioner came to be made by Dr. R. S. Pandey, who was charged with the duty to evaluate the answer books of Zoology IIIrd paper including that of the petitioner. According to him. It is a suspected case of adopting unfair means and his suspicion is based on two grounds ; firstly, that the signatures of the invigilator found on the answer books A and B, of the petitioner do not tally with the signatures of the invigilator on the answer books of the other candidates, and secondly, the material reproduced by the petitioner and the neat graphs drawn by him in the answer book, which was sent for evaluation, could not have been written/drawn within the specified period of 3 hrs. and, therefore, it can be inferred that the petitioner had his own time to write the answers and to draw the sketches. The gravamen of the charge against the petitioner, therefore, is that he has, as a matter of fact, smuggled and submitted answer book which was written by him not in the examination hall but was brought from outside after scribing the answers and drawing sketches/graphs at his leisure. After receipt of the report of the examiner, a notice dated 30.10.1996 was served on the petitioner whereby he was informed about the report of the examiner. Papers brought on the enquiry file indicate that the petitioner's explanation is missing and consequently without taking into consideration his point of view, orders were passed on 1.12.1996 to cancel the examination of B.Sc. Part II by the Committee constituted under clause 1.4 of the Ordinance. On the other hand, the petitioner has asserted that the notice dated 30.10.1996 was received by him on 13.11.1996 while he was allowed time to submit his explanation by 8.11.1996 and it was for this reason that he had asked the concerned authorities to give him one week's time to submit explanation. The application of the petitioner dated 13.11.1996 copy of which is Annexure-4, is not available on the record of enquiry. Not only this, the petitioner did submit his detailed explanation dated 18.11.1996, a copy of which is Annexure-5 to the writ petition. This explanation was submitted before the Vice-Chancellor who made a query on the explanation itself under his signatures dated 19.11.1996 and asked the Controller of Examination to speak with a view to clarify the position whether the petitioner was caught red handed adopting unfair means in the examination hall or not. Amazingly enough, even this explanation of the petitioner along with note of the Vice-Chancellor is not available on the record of enquiry. It appears that the orders were passed by the Committee constituted under clause 1.4 of the Ordinance without taking into consideration the prayer of the petitioner to give him one week's time to submit explanation, and the explanation dated

18.11.1996, which he did submit. The order of punishment dated 1.12.1996 passed by the Committee was virtually ex parte.

8. The learned counsel for the petitioner pointed out that though the order of punishment is vitiated on account of flagrant violation of principles of natural justice, inasmuch as, the explanation of the petitioner was not at all taken into consideration. It also suffers from an inherent infirmity and lack of jurisdiction for the reason that the provisions of unfair means Ordinance, referred to above are not attracted to the present case. It was urged that the scheme of Ordinance makes it clear that a candidate who is caught red handed in the examination hall in the circumstances mentioned therein only can be proceeded against after complying with the mandatory provisions pertaining to the procedure to be adopted. To sift the submission, the provisions of the Ordinance may be referred to.

9. Chapter XXVIII contains the Ordinances on the use of unfair means and causing disturbances in Examination. The relevant provisions of said Chapter are reproduced below ; (only relevant quoted) ;

"ORDINANCES ON THE USE OF UNFAIR MEANS AND OF CAUSING DISTURBANCES IN EXAMINATIONS.

1. UNFAIR MEANS :

1.1 Candidates found using or attempting aiding, abetting or instigating to use unfair means at the examinations of University of Allahabad shall be punished.

1.2 Definitions :

(A) UNFAIR MEANS.-

A candidate shall be deemed to have used "unfair means" if the candidate is in possession of unauthorised material or if he has transcribed any part or the whole of the unauthorised material or if he intimidates or threatens or manhandles or uses violence against any invigilator or person on duty in the examination or if he leaves the examination hall without surrendering his examination script to an invigilator or if he is found communicating with other examinees or any one else inside or outside the examination hall.

(B) POSSESSION OF UNAUTHORISED MATERIAL.

