

(2002) 02 DEL CK 0086
In the Delhi High Court
Case No : CW No. 7078 of 2001

Neha Jain

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Citation : (2002) 3 AD 75 : AIR 2002 Delhi 403 : (2002) 97 DLT 239

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : K.L. Budhiraja, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Partly Allowed

Judgement

Manmohan Sarin, J.—Petitioner, by this writ petition seeks quashing of the decision of the respondent University of Delhi, cancelling her examinations of B.A. (Pass), 1st Year, for the year April-May, 2001 and de-barring her from appearing at any examination of the University for a period of 12 months. Petitioner also seeks declaration of the results of all the four papers in which she had appeared. Further, petitioner seeks a reasonable opportunity, as sought in the representation dated 6.10.2001 to explain her case.

2. The facts leading to the filing of the present case may be briefly noted:-

(i) Petitioner, a student of Satyawati Co-Educational College, Day Classes, was enrolled in B.A. (Pass) Part-I course. She appeared for B.A. (Pass) first year examination held in April-May, 2001. She had taken the examination in English, Hindi, Political Science and Sanskrit on 30.4.2001, 2.5.2001, 4.5.2001 and 8.5.2001 respectively.

(ii) Petitioner during the examination of the Political Science paper was found to be having some notes on the date sheet. The Invigilator seized the date sheet and the answer sheet. Petitioner was provided with another answer sheet. This happened when the petitioner had completed almost the entire paper. She

answered the paper again within the limited time left. The result of the petitioner was not declared. As noted above, her entire examination was cancelled. She was disqualified from seeking admission to the second year of B.A. (Pass) Course and from appearing in any examination of the University for 12 months. Petitioner claims to have made repeated requests and entreaties to the University Authorities, but to no avail.

(iii) The University held the petitioner to have adopted unfair means. According to respondent notes made by her on the date sheet had been utilized for answering question No. 6 in the Political Science paper. Petitioner, when caught had refused to tender any Explanation. Her case was examined by an Expert, who opined that the notes/material had been utilized by the petitioner in answering verbatim question No. 6. She was found to have adopted unfair means as a result of which the Examination Disciplinary Committee cancelled the examination for B.A. (Pass) First Year and penalty of de-barring her from appearing in any examination in the University for 12 months was imposed.

(iv) A show cause notice had been issued to her and intimation of the penalty imposed was also sent to the Satyawati Co-Educational College. The University claims that the Examination Disciplinary Committee had duly considered the report of the Expert and recommended the punishment.

3. Notice in the writ petition had been issued on 22.1.2002. The respondent University had filed its counter affidavit and additional affidavit in which the stand, as noted above, has been taken. This Bench on 7.1.2002, noted the submissions of the learned counsel for the respondent that the Review Committee had not met. The Court had also directed the respondent to consider whether the notes made by the petitioner on the date sheet were confined to question No. 6 or any other material, which was not there in the question paper also. The Review Committee was also requested to expedite its decision. Petitioner's case was also considered by the Review Committee before whom the petitioner did not appear on 22.1.2002. The petitioner states intimation was received by her on 21.1.2002 and on account of the Court hearing on 22.1.2002, she could not appear. The Review Committee after reviewing the matter recommended that the decision already taken by the Examination Disciplinary Committee, required no further review.

4. Learned counsel for the petitioner, Mr. K.L. Budhiraja, submitted that the petitioner was not guilty of adopting any unfair means. Petitioner had only while going over the question paper, for the sake of facility of reference, made notes on the date sheet so that while writing the answer sheet, she could remember and re-capitulate the points and not forget any point. Instead of making the notes on a page of answer sheet, inadvertently notes were made on the date sheet. This was the only breach of instructions Committed by the petitioner, for which the respondent had cancelled her entire examination. He argued that neither show cause notice had been served on the petitioner nor had she been given an opportunity to explain the position. The University Authorities have

imposed an excessive punishment and the career of the petitioner is sought to be marred and ruined.

5. He submitted that the petitioner had gone to enquire about the results from a University Authorities. At the behest of an University employee, she wrote as to what had transpired in the Political Science paper. The same was not in response to any show cause notice, as the same had not been received by the petitioner. Learned counsel for the petitioner submits that the impugned action in cancelling the examination of the petitioner was taken in violation of principle of natural justice and without a proper enquiry. Petitioner had no opportunity to explain her position. Reliance was placed on a Full Bench decision of this Court in *Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another*, .

