

(1973) 05 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 381 of 1972

Mushtaq Hussain and Another

APPELLANT

Vs

The Secretary, Board of High School and Intermediate
Education, U.P., Allahabad and Others

RESPONDENT

Date of Decision : 08-05-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 All 537

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : V.N. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The petitioners are real brothers. Both of them appeared as regular students in the Intermediate Examination conducted by the Board of High School and Intermediate Education, Uttar Pradesh, in the year 1971 from the Islamia Inter College, Muzaffarnagar. They had offered the same subjects, one of which was Biology. They appeared in the Examination from the same Centre, namely, S. D. Intermediate College, Muzaffarnagar. They were sitting in the same room and in the same row but in between them there was another candidate. It appears that the Examiner, who examined their answer books found similarity in their answers to question Nos. 3, 7 and 8 of the Biology second paper. He suspected that they had used unfair means in answering their question papers and accordingly reported the matter to the Head Examiner. On August 24, 1971, an Enquiry Committee was appointed to investigate the charge of using unfair means by the petitioners. The Committee examined the petitioners and their answer books of the Biology second paper. It was stated by the petitioners before the Committee that they were real brothers and were reading in the same section and same class and they employed a tutor who coached them at the residence and that they had crammed answers to certain questions which were

indicated to them by the tutor to be important and that was the reason why there was similarity in the answers given by them to some of the questions. This explanation was accepted by the Committee, which found that although the language of answers to certain questions was identical yet the order of paragraphs was different. It also found that one of the petitioners had given diagrams while the other petitioner had not. The Committee accordingly exonerated them of the charge. The recommendation of this Committee was not accepted by the Examinations Committee, which held them guilty. The first respondent, Secretary, Board of High School and Intermediate Education by its order dated 16th November, 1971, cancelled the results of the petitioners and debarred them from appearing in the Intermediate Examination to be held in the year 1971. The petitioners have challenged this order in this petition under Article 226 of the Constitution.

2. The petitioners have reiterated that as both of them had received coaching from the same tutor and had learnt by heart the answers to certain questions as given to them by that tutor, the similarity in the language employed by them in answering certain questions was bound to be there. They have also reiterated that in the examination room they were not sitting close to each other nor behind each other, they were separated by another candidate and, as such, could not have copied out the answers from each other. They have also stated that a search was made of their person at the end of the examination and no paper or books were found from their possession from which they could have copied their answers. That indeed appears to be a plausible explanation. It is primarily for the Examination Committee to come to a decision after taking into consideration their explanations and other circumstances. Ordinarily, this Court would not interfere with the decision of the Examination Committee if it is based upon relevant considerations and is arrived at after affording adequate opportunity to the candidate concerned. But in the instant case I find that the decision taken by the Examination Committee violates the principles of natural justice. It is an elementary principle of natural justice that the material used against a person must be disclosed to him so as to enable him to rebut the same. From the order of the Examination Committee it appears that it took into consideration not only answer books of the petitioners but also the reports of the Screening Committee, the Superintendent of the Examination centre and the Invigilator of the room. These papers were not shown to the petitioners. The defence taken in the counter-affidavit is that in law it was not necessary to show these papers to the petitioners. No authority has been cited in support of this proposition nor indeed there can be such an authority, because it is a settled principle that no decision can be taken by any court, Tribunal or authority which affects the right of another person unless that person has been given adequate opportunity of meeting the case against him. Unless the material sought to be used against a person is disclosed to him, he cannot be said to have been given adequate opportunity to defend himself. All that appears to have been done by the Examination Committee was to show the answer books to the petitioners and to

get a declaration signed by them that they had given answers to the questions voluntarily. No question was put to them with regard to the reports of the Screening Committee, the Superintendent of the Centre or of the Invigilator of the room nor were the reports shown to them. In these circumstances it cannot be held that the petitioners were afforded reasonable opportunity. The decision taken against them is thus contrary to the principles of natural justice.

3. Accordingly the petition succeeds and is allowed. The order of the Secretary, Board of High School and Intermediate Education dated 16th November, 1971, (Annexure C to the writ petition) is quashed. The respondents are directed to declare the results of the petitioners of the Intermediate Examination, 1971, which has been cancelled. In the circumstances of the case there will be no order as to costs.