
(1974) 08 AHC CK 0013
In the Allahabad High Court
Case No : Writ Petition No. 635 of 1969

Narendra Narain Misra

APPELLANT

Vs

The Vice-Chancellor, Gorakhpur University and Others

RESPONDENT

Date of Decision : 13-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1975 All 290

Hon'ble Judges : Omprakash Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Omprakash Trivedi, J.—This petition under Article 226 of the Constitution of India has been filed by Narendra Narain Misra. The material facts are as follows. The petitioner was a student of M. L. K. Degree College, Balrampur, Gonda, in B. A. Final. The petitioner appeared in the B. A. Final Examination, held by the Gorakhpur University, through M. L. K. Degree College Centre of which the Principal was the Centre Superintendent. Sri P. S. Kapoor and Sri S. C. Sharma who were invigilators in the room in which the petitioner had a seat in the said examination charged the petitioner with having used unfair means in answering the Psychology Paper. According to opposite parties' case as set out in the counter-affidavit a manuscript containing certain matter relating to the Psychology Paper was actually seized from the petitioner's possession by the said invigilators on the spot. The petitioner was asked to fill the form of reporting cases of use of unfair means at the examination (Annexure C to the counter-affidavit filed by opposite parties Nos. 1 and 2). The petitioner filled the relevant columns of this form then and there and admitted in writing that a piece of paper containing certain points was seized from his possession, but he denied having used the same in answering the question paper and explained that the paper happened to be with him inadvertently as before start of examination he was learning certain points from this paper. He contested also that this paper had any

connection with the subject of Psychology. The two invigilators Sri P. S. Kapoor and Sri S. C. Sharma drew up a report on the prescribed form (copy of which is Annexure D to the counter-affidavit of opposite parties Nos. 1 and 2), In this report the invigilators stated that they had noticed the petitioner hiding a piece of paper in his handkerchief and when asked to show the paper he refused to do so and placed the paper with the handkerchief inside his shirt. He refused to show that pocket when asked to do so. Then the Superintendent was called for help and with difficulty and after lot of fuss being created the petitioner handed over the piece of paper taken out of his pocket in the presence of the Superintendent. After his pockets were searched by the Superintendent he was seen swallowing a piece of paper with the help of a glass of water. Then he threw the second copy which was issued to him and left the place, the Superintendent of the examination centre also recorded the same day his own report on the said prescribed form for reporting cases of use of unfair means at examinations and the same is contained in Annexure E filed with the counter-affidavit. The same day on 11-5-1968 the Centre Superintendent reported the incident by a letter to the Registrar Examinations, Gorakhpur University along with the matter contained in the Form E-4. In this report the Superintendent reported that in the morning session of the examination held on 11-5-1968 the petitioner while appearing in the Psychology Paper-I was found in possession of a manuscript written on one side. With this letter were enclosed the relevant documents including the manuscript slip said to have been seized from the petitioner and his belongings on Form E-4, the report of the invigilators and the Centre Superintendent on this Form (Annexures C, D and E attached to the counter-affidavit of opposite parties Nos. 1 and 2). Copy of the manuscript slip allegedly seized from the petitioner is Annexure G filed with the same counter-affidavit. That very day (11-5-1968) the petitioner sent a complaint to the Registrar, Gorakhpur University, under registered cover alleging that Sri P. S. Kapoor and Sri S. C. Sharma nursed past ill will against him & through a well hatched design had tried to falsely implicate him for being in possession of a piece of paper and for having used unfair means. In this complaint the petitioner denied not only the fact that any such manuscript was recovered from his possession but alleged that he was made under duress to admit in the prescribed form, on the dictation of these persons, that the same was recovered from his possession. The petitioner claimed to have lodged a report also with the police, alleging coercion in obtaining his admission about recovery of paper. The Registrar was requested to ignore the reports of the college authorities and prayed for an opportunity to produce defence in respect of his case. Thereafter the petitioner received a show-cause notice under signature of the Registrar dated 16-7-1968 alleging the use of unfair means by him in the Psychology Paper. He was required to submit an explanation within specified time (Annexure A to the counter-affidavit of opposite parties Nos. 1 and 2). The petitioner submitted a written explanation dated 20-7-1968, vide Annexure B to the counter-affidavit of opposite parties Nos. 1 and 2, denying the use of unfair means in the Psychology Paper and disputing correctness of report of the Centre