--"Possession of unauthorised material" by a candidate shall mean having any unauthorised material on his person or desk or 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 the passage thereto or there from any time from the commencement of the examination till its end.

(C) UNAUTHORISED MATERIAL.

-- "Unauthorised material" shall mean any material whatsoever, related to the subject of the examination printed, typed written or otherwise, on paper, cloth,

wood or other material, in any language or in the form of a chart, diagram, map or drawing.

(D) A CANDIDATE FOUND IN POSSESSION.-

"A candidate found in possession" shall mean a candidate reported in writing as having been found in possession of unauthorised material by the Invigilator or Head Invigilator or by a teacher or official authorised in this behalf even if the unauthorised material is not produced as evidence because of its being reported as swallowed or otherwise destroyed or snatched away or otherwise taken away by the candidate or by any other person acting on his behalf provided that such report is submitted to the Registrar. Allahabad University, or an officer deputed for the purpose on his behalf within three hours or the end of the examination concerned after authentication by the Head Invigilator concerned (along with the unauthorised material found, if available as evidence).

(E) MATERIAL RELATED TO THE SUBJECT OF THE EXAMINATION.-

"Material related to the subject of the examination" shall if the material is produced as evidence, mean any material certified as related to the subject of the examination by a teacher of the subject if the material is not produced as evidence for any of the reasons referred to in (D) above, the presumption shall be that the material did relate to the subject of the examination.

1.3 A candidate found using unfair means in an examination shall be served with a notice therefore in the examination hall itself and if he refuses to accept or avoids or escapes personal receipt of such notice, such notice shall be sent to him by Registered Post within seven days of the incident. The candidate shall be required to submit his reply to the notice within 10 days of the issue of such notice. If no reply is received within this period, it would be presumed that the candidate has nothing to state in his defence.

1.4 Punishment prescribed in these Ordinances (No. 1.1 to 1.6) shall be awarded by a Committee of not less than five teachers appointed by the Examination Committee or by the Vice- Chancellor acting on behalf of the former. The quorum of this Committee shall be three."

10. Clauses 1.5 and 1.6 deal with the matters and circumstances to be considered by the Committee and the quantum of punishment. The aforesaid Ordinances are stated to have been framed in exercise of power under the U. P. State Universities Act. 1973 and are being justified with the help of Sections 50, 51 and 52 of the aforesaid Act read with Statutes 9.02 and 9.03 of the First Statutes, 1976.

11. A bare reading of the aforesaid provisions of the Ordinance and its scheme would make it amply clear that it deals with a situation in which a candidate is caught using unfair means in the examination hall itself and it is for this reason that under clause 1.3, it has been mentioned that a notice shall be served on the candidate in the examination hall and if he refuses to accept or avoids or escapes

personal receipt of such notice, it shall be sent to him by registered post within 7 days of the incident. In the instant case, there was no such "Incident" as has been contemplated by the provisions of the Ordinance, as quoted above. It was for this reason that the Vice-Chancellor has raised his eye brows in the matter by putting a note on the explanation of the petitioner as to whether he was actually apprehended while engaged in adopting unfair means in the examination hall. The query and anxiety of the Vice-Chancellor remained unsatisfied. My considered view of the matter is that the case of the petitioner is not covered by any of the provisions of the Ordinance, aforesaid, and therefore, he could not be punished for having adopted alleged unfair means within the meaning of the expression contained in the Ordinance by the Committee constituted for the purpose.

