
(1960) 03 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2443 of 1959

Mukand Madhav Singh

APPELLANT

Vs

Agra University and Another

RESPONDENT

Date of Decision : 08-03-1960

Acts Referred:

Agra University Act, 1926 — Section 26, 27A(2), 27B, 34(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1961 All 301

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : K.C. Saxena, for the Appellant; N.P. Asthana, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution filed by one Mukand Madhav Singh, who after having passed his B. A. examination from the Agra University got admission to the LL. B. (Previous) of the Agra College in 1955. In 1956 he appeared in that examination but failed. In 1956 he got admission to M. A. (Previous) in Political Science of the Agra College. He appeared at the M. A. (Previous) examination in 1957 as a regular student and at the LL. B. examination as an ex-student.

He succeeded in M. A. (Previous) but failed in Law again. He joined M. A. (Final) of the Agra University in 1957 and appeared in 1958 at the M, A. (Final) Examination and also as an ex-student in LL. B. (Pr).. He succeeded in both. The petitioner alleges that he obtained a third division in M. A. (Final); a true copy of the mark-sheet has been given by him in Annexure Y. The petitioner got his degree having passed his M. A. examination in the third division. He got himself admitted in LL. B. (Final) Class in July 1958 and he also resided there in the hostel.

2. The petitioner alleges that since he had been the President of the Student's

Union and an active worker for the cause of the students and had staged a demonstration against University authorities and distributed leaflets, the University authorities were displeased with him. On 23-12-58 a letter was received by him to the following effect:

"You collusively contrived and obtained fraudulently the M. A. (Political Science) diploma of having passed the Agra University Examination held in March, 1958, in higher division than the one, namely, the Third division in which you were actually placed on the merits of your answers in the answer books written by you. This you did by manipulating and by getting the real marks obtained by you increased by tampering with the University Examination records. This action of yours is liable to deprive you of the diploma."

In the same letter it was mentioned that he had made himself liable to criminal proceedings, that his action amounted to a scandalous misconduct, and that action was proposed to be taken against him u/s 34(2) of the Agra University Act to withdraw the degree which had been conferred by the University. He was asked to show cause why the action should not be taken. On 31-12-58 the petitioner sent an explanation as required by the Registrar, stating, inter alia, that according to the mark-sheet he had obtained a third division, and along with the explanation he sent the original degree in a registered cover.

3. The Registrar of the Agra University by his letter dated 6-1-59 informed the petitioner that the original diploma of M. A. Political Science had not been received along with the petitioner's explanation, and the petitioner was asked to send the original diploma. Thereafter correspondence ensued between the petitioner on the question whether the diploma had been enclosed along with the explanation or not. The petitioner also relied on a certified copy of the diploma which he had obtained and which was duly signed by a Magistrate.

4. The Registrar of the Agra University by letter dated 21-1-59. informed the petitioner that his explanation dated 31-12-58 was considered by the University Authorities, and it had been recommended that his examination of 1958 be cancelled and he be debarred from appearing at any examination of the University for two years. The petitioner was also asked to explain why the proposed action should not be taken against him. The petitioner submitted his explanation by letter dated 9-2-59 and protested against the procedure adopted by the Registrar and made a grievance that no opportunity had been given of being heard.

5. In June 1959 the result of the LL. B. (Final) Examination was published, but his name was not to be found. He made enquiry from the Registrar and then he came to know that his result had been struck off in the same manner as the result of the failed candidates had been struck off. He asked for his mark-sheet, but he was not given the same for some time and, therefore, he went to Agra personally.

The Registrar by letter dated 16-7-59, informed the petitioner that his case was

under enquiry; on 3-10-59 the petitioner received a letter from the Registrar dated 1-10-59, to the effect that the punishment contained in the aforesaid letter was that the petitioner's degree of M. A. had been withdrawn, his examination of 1959 was cancelled and he was debarred from appearing at any University examination before 1961. According to the petitioner, he had never been informed of the evidence on the basis of which he was accused of tampering with the University Examination results,

6. The petitioner contends that it appears that this action had been taken by the University under Order 13, Ch. XXV of the University Ordinances.