Superintendent. On the allegation of past animus against Sri Suresh Chandra Sharma. Head of Geography Department, it was alleged that he got him falsely implicated with the help of his friend Sri P. S. Kapoor. The authorities were requested also in this connection to take into account the contents of the petitioner's application to the Registrar dated 11-5-1968 (Annexure 2 to the writ petition).

2. It is contended for the Vice-Chancellor and the Registrar, Gorakhpur University in their counter-affidavit that an enquiry into the petitioner's reported conduct was made by an Examination Committee, consisting of all the Deans of Faculties appointed by the Vice-Chancellor, and it was held that the report of use of unfair means against the petitioner was correct. Accordingly the petitioner's examination for the year 1968 was cancelled and he was debarred from appearing at any University examination upto 1970. This decision was communicated to the petitioner by the Registrar's letter dated 31-7-1968 (Annexure 3 of the writ petition). By an application dated 22-8-1968 (Annexure 4 of the writ petition) the petitioner prayed the Vice-Chancellor to review this decision. This prayer was rejected by the Vice-Chancellor's order dated 14-3-1969 (Annexure 5 of the writ petition). The petitioner assails validity of the order dated 31-7-1968 (Annexure 3} on the ground that the principles of natural justice were violated as no opportunity was afforded to the petitioner to substantiate his case, to rebut the adverse reports made against him, and to cross-examine those who gave adverse reports and because the show-cause notice was vague and no opportunity of personal hearing was afforded to the petitioner. Thirdly, the order is impugned on the ground that it was vitiated by mala fides. Order of the Vice-Chancellor refusing to review the case is challenged on the ground that it was a case of failure on the part of Vice-Chancellor to exercise jurisdiction vested in him. The petitioner prays for Certio-rari for quashing the orders dated 31-7-1968 (Annexure 3) and 14-3-1969 (Annexure 5 of the writ petition).

3. I have heard learned counsel for the parties and also examined the affidavits exchanged in this case.

4. The first submission made on behalf of the petitioner was that there was violation of principles of natural justice because personal hearing was not afforded to the petitioner and that no opportunity was given to him to produce evidence in support of his defence. It was observed by the Supreme Court in the case of Suresh Koshy George Vs. University of Kerala and Others, that "the rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point the constitution of the Tribunal and the rules under which it functions." They further observed in para. 11 of the report that "the requirements of natural justice in case of an enquiry of this kind are, first, that the person accused should know the nature of accusation made; secondly that he should be given an opportunity

to state his case; and thirdly, of course, that the tribunal should act in good faith. There is really nothing more."

5. In the case of *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, the Supreme Court observed that "in dealing with cases like those of educational institutions dealing with matters of discipline like employing unfair means, the problem faced by the educational institutions should be appreciated by the High Court and so long as the enquiry held is fair and affords the candidate an opportunity to defend himself, the matter should not be examined with the same strictness as applicable to criminal trials in the ordinary courts of law."

6. In the case of *State of Mysore Vs. S.S. Makapur*, again the Supreme Court emphasised that "tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. What is a fair opportunity depends on the facts and circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

In the case of *Bihar School Examination Board v. Subhash Chandra Sinha*, C. A. No. 2620 of 1969 : 1970 SCN 83) while deciding a case in which there was an en masse use of unfair means by examinees at a particular centre their Lordships went so far as to say that the examinees need not be given show-cause notice as it was not a case of any particular individual being charged with adoption of unfair means but relates to the conduct of all the examinees or at least a vast number of them. The Court observed in that connection that to hold otherwise would be to make such decisions dependent upon a full-fledged judicial inquiry which would hold up the functioning of such autonomous bodies as Universities and School Boards.

7. On a survey of the Supreme Court decisions in the case of *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, a Full Bench of this Court in the case of *Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad*, held that the essential principles of natural justice to be observed by a quasi-judicial authority 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."