12. Sri Ratnakar Choudhary, learned counsel for the respondent-University urged that even if it be taken that the present case is not covered within the four-corners of the Ordinance, in that event, the petitioner could be subjected to punishment under the inherent powers of the examining body, whether it be the Vice-Chancellor or the Controller of the Examinations and, in any case, a candidate who has resorted to unfair means cannot be allowed to go scot-free merely because, his case is not covered by the Ordinance. A reference was also made to the decision of the Apex Court in *Guru Nanak Dev University and another Vs. Harjinder Singh and another*, in which it was held that the definition of the expression "unfair means" given in Ordinance 10 published in GNDU Calendar Vol. II, Part-B, 1991 is, in the face of it, inclusive and not exhaustive. The Apex Court observed that the menace of copying has already reached at an alarming stage and in fact is a disgrace to our education system. There is no end to the ingenuity in discovering new techniques and methods of copying in the examination halls. It is not, therefore, possible to give an exhaustive definition of "unfair means". The framers of the Ordinances have rightly given an inclusive definition to the said expression in Ordinance 10. It has further been observed by the Supreme Court that so long as the University has communicated the charge to the candidate in clear terms and has given him opportunity to defend, the candidate cannot be heard to say that he is not guilty simply because he is not covered by any of the clauses in Section 10 of the Ordinance. I have thoroughly studied the aforesaid decision of the Apex Court and find that it does not squarely cover the point in issue in the instant case. The definitions of the expressions "unfair means", "possession of unauthorised material" and "candidate found in possession" have been given in exhaustive terms in the Ordinance of University of Allahabad. These expressions do not leave any scope for including the matters of unfair means in regard to which "Incident" had not taken place in the examination hall. Therefore, the decision in GNDU case (supra) is of no help and assistance to the respondents.

13. When once the University of Allahabad has framed the specific ordinance to combat the menace of unfair means, the question of exercising of residuary or inherent powers, over and above the provisions of the Ordinance made

specifically for the purpose does not arise. No provision or authority was placed before this Court to fortify the contention that the University authorities have inherent or residuary power to punish a student for adopting unfair means even though his case falls beyond the provisions of the Ordinance, aforesaid. My conclusion in the matter is that either a student is, to be punished under the provisions of the Ordinance itself or not at all. There cannot be an inherent power of punishment, which is likely to visit with evil consequences the entire future career and prospects of a student. No student can be visited with evil consequences without the authority of law. It would, therefore, be too genteel to make a discourse upon the inherent or residuary powers to the University authorities in the matter. If the contention of the learned counsel for the University is taken to be correct in that event, there was nothing to prevent the Vice-Chancellor to inflict appropriate punishment on the petitioner when the matter was brought to his notice. The Vice-Chancellor who felt shaky in the matter in his wisdom called upon the Controller of the Examination to clarify the position, but it was never done. This fact indicates that even the Vice-Chancellor who is the lynchpin in the University administration felt chary in passing the order of punishment in exercise of his inherent or residuary powers.

14. The matter may be viewed with yet another angle. Even if, for a moment the present case of the petitioner is stretched to such an extent that it is found to be covered by the provisions of the Ordinance, the order of cancellation of the examination of the petitioner is hit on account of non-observance of the principles of natural justice.

15. It is well-settled proposition of law that the examination committee, or for that matter, any committee awarding punishment, acts quasi-Judicially and principles of audi alteram partem are applicable to the proceedings taken by it. In *Jammi Raja Rao Vs. Sri Anjaneyaswami Temple Valu etc.*, . Hon"ble Supreme Court has ruled that adequate opportunity of presenting his case should be given to the examinee and if the opportunity is not afforded, the action taken and order passed is vitiated. The oft-quoted observation of the Apex Court in the aforesaid decision may be extracted as below :

"Though therefore, there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee of act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under Rule 1 (1). We are, therefore, of opinion that the Committee when it exercises its power under Rule 1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in *Dipa*

Pal v. University of Calcutta. AIR 1952 Col 594 and B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others, , in similar circumstances and is in our opinion correct."

Similarly, in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , the Hon"ble Supreme Court ruled that even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. Similar view was taken by Hon"ble Supreme Court in the case of D.K. Vadau v. J. M. A. Industries Ltd. (1993) 3 SCO 259. A Division Bench of this Court in the case of Prabhat Kumar v. Board of High School and Intermediate Education. U. P., Allahabad and another 1971 ALJ 1391, also followed the aforesaid decisions and ruled that opportunity of hearing before conclusion of guilt as also to the quantum of punishment had to be given.