7. The action of the University in cancelling the examination of the petitioner of 1958 is being challenged in this writ petition on numerous grounds. The grounds are the same which are also taken in writ petitions Nos. 1323, 2611, and 1121 of 1959. The grounds taken inter alia are:

1. That the case did not fall within the scope of Order 13;
2. that the degree having already been conferred on the petitioner, it could not be withdrawn by the Executive Council acting u/s 34(2) of the Agra University Act; it could only be done by the Senate;
3. that the petitioner had been 110 party to the tampering;
4. that the petitioner had done nothing which would make him liable to withdrawal of his degree;
5. because the enquiry had been held behind the back of the petitioner and he had been given no reasonable or adequate opportunity to meet the charges levelled against him, nor were the charges told to him.

In that connection it has been urged on behalf of the University that the action had not been . taken under Order 13, as alleged by the petitioner, but has been taken under the temporary Order 121 which had been passed by the Executive Council on 17-1-59. On this fact having been disclosed in the counter affidavit, learned counsel for the petitioner argued that it was beyond the competence of the Executive Council to pass that Ordinance, because there already existed a specific provision for withdrawing the degree and if there is a special provision it would exclude the general. The intention of the Legislature, therefore, was that if there was to be a withdrawal it should be only by means of a Statute by the Senate;

(2) that actually that Ordinance had not been passed by the Executive Committee;

(3) that in any event, the Executive Committee, while passing that Ordinance, had exceeded its power given under Sections 27-A and 27-B of the Agra University Act;

(4) that the Ordinance, in any event, created actually a new offence which could

not be retrospective, and as the act had already been committed by the petitioner, it could not be dealt with under the new powers given by the Ordinance, and

(5) that the order, in any event, of cancelling the degree could be only effective after the Senate and the Chancellor had approved it.

8. It was further contended that from the language of the resolution it appears that It was the Executive Council which was going to take that action, though it was only a recommendatory body.

9. Another ground taken was that in the notice it had been given that it was proposed to take action u/s 34(2), but action actually has been taken under entirely a new provision of which no notice had been given and the petitioner was not aware of that Ordinance at all.

10. The most important question that has to be determined is whether the power which has been exercised had already been given to another body; In that connection the provisions of the Agra University Act have to be examined.

11. Section 26 of the Act provides for statutes being framed by the University, It says:

"Subject to the provision of this Act, the Statutes may provide for any matter relating to the University and shall in particular provide for the following:

* * * * * (f) the withdrawal of degrees, diplomas, certificates and other academic distinctions.""

It was contended on the basis of this provision that the withdrawal of degrees, diplomas, certificates or other academic distinctions can only be made by statute, not otherwise, because there is no provision in any other section which gives this specific right being enforced in any other fashion.

A statute can only be passed by the Senate and how they are passed, is provided in Section 27. The provisions of Section 27 I need not repeat, because it is not the case of the University that any such statute had been made by them, The contention of the University is that they can "cancel" the examination and punish under the Ordinance which has been made u/s 27-A. Ordinances can be made by the Executive Council under certain conditions. Section 27-A(2) provides that:

"Without prejudice to the generality of the power conferred by Sub-section (1), the Ordinance shall provide for the following matters, namely:

(i) maintenance of discipline among the students;"

12. On behalf of the University it has been, contended that it was by virtue of this section that Ordinances could be made for the purpose of "maintaining discipline among the students",

13. Section 27-B provides:

"(1) Notwithstanding anything in Section 27-A the Executive Council may frame and enforce a temporary Ordinance on any of the matters referred to in Sub-section (2) of the said section."

14. The sole question for determination, therefore is whether the University had any power under the words "discipline among the students" to frame such an Ordinance. According to the Murray's Oxford Dictionary, the word "discipline" means, inter alia, "Instruction imparted to disciples or scholars; teaching; education, schooling; Instruction having for its aim to form the pupil to proper conduct and action; the training to scholars or subordinates of proper and orderly action by instruction and exercising them in the same; correction; chastisement; punishment inflicted by way of correction and training". Thus if any code of conduct or mode of punishment is being prescribed for the students in certain special circumstances, I think it would be within the competence of the Executive Council to frame Ordinances;

Here what the Ordinance has done is, that it has set up a mode of conduct that the students should not be guilty of misconduct in connection with his/her examination and/or be instrumental in the tampering of the University records including the answer books, mark-sheets, result charts, diplomas and the like. This, to my mind, is a mode of conduct which the University would like all its students to observe, and in case of failure the University can very well chastise or punish in its disciplinary action. The word "discipline" and the expression "disciplinary action" themselves mean that there should be a conduct which should be followed by certain persons and in case of breach action is called for. Therefore, in my opinion, it would be within the competence of the Executive Council to frame such an Ordinance.