It was also observed that the "rules of natural justice not being embodied rules,

it is open to the authority concerned to evolve its own Procedure for acquainting the person concerned with the charges and the material on which they are founded, and also for affording him an opportunity of explaining those charges and putting forward his case. The procedure will necessarily vary with the facts, circumstances and nature of the case, constitution of the authority dealing with it and the rules under which it functions."

8. Deciding the matter in the light of the above decisions of the Supreme Court, the argument that the principles of natural justice were not observed in this case because the petitioner was not given a personal hearing or because opportunity was not afforded to the petitioner to produce evidence in support of his defence or copies of the documents, on which the charge was based, were not supplied to him, is not tenable for the University authorities were not bound to adopt the procedure with which one is familiar in courts of law or in criminal trials. They were free to adopt any procedure to satisfy themselves about the charge against the petitioner after ensuring that the enquiry was fair and unbiased. In the present case on the three tests laid down by the Supreme Court in the case of Suresh Koshy George Vs. University of Kerala and Others, being applied it will appear that there was no violation of the requirements of natural justice because the nature of the accusation against the petitioner, namely, the employment of unfair means in the Psychology Paper, was made known to him by the show-cause notice and secondly, he was given an opportunity to state his case which he actually did through the written reply contained in Annexure B of the counter-affidavit of opposite parties Nos. 1 and 2. As to the third requirement that the tribunal should act in good faith, for reasons which I shall hereinafter state, there is not even an oblique imputation of lack of good faith against the Vice-Chancellor or the Examination Committee and there is not the slightest cause for doubting bona fides or good faith of their action in ordering cancellation of the petitioner's examination and in debarring him from examinations till 1970. The petitioner had brought to the notice of the University authorities that the manuscript slip was not recovered from his possession: that he was made to record an admission in Form E-4 under duress; and that the invigilator Sri S. C. Sharma was maliciously disposed towards him. There is no reason to think that the Examination Committee and the Vice-Chancellor did not bestow necessary thought to these pleas raised in defence and did not make necessary enquiry to determine the veracity of these pleas. as the University authorities were not bound by any preconceived notions of procedure and could adopt and evolve their own procedure in order to satisfy themselves about the correctness of the charge and the pleas raised in defence, the petitioner could not as a matter of right claim an opportunity to produce evidence in respect of his defence before the Examination Committee or the Vice-Chancellor and there is no violation of any principle of natural justice because the authorities did not call upon the petitioner to produce such evidence or did not receive such evidence. The same applies also to the argument regarding failure to deliver copies of documents or reports to the petitioner on which the charge was founded. There is no law or

principle under which it was obligatory for the Examination Committee or the Vice-Chancellor to deliver copies of documents or reports to the petitioner. The Committee and the Vice-Chancellor quite justifiably appear to have taken the view that the complaint and the report to the police with allegation of exercise of pressure in obtaining admission from the petitioner regarding the loose paper were sent with a view to forestall proceedings for use of unfair means. I can see no error in rejection of the plea of exercise of coercion or undue influence by the Vice-Chancellor.

9. In the case of Suresh Koshy George Vs. University of Kerala and Others, it was held that it would not be contended that there was any breach of the principles of natural justice even if the Vice-Chancellor did not make available to the student a copy of the report submitted by the Inquiry Officer (see para. 11). Similar view was taken in the case of Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, where it was held that there was no violation of the principles of natural justice when the report of the spot inquiry committee was not given to the petitioner and the Examination Committee used the material without disclosing it to him. The principles of natural justice do not require the furnishing of a copy of the report to the candidate.