16. In the case of Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, , a Full Bench of this Court had the occasion to consider and deal with the case of unfair means. Relying upon the decision of Supreme Court in Ghanshyam Das Gupta's case (supra). It was ruled by the Full Bench as under :

"A consideration of these authorities lead up to the conclusion that the essential principles of natural justice that are to be observed by an authority dealing with the case in quasi-judicial manner are as follows :

- (1). The person whose rights are to be affected must be given notice of the case or the charges which he has to meet.
- (2) He must be given an opportunity to make a representation and to explain the allegations made against him and to have his say in the matter ; and
- (3) The authority conducting the proceedings must not be biased and should act in good faith."

17. Another Full Bench of this Court in the case of Gazejar Rashid v. Secretary, Board of High School and Intermediate Education, U. P., Allahabad and others AIR 1979 All 219 , had the occasion to consider the matter in issue, and was pleased to rule that High Court cannot reassess the circumstances and evidence, but if there is violation of principles of natural justice and if the conclusion is not supported by evidence, the High Court has got the jurisdiction to interfere in the matter in exercise of its power under Article 226 of the Constitution of India. In this connection, a reference may also be made to the decision of the Apex Court in the cases of S.L. Kapoor Vs. Jagmohan and Others, ; S.N. Mukherji v. Union of India and others AIR 1980 SC 1984 ; Mahesh Chandra v. Regional Manager and others. 1992 (2) SCC 325 ; Vasudeo Vishwanath Saraf Vs. New Education Institute and Others, and a Full Bench decision of this Court in Anil Kumar and 27 others u. Secretary Board of High School and Intermediate Education, U. P., Allahabad and others. In the instant case, as said above, notice dated 30.10.1996 requiring the petitioner to submit explanation by 8.11.1996 was

received by him only on 13.11.1996. Since the date for submission of the explanation had already expired and Deepawali holidays had intervened, the petitioner, in the ordinary course, asked for one week's time to submit explanation. No notice appears to have been taken of this request of the petitioner. The petitioner, sincere as he was, to submit his explanation, submitted the same on 18.11.1996. It was placed before the Vice-chancellor on 19.11.1996 when the Vice-Chancellor made his comments as noted above. The petitioner was not allowed time to submit his explanation after 13.11.1996 on which date, he received the notice and on the top of it, his explanation which he did submit on 18.11.1996 about which there can absolutely be no controversy as the Vice-Chancellor himself had made a note on his explanation on 19.11.1996, was not at all considered. Mere performing empty formality of issuing a notice is not sufficient. It is not a ritual. The concept of reasonable opportunity comprehends within its ambit a reasonable time during which the notices may submit his reply. In the instant case, the notice was sent on 30.11.1996 and the petitioner was required to furnish his explanation by 18.11.1996, i.e., within a week or so. As a matter of fact, the notice was received by the petitioner on 13.11.1996 when the last date for submission of explanation had already expired. The petitioner could do no better than to approach the respondents to extend one week's time to submit explanation. This prayer does not appear to have been acceded to. The petitioner submitted his explanation on 18.11.1996 which also, for whatever reasons it may be, was not considered by the Committee authorised to impose punishment. It is, therefore, a case in which the case of the petitioner was not at all taken into consideration. The Committee acted in flagrant violation of the principles of natural justice.

18. The concept of natural justice further requires that a speaking order should be passed by the punishing authority. This aspect of the matter has been considered in Vasudeo Vishwanath Saraf's case (supra), in which it was observed by the Apex Court that it is necessary to pass a speaking order. The order should record in nutshell relevant reasons. Taking the same view, the Full Bench in the case of Anil Kumar's (supra) came to the conclusion that the orders impugned in those petitions were non-speaking orders, no reasons were recorded and no adequate opportunity was afforded to the candidate, therefore, said orders were held to be unsustainable. A reference may also be made to the decision of this Court in Sundaram Srivastava a. Allahabad University, Allahabad and others (1992) 2 UPLBEC 949 ; Amit Kumar Singh v. Registrar, University of Allahabad (1992) 1 UPLBEC 772 and Jyoti Prakash Pandey v. University of Allahabad and others 1996 AWC 1094, A contrary view appears to have been taken in the case of Mahendra Tripathi v. Allahabad University, Allahabad and others (1997) 1 UPESR 224. The observations made in the said case do not apply to the facts of the present case as in Mahendra Tripathi's case, the petitioner was caught by the University's Flying Squad and printed pages were recovered from his possession and all the required formalities were completed within the examination hall itself.