6. Learned counsel also submitted that the punishment imposed on the petitioner was totally disproportionate to the alleged mis-conduct. He also relies on the case of one Mr. Sandeep Kumar a candidate, who is also stated to have made some notes on his cardboard, brought by him from residence. The University Authorities in his case imposed penalty of cancellation of only the examination of the subject in question. He, Therefore, submitted that the punishment imposed on the petitioner was excessive and discriminatory under Article 14 of the Constitution of India.

7. Mr. Anurag Mathur, learned counsel appearing on behalf of the University, submitted that the petitioner, who was caught, having the notes on the date sheet, by the Invigilator declined to give any Explanation or make a statement, as recorded in the report of the Invigilator. He submitted that the show cause notice was duly issued to the petitioner. In fact, petitioner even submitted her reply, which is now sought to be described as a narration of what had transpired, hurriedly written at the behest of a University employee, when the petitioner went to make an enquiry regarding declaration of her result.

Learned counsel produced the entire records including that of Sandeep Kumar and submitted that the matter had been examined by an Expert, who found that the petitioner had utilised the notes made by her on the date sheet, in answering paper of Political Science. The Examination Disciplinary Committee duly considered the report of the Expert and all the relevant papers and records. The Committee decided to punish the candidate under Category "C" of the Guidelines, by cancelling the examination and further debarring her from taking any examination for a period of one year. She would, however, be eligible to be admitted to the Annual examination of 2002, if otherwise found eligible. Learned counsel submitted that it was of utmost importance that discipline is maintained in Educational Institutions and the use of unfair means had to be deprecated. He submitted that the Review Committee has also reached the same conclusion and no ground is made out for any interference by this Court in the exercise of writ jurisdiction. He relied on *Union of India (UOI) and Others Vs. Upendra Singh*, , *Government of Tamil Nadu and another Vs. A. Rajapandian*, , *B.C. Chaturvedi Vs. Union of India and others*, and *State of Tamil Nadu and another Vs. S.*

Subramaniam, .

8. I am conscious of the limitations in judicial review. The findings of fact as reached by the University authorities are not to be substituted by the Courts' own judgment in the exercise of writ jurisdiction under Article 226 of the Constitution of India. However, in this case, considering the petitioner's plea that, (i) it was not at all a case of adoption of unfair means; (i) the punishment that had been imposed upon her was discriminatory and grossly disproportionate so as to shock the judicial conscience, I have gone through the records and material available as well as considered the decision making process.

A perusal of the notes made by the petitioner on the date sheet show that these relate to question No. 6, which was to write an "Essay on Human Rights." The notes do not appear to have a bearing on any other question or topic in Political Science syllabus. Petitioner, it may be noted, had almost completed, answering the question paper. She had answered question No. 6 and thereafter another question i.e. question No. 10, when the Invigilator, it appears, discovered the notes on the date sheet, made by her.

9. What is significant is that the notes, which are made on the answer sheet do not relate to any other question in the question paper except question No. 6 or to any other topic of the Political Science syllabus. Normally candidate, who intends to use unfair means by bringing notes from residence, would do so by making notes on probable or important questions that might be expected to be asked in the question paper. These would generally include notes, which would cover a whole gamut of topics and not only a particular question of the question paper. It is not anybody's case that there had been any leakage of the question paper.

10. From the foregoing, it would be seen that the Explanation of the petitioner that while she was reading the question paper, she made these notes on the date sheet instead of answer sheet for the purpose of recalling the points is a plausible one. It is also significant that on discovery of the notes on the date sheet, the Invigilator had seized her answer sheets and given her a fresh answer sheet on hearing her Explanation. Petitioner in the limited time, it may be noted without the aid of any notes was able to answer the whole question paper once again. The Expert of the respondent has also given the opinion that the notes on the date sheet were relevant for question No. 6. The Expert in an answer to the question, whether the material, if not relevant to question paper covered the scope of Syllabus, the Expert has written "not applicable". The Expert also opined that the notes had been used for answering question No. 6. He had circled the user, which I find was noting the dates of beginning of Human Rights movement in Great Britain and of the Magna Carta. It is also pertinent to notice that the petitioner, while answering the question paper for the second time though in a state of anxiety and tension, was able to re-capitulate the substance of answers, as earlier written.

