
(2007) 08 AHC CK 0217
In the Allahabad High Court

Molika Banerji

APPELLANT

Vs

University of Allahabad and Others

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Citation : (2008) 5 AWC 5106

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—By way of this petition, the petitioner has sought the relief of a writ of mandamus commanding the respondents to decide her representation dated 15.9.2005 (Annexure 10 to the writ petition attended with further prayer to produce copy of Answer scripts of the petitioner in M.B.A. Final 4th Semester of Business Taxation and Tax Planning followed by the prayer to quash the result declared by Opp. party No. 1 in the case of petitioner in the M.B.A. Final II Semester Examination 2005 vide mark-sheet dated 9.9.2005 in the paper Business Taxation and Tax Planning as being illegal and unsustainable in law and also seeking further relief of declaring the petitioner as having passed M.B.A. Final Examination in the Paper Business Taxation and Tax Planning with such marks as may be deemed just and appropriate and after re-examination by any competent authority, pass suitable orders.

2. The factual matrix runs as under. The petitioner namely Molokai Banerjee after completing her High School, Intermediate and Graduation with excellence joined vocational course in M.B.A. in University of Allahabad in the year 2003-04. It would appear from the record that she secured 317 marks out of 500 in M.B.A. 1st Semester, 749 out of 1100 in the 2nd Semester examination and in the final year, she secured 304 marks out of 500. The precise split up of the marks awarded in the final year is to the effect that she was awarded 63 marks in Business Policy, 57% in Quantitative Techniques, 73% marks in Investment and Project Management, 75% marks in Financial Markets and Institutions and 63%

marks in viva voce. In the year in question, she was awarded 22 marks in written paper in Business Taxation and Tax Planning out of 75 marks and 10 marks out of 25 in class participation and written assignments. According to further allegations in the writ petition, the answer script of Business Taxation and Tax Planning carrying 25 marks was vetted by Sri Ajar Kumar Singhal, arrayed as Opp. party No. 5, which carried 75 marks. It is further alleged that in class test, she was awarded only 10 marks out of 25 marks on the count of participation and written assignments and consequently she was declared failed attended with further submission that she has throughout been a brilliant and meritorious student having romped home in all subsequent examination with marked excellence. It is further alleged that since Sri Ajar Kumar Signal, Opp. party No. 5 was also indulging in private coaching, he covertly pandered to those students who joined his coaching classes. It is further alleged that Dr. P.C. Verma who earlier held the charge of Head of the Department, had debarred the Opp. party No. 5 from examination work pursuant to a complaint made by her maternal uncle namely Dr. Remainder Rai and as a result he nursed animus against the petitioner and actuated by a malice, he mala fide marked her down by awarding only 10 marks out of 25 marks although all other students in the class were awarded marks between 19 to 23. The allegations further are that some of the students who were not in attendance in class test on the date of test, were awarded 20 to 23 marks out of 25 marks. Subsequently, it is stated that the matter was represented to Vice Chancellor by the petitioner and her local guardian and acting on her representation, the Vice Chancellor appointed Dr, Aseem Mukherjee and Dr. K.G. Srivastava, Dean of Faculties of Arts who vetted, the entire matter including copies of the petitioner and in the ultimate analysis, opined that injustice has been done to her. It is further stated that during pendency of the representation new Act came into being. Besides the above, various other allegations have been ventilated in the representation annexed to the writ petition in order to make out a case for acting malafide in her case.

3. Learned Counsel for the petitioner canvassed that the petitioner was illegally flunked in the written test by awarding only 22 marks out of 75 marks and 10 out of 25 marks allocated for adjudging the Performance in class participation test and written assignments attended with further submission that the same warrants revaluation by any independent Examinees. It is further canvassed that as the matter was closely scrutinized by Dean of Faculties of Arts who opined that petitioner was wrongly marked down, it is all the more furnishes a justification for rechecking of the petitioner's marks and re-examination. The learned Counsel for the petitioner also canvassed that in case malafide is brought home, the Court is fully empowered to direct re-examination by independent authority. The learned Counsel voiced his serious misgivings that in case the petitioner appeared in supplementary examination, it would be fraught with adverse consequence to her career inasmuch as in the mark-sheet it is invariably written that she passed the examination in supplementary examination and by this reckoning, the badge of supplementary examination will continue to stick

which will imperil and impair her future prospects.

