

(2016) 05 RAJ CK 0143

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14653 of 2015.

Neeraj Kumar - Petitioner @HASH State of Rajasthan and Others

Date of Decision : 12-05-2016

Acts Referred:

Constitution of India, 1950 — Article 20(2), Article 226, Article 227

Citation : (2017) AIR(Raj) 1 : (2016) 4 RLW 2753 : (2017) 1 WLC 272

Hon'ble Judges : P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. M.A. Siddiqui, Advocate, for the Petitioner; Mr. Lokesh Mathur, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J. - Petitioner, a student pursuing his MBBS Course has laid this writ petition under Articles 226 & 227 of the Constitution of India to challenge the impugned order dated 07.09.2015 (Annex.5) penalising him for using unfair means during second MBBS Examination conducted on 03.07.2015. It is clearly spelt out in the impugned order that while appearing in Pharmacology Third Theory Paper, petitioner was caught red handed by the Invigilator using unfair means in the examination. The Invigilator promptly reported the matter and thereupon the answer-book of the petitioner along with incriminating material was sealed at the Examination Centre and forwarded to the respondent-University.

2. The respondent-University later on allowed access of the incriminating material to the subject expert and subject expert submitted its report that material collected during examination is directly related with the question paper. It is also reported by the subject expert that petitioner has used the requisite material for solving question paper. The objectionable material along with report of the subject expert was then placed before the Committee constituted for hearing the cases relating to unfair means in the examination. The committee afforded personal hearing to the petitioner in the matter and thereafter passed the following punishment order:-

"Present examination shall be cancelled and he shall be further debarred for one subsequent examination, if the examination is held once a year or two subsequent examinations if the examination is held twice a year."

3. In the entire petition, the petitioner has not questioned the procedure adopted by the Committee before conveying him adverse decision but has simply contended that punishment is too harsh. It is also urged by the petitioner that the punishment of cancellation of present examination and debarment for one subsequent examination tantamounts to double jeopardy which is forbidden under Article 20 (2) of the Constitution of India.

4. On behalf of respondents, reply to the writ petition is submitted. In the return, respondents have categorically averred that the petitioner was found in possession of objectionable material while taking up his second MBBS Examination for Theory Paper of Pharmacology-III and during the enquiry, it is also proved that he has used unfair means in the examination for solving question paper concerned. For justifying impugned penal action against the petitioner, respondent-University has placed reliance on Ordinance 152-4 (c) (i) of the University Ordinance. It is also pleaded by the respondents that before inflicting punishment, the petitioner was afforded opportunity of personal hearing by the Committee and as such no interference with the impugned order is warranted. Refuting allegation of the petitioner that he has been subjected to double jeopardy, it is submitted by the respondents that impugned order has been passed in strict adherence of Ordinance 152-4 (c) (i) of the University Ordinance.

I have heard learned counsel for the parties and perused the materials available on record.

5. It is a matter of serious concern that an incumbent like petitioner pursuing his professional course of MBBS has used unfair means during examination. Use of unfair means by examinee during examination is really distressing and, therefore, the Courts while examining such matters are not expected to be swayed by misplaced sympathies and extra benevolence. It goes without saying that Universities while conducting examinations are required to regulate such examinations by prescribing certain rules and norms. In the instant matter, the respondent-University has provided complete procedure for conduct of examination and envisaged a clear and unambiguous provision for control of unfair means and disorderly conduct. That apart, Ordinance 152 of the University Ordinance also prescribes punishment when a candidate is indicted for use of unfair means in the examination. The relevant excerpts of Ordinance 152 reads as under:-

"3. Punishment:

A candidate found guilty of unfair-means or disorderly conduct at or in connection with an examination shall at the discretion of the Syndicate, be punished with one or more of the following. This may even be in addition to the

punishment that may have been already awarded by the Principal/Central Superintendent, under O.88 or O.152:

(i) Cancellation of the result of the paper in respect of which he is found to have been guilty; and/or

(ii) Cancellation of the result of the examination for which he was a candidate; and/or

(iii) Debarring the candidate from securing admission to a class and appearing at any future examinations of the University for a stated period; and/or

(iv) Any other punishment deemed suitable by the Syndicate."

6. A bare perusal of above-quoted Ordinance makes it amply clear that a candidate found guilty of unfair means or disorderly conduct at or in connection with examination can be punished by the Syndicate of the University at its discretion with one or more punishment provided therein. While examining the conduct of the petitioner, Syndicate of the University in its discretion has imposed the punishment by Annexure-5 to curb the menace of use of unfair means by the examinees during examinations. Therefore, in the considered opinion of this Court, the said punishment cannot be categorised as harsh. The contention of the petitioner that he is being subjected to double jeopardy is nothing but an ambitious plea which cannot be countenanced in view of clear and unambiguous provision under the Ordinance 152 (supra).