11. From a perusal of the records, I find that the Examination Disciplinary

Committee had recorded its finding as under:-

"The Committee has gone through all the relevant reports in the file. From the report of the Expert on the subject, it is revealed that the papers recovered are relevant to the question paper of the day and the candidate has also used these papers in solving questions, the candidate has also given the reply of the show cause notice. Keeping in view the above, the Committee decided to punish the candidate under Category "C" of the guidelines."

The above finding insofar as it states that the candidate had used the notes in solving questions as an opinion of the Expert is contrary to record. As noted above, the Expert himself opined that the material had been used in answering question No. 6 and "not applicable". While for others the Committee appears to have proceeded on the basis that it was used for solving questions. This, in the light of the discussion above, has a bearing on the question of dis-proportionality of the punishment, as discussed hereinafter.

12. The foregoing discussion clearly points out to the plausibility and credibility of the version of the petitioner of having made the notes in the date sheet instead of the answer sheet for the purpose of answering the question while reading the question paper.

13. Circumscribed as I am on account of limitations of judicial review in such matters, I would not substitute the finding of the University Authorities with regard to adoption of unfair means, especially when making of notes on date-sheet and its use was unauthorized and not permissible. It cannot be treated as a case of no evidence. However, the punishment that had been imposed by the University Authorities on the petitioner is totally disproportionate and excessive for the mis-conduct committed by her. The career of a young bright student is sought to be marred by adoption of a rigid and arbitrary approach, which ignores the plausibility of her Explanation. It is also correct that the University in the case of Mr. Sandeep Kumar, who had made notes on the card board brought from his residence imposed the punishment of cancellation of only one paper on the ground that the notes were only remotely relevant to the question paper or the Syllabus. Awarding minimum punishment to a candidate, who attempts to adopt unfair means because he could not succeed in the attempt, does not appear to be a rational or an objective approach. It would be a matter of chance only whether the material brought is usable or not. This does not appear to be a very germane or rational criteria for assessing the quantum of punishment to be meted out. Be that as it may, applying the same analogy, the present case is a fit case where if at all the University Authorities wanted to punish the petitioner, the cancellation of one paper would have been more than adequately sufficient and met the ends of justice. Petitioner as it is was not permitted to attend the classes for IIInd year.

14. In B.C. Chaturvedi Vs. Union of India and others, , the Hon"ble Supreme Court while noting the limitation of judicial review also recognized that in

appropriate cases, where the punishment meted out was wholly disproportionate, the Court could interfere and mould the relief. The Court observed as under:-

"The disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It may be noted that Hansaria, J while concurring with the majority decision also specifically noted that while the Supreme Court enjoyed the above powers by virtue of Article 142, the High Court may also modify the punishment or penalty by moulding the relief.

"A High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief. In a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, the punishment/penalty awarded has to be reasonable"; and if it be unreasonable, Article 14 would be violated. If Article 14 were to be violated a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it."

15. Reference may also be usefully made to *Om Kumar and Others Vs. Union of India*, . The Court reviewed the case law and held that when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principles of secondary review based on *Wednesbury* principles apply. The Court also took notice of the decisions in *Ranjit Thakur Vs. Union of India (UOI) and Others*, and *B.C. Chaturvedi v. Union of India (supra)* and observed that the Court would not normally interfere unless the punishment awarded was the one, which shocked the conscience of the Court. The Court would normally remit the matter back to the Authority and not substitute one punishment for the other. However, the Court could award an alternative penalty in rare situations, as held in *Union of India v. Ganayutham (1977) 7 SCC 463*.

16. Applying the aforesaid principles, I am of the view that the punishment and penalty on the petitioner is wholly disproportionate to the alleged misconduct so as to shock the judicial conscience, as discussed in paras 9 to 12 hereinbefore.

17. In these facts and circumstances, where the petitioner has already lost one

year and the Review Committee has also endorsed the decision of the Examination Disciplinary Committee, remitting the matter is not called of rend will be futile. I, accordingly, quash the decision, cancelling the entire examination. The cancellation shall be confined to the question paper of Political Science only. The result of the petitioner be declared for the remaining papers. Petitioner be required to appear in the political science paper only. Further, the decision regarding not permitting the petitioner to attend classes for the second year is also quashed. Petitioner shall be permitted forthwith to attend the classes and in case it is permissible, as per rules, to provide relaxation to the petitioner to make up the attendance for the IInd year course in the succeeding year, the University Authorities shall duly consider the petitioner's case for granting relaxation on execution of the requisite undertaking, if any, and in accordance with their rules.

The writ petition stands partly allowed in the above terms.