4. Per contra, Sri A.B.L. Gaur, representing the University of Allahabad, relied upon the affidavit of Sri S.S. Upadhaya Controller of Examination and contended that there is no provision for re-examination in the Act, statute or Ordinance of the University. He further drew attention of the Court to the fact that matter was referred to a Three Men Committee belonging to the same department Constituted by Head of the Department of Commerce and the Committee constituted by Head of the Department opined that marks awarded to the petitioner were rightly given by Opp. party No. 5 and the respondent No. 5 was not actuated by any malice or ill-will in marking her down. Adverting to the report the learned Counsel argued that she scored a blob in class test attended with further observation that it is on record that she was a non-serious student in class and was very poor in class participation and discussion. The learned Counsel also adverted to further finding and urged that the petitioner had got 23 presents and 10 absents in the total class of 33 lecturers and for her attendance the teacher concerned has been liberal enough to award 8 marks out of 10. He also drew attention to further finding that she failed in class test and it appeared from her answer that she knew nothing about the subject and therefore she was rightly awarded Zero marks but taking a lenient and charitable view regard being had to her career, the teacher still graced her with 2 marks. Ultimately, the learned Counsel submitted that the petitioner is not entitled to any

5. The learned Counsel also drew attention to affidavit filed by Prof. Raj Shekhar (since retired) and Sri Umesh Narain Sharma, learned Senior Counsel appearing on behalf of Head of the Department urged that the marks were rightly given by Opp. party No. 5 and there is no error of law apparent on, the face of record in either scrutinizing answer scripts or in awarding marks to the petitioner.

6. This Court by means of a prolix order dated 13.2.2007 referred to the report of Committee dated 4.10.2005 (Annexure 1 to the counter affidavit) wherein it was stated that 25 marks are allocated to adjudge performance cumulatively on the count of attendance, class test and assignments, The Court enjoined the learned Counsel for the University, and also for Head of the Department to assist the Court and shed light on the fact how the three students who were absent in class test, were awarded 21, 20 and 22 marks while only 10 marks were prescribed for attendance attended with direction to produce copy of class test of all the four students including the petitioner and marks awarded for class test and assignments and details of assignments of work allotted to petitioner and other students during the entire year and assignments completed by them. Over and above the direction aforesaid, the University was also directed to produce the entire record. Notwithstanding peremptory direction, the records have not been produced and ultimately, the Court was compelled to proceed with the hearing.

7. Opp. party No. 5, Ashok Kumar Singhal, Reader in Commerce and Business Management Department, University of Allahabad, who was impleaded on the

application of the petitioner, filed a short counter affidavit as stated supra. The essence of what has been averred in the short counter affidavit is that out of 25 mark only two break ups are there in which 10 marks are awarded for attendance Band remaining 15 marks are awarded by the Subject Teacher concerned cumulatively on the count of assignment, class participation, presentation, discussion, internal test etc. In para 4 of the said affidavit, it is averred that there are no specific or fixed criteria carved out by the department or University for awarding marks of internal assignment for 15 out of 25 marks and it hinges entirely on the hunch of subject teacher how he distributed and awarded those marks. It is further averred that holding of class test or internal test is not the only criterion and therefore, it is averred, it is not compulsory to hold the class test. In para 5 of the said affidavit, it is averred that deponent in his discretion awarded these marks on the basis of subjective assessment. Before parting, he prayed for dismissal of the writ petition. It would appear from a perusal of the affidavit, that he did not confute that three students were absent in class test but in the same vein he averred that marks could be assigned without students appearing in the class test on the basis of their year all performance and that their non appearance in such class test is no anomaly in such subjective assessment as it is an exclusive domain of the subject teacher. I have searched the entire affidavit and there is nothing repudiating the allegations of malafides. He did not file any detailed counter affidavit inspite of time granted by this Court on 21.3.2007.