15. The second question that has been raised was that under the provisions of Sub-section (2) of Section 27:

"An Ordinance framed under Sub-section (1) shall have the same force and effect as an Ordinance framed and enforced under and in accordance with Section 27-A, but every such Ordinance shall be submitted to the Senate and the Chancellor and shall cease to operate at the expiration of one year from the date of its enforcement or if the Senate or the Chancellor disapproves it before the expiration of one year, upon such disapproval."

16. It was contended that unless this Ordinance had been placed before the Senate and the Chancellor and had got the approval of both of them, it could not be enforced. In my opinion, this argument has no force. The language of this section is analogous to Article 123 of the Constitution which gives the power of Ordinance-making to the President. Sub-Article (2) of Art 123 provides:

"An Ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but every such Ordinance:

(a) shall be laid before the House of Parliament and shall cease to operate at the

expiration of six weeks from the re-assembly of Parliament or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions and (b) may be withdrawn at any time by the President."

Under that Article also when an Ordinance is promulgated it has got to be placed before the House of Parliament and in case- the Ordinance has been promulgated before being placed before the Legislature and the Assembly, it has never been contended that it could not take effect unless approved by the Legislature. It is only after the Ordinance had been placed before the Senate and the Chancellor and any of them disapproves that it will cease to have its effect or at the expiry of one year, whichever is earlier. Otherwise, in my opinion, the Ordinance would have full effect.

17. The other argument that no resolution had been passed, is based on the words of the resolution. The resolution of the Executive Committee runs as follows:

"The Council resolved that action, taken so far in this matter be approved and the following Ordinance (to be added in Ch. XXV of the Hand Book be framed and enforced temporarily u/s 27-B of Agra University Act, as amended: "The Executive Council may cancel the examination of a candidate and/or debar him/her from appearing at an examination of the University for one or more years, if it is discovered afterwards that the candidate was in any manner guilty of misconduct in connection with his/her examination and/or was instrumental in the tampering of University records including the answer-books, mark-sheets result charts, diplomas and the like"."

It was contended that what the Executive Council decided was only "framing and enforcing" the resolution and actually it is not that the resolution was adopted. But the language of that resolution was in accordance with Section 27-B, Section 27-B provides that:

"Notwithstanding anything in Section 27-A the Executive Council may frame and enforce a temporary Ordinance....."

The jurisdiction which was given to the Executive Council was of framing and enforcing, and therefore, the Executive Council, when it passed the resolution of framing and enforcing, it exercised its power exactly in accordance with Section 27-B and, therefore, I do not think there is any force in the contention that the Executive Council had not adopted or passed the resolution about enforcement of a temporary Ordinance, as contended by learned counsel for the petitioner.

18. It was contended that this Ordinance created a new offence, and, therefore, any offence which was not within the ambit of this Ordinance before, could not be taken cognizance of by the Executive Council, if it fell under a misconduct committed before that Ordinance had been passed. In the circumstances, relying

on the principle of criminal law that if a new offence has been created the benefit should be given to the accused, it was urged that the petitioner was entitled to the advantage of it.

The Ordinance actually has not created any offence. It has created only a punishment. It cannot be urged for a single moment that the misconduct that has been dealt with in the Ordinance had not been a misconduct before the Ordinance. It cannot be urged with any force that tampering with answer-books, mark-sheets, result charts, diplomas and the like, or misconducting during the examination was not misconduct, or would not have been a misconduct or would have been a gentlemanly conduct before this Ordinance had been passed.