19. In the instant case, as said above, the Committee constituted by the Vice-

Chancellor under the provisions of clause 1.4 of the Ordinance did not consider the explanation of the petitioner and a mechanical order on the printed form was passed without applying judicial mind to the facts of the case. Non consideration of the explanation of the petitioner which he had furnished with all expedition after receipt of the notice tantamounts to denial of the opportunity of hearing the other side, i.e., *audi alteram partem*. Raj Kumar Singh Vs. University of Allahabad and others, and Arid Kumar's case (*supra*) are pertinent decisions on the point. A perusal of the record of enquiry would indicate that the members of the Committee have come to a scrappy, jumpy and ready-made conclusion that the petitioner has adopted unfair means in the examination. They have taken the report of Dr, Pandey as a gospel truth. Dr. Pandey has observed in his report, which is the foundation of the entire action against the petitioner, that the signatures of the invigilator of the examination hall, which were found on the answer books of other candidates in the same hall, do not tally with the signatures, which are available on the answer book "A" and "B" of the petitioner. Dr. Pandey was not an expert to decipher the signatures of the invigilator concerned. The committee, which has under taken the task of making an enquiry into the matter on the report of Dr. Pandey was expected to have at least examined or interrogated the invigilator concerned to verify the correctness or otherwise of the signatures found on the answer books of the petitioner. It was a local matter of C.M.P. Degree College Centre. Allahabad. The name of the invigilator is readable. He could have been called by the Committee to testify before it as to whether the signatures on the answer books of the petitioner were in fact genuine or not. This minimum requirement which would have clinched the issue was not fulfilled by the Committee, and therefore, it cannot be said that the answer books of the petitioner do not bear the signatures of the invigilator concerned. Mere suspicion cannot take the place of proof.

20. One cannot lose sight of the academic career of the petitioner. By and large, the petitioner has been a first class student. He secured 66% marks in High School. 59.4% marks in Intermediate. 64% marks in B.Sc. Part I and taken together, he secured 66.7% marks in the B.Sc. Part I and II examinations. Not only this, even in B.Sc. Part II examination in the undisputed papers of Chemistry and Physics, he secured respectively 119 and 93 marks out of 150, the percentage of which comes to 79.33 and 62. In view of this, it is clear that the petitioner is not only a first class student but his performance in the science subjects has been exceedingly well. If the answer book of the petitioner of Zoology of B.Sc. Part II examination is viewed from the angle of his past achievements as well as the marks obtained by him in Chemistry and Physics papers of B.Sc. Part II examination, the chances of his smuggling surreptitiously the offending answer book of Zoology paper appear to be quite remote as it is not expected from a brilliant student that he would take the risk of his spoiling career without any corresponding advantage, by substituting an answer book written at a place outside the examination hall.

21. The Committee had also an occasion to ascertain whether the offending

answer books submitted by the petitioner were actually issued to him in the examination hall or not and if it was not so, what were the serial numbers of the answer books which were actually supplied to him in the examination hall. I am constrained to observe that the Committee has failed to discharge its duty of making a fair and impartial enquiry. It was expected of the Committee that it would act in a more responsible manner as cursory and perfunctory decisions are certainly bound to have serious repercussions on the future career and prospects of bona fide students.

22. For the reasons stated above, I come to an irresistible conclusion that the respondent-University has failed to establish that the petitioner was guilty of adopting unfair means in the 1996 examination of B.Sc. Part II. The result of the petitioner has already been declared under the interim orders of this Court and provisional mark-sheets have been issued to him.

23. The writ petition is allowed and the respondent-University is hereby directed to issue clean and clear mark-sheets of the petitioner and to formally declare his result of the examination of B.Sc. Part II and III. The petitioner is entitled to all consequential benefits such as degree, etc.