8. From a perusal of the record it transpires that Head of the Department against whom also allegations of malafide and collusion with Opp. Party No. 5 were made, had appointed Committee consisting of teachers working under him to look into the veracity of allegations contained in the representation. The report of Committee is Annexed as Annexure 7 to the writ petition. The report bespeaks that student is awarded marks on the basis of attendance and class test and assignment only. So far as attendance register is concerned, it is admitted case of the Opp. party that out of 25 marks, 10 marks were allocated for attendance. It is also admitted that class test had taken place in which petitioner appeared and marks are also awarded on the basis of assignment. It is also borne out from the report that three students were not present in class test and yet they were awarded 21, 20 and 22 marks out of 25 marks. It was specifically asked by the Court by an order to show that in case petitioner appeared in class test while other three students did not appear in the said test held for assessment of knowledge of those students how those students were awarded 21, 20 and 22 marks by the Opp. party No. 5 if at all, they could be awarded only 10 maximum marks on the count of attendance and not on other counts. The respondent No. 5 who awarded the marks has not repudiated that the class test was held but at the same time, he did not mince words to say that the class test was not of much consequence stating that there is no break up of the total 25 marks allocated for attendance, participation and assignment. He claimed that it was subjective satisfaction hinging on sweet will of the class teacher. He further

explained that there was only two break up and further that 10 marks were allocated for attendance and remaining 15 marks, he meant to say, hinged on the hunch of teacher described as subjective satisfaction of teacher on the count of works combining assignment class participation, presentation discussion internal test etc. It would thus appear that the respondent No. 5 has taken a contradictory plea in his counter affidavit which militates against the statement made by him before the Committee appointed by the Head of Department and 25 marks were allocated for attendance, internal class test and assignment. The further averment made is that petitioner was awarded 8 out of 10 marks for attendance and further that although she had scored a blob in class test but taking a lenient and charitable view she was graced with two marks. The Court wanted to know the break up of class test and assignment out of 15 marks. Replying to the query of the Court, it was stated on behalf of the University that there is no rule or regulation or guidelines prescribing break up of total 25 marks allocating three maximum marks for Attendance, Class Test and assignments separately but it has come from the University as also Opp. party Nos. 5 and 4 that it is within the discretion of teacher to award any marks to any individual students. It has not been explained that in case it was relegated to the hunch of a teacher described as subjective satisfaction what are those provisions under which 10 marks were allocated for attendance. In case 10 maximum marks are allocated for attendance, what are the break ups of marks allocated for class test and assignment separately, has not been disclosed. The anomaly is sought to be explained stating that it is the subject satisfaction and sweet-will of teacher and it hardly matters whether a student passes in a class test or not and that it is not necessary to refer to the result of class test and further the students could be awarded 15 marks without appearing in class test. No criteria have been brought to the notice of the Court specifying the manner in which marks for assignment and class test are to be awarded. In case those students who did not appear in class test and still they got 10 out of 10 marks for attendance in case students who did not appear in class test and still they secured 11,12 and 13 marks for assignment ignoring the marks obtained in class test. In case class test as asserted is not of much significance and it is within the discretion of a teacher to award 15 marks out of 15 without student appearing in class test. The further question is that whether there are any criteria or break ups separately for adjudging the performance of a student in the works on the count of assignment, class participation and other curricular activities as now introduced in the counter affidavit.

9. In such situation, the facts beyond the pale of controversy are that on the complaint made by maternal uncle of the petitioner, the Opp. party No. 5 was debarred from examination works for certain period, the possibility of mala-fide on the part of respondent No. 5 in marking down her and declaring her failed cannot be ruled out particularly when the matter is looked at from another angle. It bears no dispute that allegations of malafides are easily made than made out and this renders the task of the Court all the more heavier to scan the facts more