That principle of law applies in cases, where a certain action before a certain legislation would have been a legal and honest action, but on account of the enforcement of a certain law, became illegal. Then and only then it can be said that a new offence has been created. But if the misconduct was there, but it was only a question as to which should be the authority, which should punish for that misconduct, and a certain authority is given the power to deal with such misconduct, in my opinion, it is only delegating of power to deal with that misconduct, and not creating a new offence.

19. There is another point which deserves consideration in this connection. Withdrawal of a degree and cancellation of examination are two entirely different kinds of action. Withdrawal of a degree is when a degree is once conferred and there is some misconduct later on, either connected with the examination itself or entirely disconnected with the examination, but which makes a candidate unfit to hold that degree.

It is a matter of common experience that when a degree is conferred upon a student he is always charged with a duty that he should conduct himself as worthy of the same, if he conducts himself in a manner unworthy of that honour, the Legislature has given the power to the Senate to withdraw that degree. I may take the example of a person who obtains his degree honestly without any kind of misconduct at the time of the examination or by tampering with the mark-sheet, but later on he is found to have embezzled a certain sum of money or being involved in any other offence involving moral turpitude.

It may be open to the University to take action for withdrawal of his degree under its statutory power given u/s 34(2). On the other hand if a student misbehaves or misconducts himself at the examination, that is. before any degree is conferred upon him, or even if the degree is conferred, but his misconduct is established in connection with that examination itself, it would be cancelling the examination and thereby it might automatically also lead to the withdrawal of the degree, if it has already been conferred.

In the present case what the Ordinance provided was "cancellation of the examination" and not "the withdrawal of the degree". It may be that after the cancellation of the examination and after inflicting the punishment of debarring

him from appearing in certain examination, proper course may be taken for withdrawing the degree u/s 34(2). It would be only in the nature of a preliminary step of withdrawal of the degree. There is no order which has been passed, or which has been shown by the petitioner, by virtue of which the degree has been actually withdrawn so far.

20. Regarding the complaint by the petitioner that no action should have been taken under the Ordinance when notice u/s 34(2) had been given, in my opinion, the notice has not yet exhausted itself. It is only at the present moment that the examination has been cancelled and yet there will be an opportunity for the Senate to consider the matter whether they are going to withdraw the degree or whether they think that the degree which has already been conferred should not be withdrawn. Therefore, it cannot be said that the notice, which had been given was not a proper notice. The matter, if the degree is to be withdrawn, "will still have to go before the Senate as required u/s 34,

21. It has been contended that no opportunity was given to the petitioner to meet the charges as was necessary under the principle of natural justice. Universities are educational and autonomous bodies and provision has been made for their working so that there may be the least interference from outside and this Court will be reluctant to interfere with the administrative and disciplinary matters unless it thinks that there has been a blatant deviation from any provision of law. It has been held in *Ram Chander Roy v. University of Allahabad* (S) 1956 All 46 thus :

"Further. this Court has always held that, in matters of discipline of educational institutions, it will not exercise its power under Article 226 of the Constitution unless some legal right of a student has been violated."

As has been held by Lord Goddard, C. J. in *R. v. Metropolitan police Commr., Ex parte Parker* (1953) 2 All ER 717) and again in *Ex parte, Fry* (1954) 2 All ER 118 :

".....Where a person, whether he is a military officer, a police officer, or any other person whose duty it is to act in matters of discipline, is exercising disciplinary powers, it is most undesirable, in my opinion, that he should be fettered by threats of orders of certioraris and so forth, because that interferes with the free and proper exercise of the disciplinary powers which he has".

22. It is on this ground that it had been held that unless the order affects any fundamental right of a person, it is not necessary in every case to give an opportunity to the person affected by the order of the authority to explain his conduct, particularly in cases where an order has been passed by an authority for the purpose of maintaining the discipline of an institution,

23. The matter came recently before, a Division Bench of this Court in *Sri Calcutta Singh Vs. Registrar, Banaras Hindu University, Varanasi*, In cases of students found guilty of misconduct, as in the present case I do not think it can be doubted that the Executive Council, while considering those raises was

considering them in any other capacity than as an administrative or disciplinary body. It cannot be said to be acting judicially or quasi-judicially.