10. The plea that the principle of natural justice must be found to have been violated because personal hearing was not afforded to the petitioner is equally untenable. There is no statutory provision or principle of natural justice which binds an Examination Committee acting as a quasi-judicial body to afford personal hearing to the candidate against whom action is proposed to be taken for use of unfair means at the examination centre. A Full Bench of this Court took this view in the case of Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, . I, therefore, reject the argument that there was non-observance of the principles of natural justice in this case. In this connection an argument to the effect that the petitioner was prevented from defending himself effectively because of vagueness of the show-cause notice may also be considered. I am unable to notice any vagueness in the show-cause notice because it expressly contained the accusation that the petitioner had used unfair means in the Psychology Paper. In the background of the fact that he was caught by invigilators on 11-5-68 and asked to fill in Form E-4 and the fact that he sent a complaint to the Registrar about this incident should have given to the petitioner full notice of the fact that the show-cause notice required him to explain the charge of use of unfair means in the examination of 11-5-1968. This argument also, therefore, must be rejected.

11. Remains now to consider the plea of mala fides. As to this the only allegations made in the petition are against Sri P. S. Kapoor, Sri S. C. Sharma and the Principal the allegations being that the petitioner had incurred displeasure of the Principal of the institution for having pressed the demands of students and because of his activities. P. S. Kapoor and S. C. Sharma, who were

members of the Proctorial Board, gave adverse reports against the petitioner upon which the Principal demanded a letter of apology from the petitioner's guardian who refused to tender one. In 1965 the Principal refused to the petitioner permission to appear in the examination on account of shortage of attendance and refused him admission to the Institution in the next session. In November 1965 a Havaladar of the M. L. K. Degree College was beaten up by some villagers. In the police report the petitioner was nominated as one of the culprits. The report was prepared in the office of Sri Sharma. The petitioner was tried for offence under Sections 308/323/354, I. P. C. and P. S. Kapoor provided all sorts of assistance to the police in the trial and S. C. Sharma appeared as a prosecution witness against the petitioner in the trial which ended in his conviction and sentence. He was, however, ultimately acquitted by the Court of Session. In 1966 the Management of the College again refused to admit the petitioner and it was only upon his guardian furnishing an undertaking as demanded by the Principal that he was admitted. In 1966 the petitioner was elected leader of the Parliament defeating his rival candidate Virendra Singh Chahar who had the support of P. S. Kapoor and S. C. Sharma. It is alleged that the feelings of hostility and antagonism of P. S. Kapoor and S. C. Sharma knew no bounds and they could not see eye to eye with the petitioner and never wanted that the petitioner should remain in the institution. In 1968 there was an attempt on the part of one Shailendra Vikram Singh, a friend of P. S. Kapoor and S. C. Sharma, to charge the petitioner with use of unfair means in the B. A. Final Examination without success. The petitioner reported this to the Principal who took no action and then he filed a complaint to the Registrar, Gorakhpur University (An-nexure 1 of the writ petition). It will be noticed from the above that no facts suggesting or justifying an inference of personal animosity were made against P. S. Kapoor or S. C. Sharma or the Principal. The facts alleged in the petition against these persons merely disclose certain actions on the part of the Principal, P. S. Kapoor and S. C. Sharma in their official capacity as Principal or members of the Proctorial Board or as teachers of the College. No inference of personal bias or animus could be raised against them merely because adverse reports were made against the petitioner's conduct and apology was demanded from the guardian or because admission was refused to the petitioner on various occasions or from the fact that the petitioner was nominated in the first report relating to his trial for offences under Sections 308/323/354, I. P. C. Petitioner's nomination in the report may have been made in good faith. Petitioner did not implead P. S. Kapoor or S. C. Sharma in the petition with the result that they had no opportunity to meet the various allegations in connection with the plea of mala fides made against them. In the circumstances it is impossible to hold that P. S. Kapoor, S. C. Sharma or the Principal of the College were inimically disposed towards the petitioner before the incident of 11-5- 1968. Apart from this there is not even the faintest allegation of bias or malice against the Vice-Chancellor or the Examination Committee which conducted the enquiry. Therefore, there is not the remotest possibility of the decision to cancel the petitioner's examination and to debar him till 1970 having resulted from bias or malicious exercise of

power.

12. Lastly, the Vice-Chancellor was not in error in rejecting the application for review of his order as the Statute did not confer any power of review in the Vice-Chancellor.

None of the points raised in the petition are, therefore, tenable. The petition is, therefore, liable to be dismissed.

The writ petition is dismissed with costs to the opposite parties.