closely in order to ferret out the traces of malafides. The petitioner has had a consistent track record throughout her career from High School up to Graduation with first division marks in most of the subjects. Even her career in M.B.A. course, does indicate a consistent record of having obtained first class marks in most of the subjects and in only one subject of which Opp. party No. 5 was the examinees i.e. sessional marks she was marked down. It brooks no dispute that if she had secured only one more mark in the sessional marks, she would have been declared passed in first division which according to the teacher and also University to adjudge the performance is the privilege of teacher which by implication is meant to hinge on the hunch of a teacher described his subjective satisfaction sans any guidelines to fall back upon. The teacher as also the University did not deny that 10 marks are allocated for Attendance but under which provisions 10 marks have been prescribed for attendance has not been explained. On this count, the teacher as well as University has taken recourse to the plea that it is the discretion of a teacher to pass a student or to fail him/her without disclosing what marks have been assigned to a student and also on which count. In one breath it is stated that class test is necessary for assessment of sessional marks, but in the same breath, it is asserted that student who does not appear in a class test involving marks, could yet be awarded marks. Those students who did not appear in class test held for assessing performance have got more than 20, 21 and 22 out of 25. Thus there is conspicuous lack of checks and balances on teacher to put on leash the trend of arbitrary exercise of his discretion. In such a situation when this fact has not been denied that Opp. party No. 5 and Head of Department nursed animus and acted malafide against the petitioner as a consequence of complaint of the maternal uncle of the petitioner and in the result, he was debarred from doing examination work, under the circumstances, this Court turns attention on the decisions of the Apex Court for guidance in the absence of any statute brought to the notice of the Court.

10. The 1st case cited across the bar is Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, It was a case of tampering of grade sheet at the behest of Chief Minister of State. The Apex Court held that in case plea of malafide against person in power, the court should be conscious while dealing with the allegations but it cannot ignore probabilities arising from proved circumstances.

11. The next case cited is Common Cause A Regd. Society Vs. Union of India and Others, . it is a case of allotment of petrol pumps out of discretionary quota of Minister. In this case, the entire action was found to be arbitrary, discriminatory, malafide and wholly illegal and the Apex Court directed to pay a sum of Rs. 50 lacs as exemplary damages to the Government exchequer.

12. In the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, the Apex Court dealt with the power of High Court to go into disputed questions of fact and it was held that High Court on consideration of nature of controversy if the High Court decides that it should go into a disputed question of

fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles.

13. Yet another case cited is S.A Jaffar v. University of Gulbarga AIR 1989 Kan 174. In this case, the Division Bench of Karnataka High Court directed the University to announce result of petitioner to have passed in supersession of result announced earlier.

14. In The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, , the Apex Court held that an order passed by a Tribunal holding a quasi judicial inquiry which is not supported by any evidence, is an order which is erroneous on the face of it and as such is liable to be quashed by the High Court in exercise of its high prerogative jurisdiction to issue a writ under Article 226.

15. There is another aspect worthy of being noticed. According to paragraph 8 of the writ petition, the matter was represented to the Vice Chancellor Allahabad University Allahabad and in consequence, the Vice Chancellor appointed Dr. Aseem Mukherji and Dr. K.G. Srivastava, Dean, Faculties of Art to look into the matter and examine copies. This fact has not been denied in any of the paragraph of the counter affidavit by anybody. It has been simply said that the averments cannot be denied for want of knowledge. I have also been taken through the affidavit filed by Dr. K.G. Srivastava, Dean, Faculties of Arts. In paragraph 4 it has been averred that the then Vice Chancellor Professor H.R.Singh had asked office of Controller of Examination to bring to his office the valued answer book of Miss Millika Banerji, pertaining to M.B.A. 4th Semester Examination 2005, Business Taxation and Tax Planning in the presence of Sri K.G. Srivastava, Dean, Faculties of Arts and Professor Aseem Mukherji, an expert of Taxation and a teacher of that very paper in the Business Administration Wing of the University. It is further averred that the respondent No. 3 was also present in the chamber of Vice Chancellor. Professor Aseem Mukherji after going through the answer script of the petitioner came to the conclusion that the examiner had willfully and deliberately under valued many questions and awarded less marks. His considered view was that the petitioner deserved 45 to 50 marks, instead of 22 marks out of 75 marks as awarded by the Examiner. It is further averred that he also perused the said script and was impressed by the English expression of the candidate and that it was decided by the Vice Chancellor, Professor H.R. Singh that something needs to be done for the sake of justice through the examination Committee of University. It is further averred that however, Prof H.R.Singh, then Vice Chancellor had to hand over charge to new Vice Chancellor Prof. Rajendra Govind Harshe and the promised examination committee could not be convened first owing to the Dusshera holidays and secondly on account of appointment of the new Vice Chancellor. The affidavit of Dr. K.G. Srivastava is quite illuminating and revealing and speaks volumes about the assessment made by Opp. party No. 5 which clearly smacks of malafides.