It is true that in some cases even an administrative or disciplinary body may observe the principles of natural justice, and one of such principles is that a reasonable opportunity should be given of being heard. I do not think that in such cases the provisions of the C. P. Code or even Evidence Act would be applicable. It has been laid down both by the English Courts as well as by the Supreme Court and this Court that the requirements of natural justice and the giving of reason-able Opportunity would depend on the circum-stances of each case.

It will depend on the nature of the enquiry to be conducted, the body which is conducting the enquiry, the purpose for which it is being conducted and the subject matter to be dealt with. No hard and fast rule can be laid down that in every case a certain procedure has got to be followed. In the Bench case which has been referred to above, it was the Academic Council of the Banaras Hindu University, which had cancelled the result and disallowed a candidate to appear for some future examination.

The petitioner had been informed by a letter of the misconduct that he had been charged with, and he was given an opportunity to explain. An explanation was given by him. Thereafter he was punished as mentioned above. A grievance was made that a regular charge was not framed against him and he was not permitted to cross-examine the witnesses and produce his own evidence. It was held by the Bench that :

"The only thing that he could expect was that the Council should act in a fair and above-board manner and should observe the ordinary rules of fair play. The requirements of natural justice in a case of this kind could only be that the person concerned should know the nature of the accusation against him, that he should be given an opportunity to state his case and that the tribunal should be acting in good faith. All these requirements appear to be fulfilled in the present case.

24. In the present case also by a letter dated 23-12-58 the petitioner was definitely informed that he had collusively contrived and obtained fraudulently his M. A. diploma of having passed in a higher division than the one, namely, the third division in which he was actually placed, and that this he did by getting the real marks obtained by him increased by tampering with the University Examination records. He had given an explanation. Thereafter a second opportunity was given to him when the punishment was being proposed and he again submitted an explanation. In my opinion the opportunity which had been afforded in this case was sufficient.

There seems to be no reason to doubt that the Executive Council was not acting in good faith. It is not only this petitioner, but there were nine other people against whom action had been taken. Three of the others have filed writ petitions

which are being heard by me along with this petition, In the circumstances I think there is no substance in the argument that no adequate and reasonable opportunity had been given to the petitioner.

25. It was also contended that once a degree is conferred, there cannot be any cancellation of it, and it cannot be withdrawn. It is not cancellation of the degree, but it is cancellation of the examination which has been done by the Executive Council, the ultimate result of which may be withdrawal of the degree by the Senate. But I do not think that it is really cancellation of the degree by the Executive Council which has been done in the present case.

26. Lastly, it was contended that this Court has jurisdiction to interfere with the order passed on the ground that there was no evidence on which the Executive Council could pass the order of cancellation of examination. The University had been directed to produce the records and they have been produced before me. I cannot say from the record that there was no evidence.

Whether that evidence would be enough in a court of law or whether on that evidence I would be prepared to pass that order, is a matter which cannot be considered in a writ petition. But if there was absolutely no evidence on the record, then the matter might have stood on a different footing and this Court might have interfered. A Bench of this Court had held in *Babu Ram Sharma Vs. State of Uttar Pradesh and Others*,

"But where the Regional Transport Authority and the State Transport Tribunal have arrived at a finding to the effect that the permit was obtained by fraud and misrepresentation which is not only unsupported by any evidence but is contrary to such evidence as there is, it amounts to an error of law if not to a violation of the principles of natural justice. An error of law apparent on the face of the proceedings is recognised as good ground for the issue of an order of certiorari."

27. In that case while coming to that conclusion their Lordships had relied on *R. v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw* (1952) 1 All ER 122. In the present case I cannot say that there was no evidence on the record, much less, that the finding is contrary to the evidence on the record, and it is only in exceptional cases that this Court would interfere on the question of fact and whether a certain fact has been established or not. As I have already said, it may be that the evidence was not as strong as it should have been, or possibly may not legally amount to have proved that offence. But a tribunal acting in its disciplinary or administrative capacity is not strictly bound by the law of evidence.

28. In the circumstances, though I may be inclined to the view that the evidence probably may be doubtful, but yet I see no reason to interfere. The petition is accordingly dismissed with costs.