7. The doctrine of double jeopardy is founded on a well known maxim "nemo delset bis vexari pro eadem causa" i.e. no person should be twice vexed for the same offence. In the instant case, the said doctrine cannot be invoked for the simple reason that petitioner has been penalised only once for his omissions in terms of relevant Ordinance of the University governing the province of unfair means. There is apparently no reason to conclude in the instant case that petitioner has been vexed twice by the University on the same set of facts. A bare perusal of impugned order makes it amply clear that after indicting the petitioner for use of unfair means in the examination, the respondent-University has passed the punishment order and as such by no means it can be said to be a case of Autrofois convict i.e. double jeopardy within the ambit of Article 20 (2) of the Constitution of India.

8. Article 20(2) of the Constitution reads as under:-

"(2) No person shall be prosecuted and punished for the same offence more than once".

The Constitution Bench of Supreme Court in *Maqbool Hussain v. State of Bombay*: AIR 1953 SC 325 while construing abovequoted clause (2) of Article 20 of the Constitution of India, held,-

"The fundamental right which is guaranteed in article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy". The roots of that principle

are to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence." (Per Charles J. in *Beg. v. Miles* (1). To the same effect is the ancient maxim "*Nemo bis debet punire pro uno delicto*", that is to say that no one ought to be twice punished for one offence or as it is sometimes written "*pro eadem causa*", that is, for the same cause."

:::: :::: ::::

"These were the materials which formed the background of the guarantee of fundamental right given in article 20(2). It incorporated within its scope the plea of "*autrefois convict*" as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence."

The same principle is reiterated by the other Constitution Bench of Supreme Court in a latter case of *S.A. Venkataraman v. Union of India* and *anr.*: AIR 1954 SC 375. The Court held,-

"Although these were the materials which formed the background of the guarantee of the fundamental right given in article 20(2) of the Constitution, the ambit and contents of the guarantee, as this court pointed out in the case referred to above, are much narrower than those of the common law rule in England or the doctrine of "*double jeopardy*" in the American (1) (1953) S.C.R-703. Constitution. Article, 20 (2) of our Constitution, it is to be noted, does not contain the principle of "*autrefois acquit*" at all. It seems that our Constitution makers did not think it necessary to raise one part of the Common Law rule to the level of a fundamental right and thus make it immune from legislative interference. This has been left to be regulated by the general law of the land.

In order to enable a citizen to invoke the protection of clause (2) of article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "*prosecuted and punished*" are to be taken not district butively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. The position is also different under the American Constitution. There the prohibition is not against a second punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arraignment and plea and a lawful impanelling of the jury. It is not necessary to have a verdict at all;"

9. Thus, in the considered opinion of this Court "*and*" in Clause (2) of Article 20 of the Constitution is used in conjunctive and not in the dis-conjunctive sense. In such circumstances, taking into account the correct and meaningful interpretation of the term "*double jeopardy*", the contention of the petitioner in

this behalf is misplaced and, therefore, not tenable. Moreover, there is nothing on record to show that petitioner has been put twice in peril for the same offence so as to attract the maxim "Nemo debet bis vexari". As a matter of fact, competent authority of the University in its discretion has inflicted punishment commensurating with the gravity and magnitude of the petitioner's culpability.

10. It is trite that this Court while exercising powers under Articles 226 & 227 is not expected to interfere with the functioning and order of the educational institutions unless there is a clear case of violation of some statutory rules or legal principles. Supreme Court in the case of Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Ors. v. Vaibhav Singh Chauhan: 2009 (1) SCC 59 while emphasising the purity and strict discipline in the examination has disapproved passing of interim orders in educational matters. The Court has further passed on a word of caution for not showing sympathy and leniency vis-a-vis candidates who resort to unfair means in examinations. The Court held,-

"Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide Board of High School & Intermediate Education, U.P. Allahabad and another v. Bagleshwar Prasad and another AIR 1966 SC 875 (vide para 12), J.P. Kulshrestha (Dr.) and others v. Chancellor, Allahabad University and others AIR 1980 SC 2141 (vide para 17), Rajendra Prasad Mathur v. Karnataka University and another AIR 1986 SC 1448 (vide para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and orders of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations."

11. In view of foregoing discussion, I feel dissuaded to interfere with the impugned order. Resultantly, the petition fails and the same is hereby dismissed summarily.