16. In view of nature of controversy involved in this petition, it is necessary to

expatiate on what constitutes malafides. Few decisions shedding beacon light on issues involved need to be considered. One such Bench-mark case is Parbodh Sagar Vs. Punjab State Electricity Board and Others, in which the Apex court laid down the law relating to malice.

Malice, in common acceptance, means and implies spite or ill-will. Malice is a question of fact. Mala fide is not meaningless jargon and it has proper connotation. The expression malice or mala fides in the facts of each case, can only be appreciated from records. Mala fides depends upon its own fact and circumstances. The Court must scan factual aspect and come to its own conclusion.

In 2001 Supreme Court 24 - Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors. It is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

"Bias" in common English parlance mean and imply predisposition or prejudice.

Paragraph 26. The concept of "Bias" however has had a steady refinement with the changing structure of the society. Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago "his Court in S. Parthasarathi Vs. State of Andhra Pradesh, proceeded on the footing of real likelihood of "bias" and there was in fact a total unanimity on this score between the English and the Indian Courts.

Mathew, J. in Parthasarathi's case observed:

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think That the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression, which other people have, "his follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiry officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. This Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (1968) 3 WLR 694 at 707. We should not, however, be understood to deny that the Court might with greater propriety apply the "real suspicion" test in criminal or in proceedings analogous to criminal proceedings.

Lord Thankerton however in *Franklin v. Minister of Town and Country Planning* (1948) AC 87 had this to state:

I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards on side or other in the dispute

27. Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted, The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of *Reg. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* (No. 2) 2000 (1) AC 119 observed:

...In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much as the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties.

17. The malafides it is settled centres round its own facts and circumstances and the Court is called upon to scan evidence and come to conclusion about traces of malafides or bias. To establish malafides, there must be cogent evidence available on record to come to the conclusion that there exists bias, which resulted in miscarriage of justice to the party concerned. The allegations of malafides are easily made than made out. With a view to discerning malafides from the facts, it is necessary for the court to scan the facts and circumstances very closely. First of all I would take up the affidavit filed by Dr. K.G. Srivastava, Dean, Faculties of Arts, University of Allahabad for scrutiny. The affidavit of Dr. K.G. Srivastava, Dean, Faculty of Arts, University of Allahabad is quite illuminating and revealing and speaks volumes about the assessment made by Opp. Parties, which clearly smacks of malafides. The totality of facts and circumstances borne out from the original record as discussed in its expanse above, makes it clear that opposite party Nos. 4 and 5 acted malafidely in marking in 2nd year paper Business taxation and Tax Planning and warding sessional marks to the petitioner. It is well settled that bias or mala fide vitiates all the actions of opposite party No. 4 and 5. In the present case, petitioner who had been a very good student in all classes and secured first division marks throughout her career, she also secured good marks in 1st and 2nd semesters of

1st year and 1st and 2nd semesters in the 2nd year in all subjects, was declared failed by one mark though she secured 1st division marks in most of the papers coupled with the various facts that a number of students who did not appear in Class Test were awarded 21, 20 and 22 out of 25. It is further clear that in the opinion of other Professor of the University on the direction of the then Vice Chancellor that petitioner is entitled to get 42 to 45 marks in the written subject and illegally awarded 22 marks in the written subject apart from the same that she was given 8 marks out of 10 marks from the Class Attendance and opposite party No. 5 did not disclose the marks allocated for the Class Test and the Assignments though these sessional marks includes three heads as is clear from the inquiry report as pleaded by opposite party No. 5,

18. From perusal of letter of the University dated 9.6 2006, it transpires that similar controversy arose so far as M Com. II Examination (Business Computer is concerned and the students who were declared failed submitted representation and the Vice Chancellor appointed a committee for re-examination of the answer sheet and sessional marks and results were declared on the bash; of re-examination. It is now not open to the University to say that no re-examination of the answer sheet is permissible. They have also taken decision in so far as re-examination of M.Com II Paper pertaining to 2005 and also MBA (Previous) 1st semester in Maths and Statistics are concerned and sessional assessment marks were also changed by the Examination Committee constituted by University but in the present case this matter was not referred to examination committee for re-examination for the reason best known to it.

19. From perusal of report Annexure-1 to the Supplementary Counter Affidavit dated 12.4.2004 as regards to Internal Assessment marks in Mathematics and Statistics MBA First Semester Examination makes it clear that break up of the marks is 25 marks for internal assessment (based on candidate's attendance, class participation, presentation, discussion, assignments and internal tests). Opposite parties purposely did not bring any thing on record to show that in case 25 were divided into various break up and one of the breaks up was of 10 marks for assessment, what were the marks allocated for internal assessment, for class participation, presentation, discussion and assignment and internal test. It is also not clear what were the marks awarded for class test. Admittedly class test had taken place.

20. The obtrusive instance cited by the petitioner relates to Nidhi Gupta and two other students who according to further alienation of petitioner, did not appear in the class test. According to further negations of the petitioner, 10 marks were allotted for class test and marks for other, which factum has not been denied. In case 2 marks were allotted for the class test, how Nidhi Gupta and two other students who did not appear in the Class Test were awarded 21, 20 and 22 marks.

21. Paragraph 6 of the writ petition has not been denied that she has been failed deliberately with vindictive intention, no reasons have been assigned to clear the

fog off the allegations of vindictiveness. The averments made in the representation dated 15.9.2005(Annexure-10 to the writ petition) makes it clear Head of the Department appointed examiner. The fact that Dr. Ramendra Rai maternal uncle of petitioner on whose complaint Vice Chancellor debarred Dr. Singhal which were to the effect that he helped only those students who got coaching from him. Dr. Singhal did not produce the record of internal Assessment. According to petitioner, the entire assignment was done by her. The petitioner fell short of one mark and if one more mark had been awarded, she could have been declared passed" in 1st Division.

22. Regard being had to the un-controverted allegation contained the report which is part of the writ petition wherein serious allegations have been made against opposite party Nos. 4 and 5 and further that petitioner's answer sheets were not produced before the Court in spite of the written order, this could safely be held that opposite parties awarded those marks and declared the petitioner failed in Business Taxation and Tax Planning II Paper malafide. In case University has already taken decision in the case of other similarly situated students, detailed above, it poses a big question mark why University has not made any re-evaluation despite regard being had to the fact that Dr. Aseem Mukherjee who is a teacher and is teaching the same subject in B.Com had assessed and answer scripts and found that petitioner's copy requires re-evaluation.

23. From perusal of the detailed of Sessional marks, it is clear that all the students except petitioner were awarded more than 18 marks and only petitioner was awarded 10 marks only. It is also clear that Mohd. Faizul Haq, Namrita Walia and Nidhi Gupta were not present in Class Test but they awarded 21. 20 and 22 marks out of 25, respectively, as is clear from Annexure -RA-3 to the Rejoinder Affidavit.

24. The totality of the facts and circumstances, does make out a case for re-evaluation as in the similarly situated cases like M.Com II Year, II Paper of 2005 and Internal Assessment examination of 40 students in Mathematics and Statistics in which the University took decision for re-evaluation as contained in the University letter dated 9.6.2006.

25. In the facts and circumstances of the case this Court is of the considered view that possibility that the petitioner was deliberately marked down out of malice and actuated by malafides by respondents 5 and 4, cannot be ruled and therefore, it is a fit case in which direction deserves to be issued for re-evaluation of answer-sheets of written examinations of Business Taxation and Tax Planning as well as for considering the sessional marks awarded by respondent No. 5 as decided by the then Vice Chancellor.

26. In the result, the petition succeeds and is allowed. The marks allotted on the answer sheets and sessional marks awarded to petitioner in second year, II semester Business Taxation and Tax Planning paper in M.B.A. are quashed. The Vice Chancellor Allahabad University Allahabad is directed to get the answer

scripts of petitioner of II year M.B.A. II Semester paper (Business Taxation and Tax Planning) re-examined by independent agency and further, to look into the assessment made by Opp. party No. 5 and do the needful in reassessing the performance of the petitioner in awarding sessional marks and declare 2nd year M.B.A. examination result 2006 accordingly.