
(1983) 03 AHC CK 0006
In the Allahabad High Court
Case No : Writ Petition No. 5282 of 1982

Pradeep Singh Chauhan

APPELLANT

Vs

University of Lucknow and Others

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 03 AHC CK 0006

Hon'ble Judges : T.S. Misra, J;D.N. Jha, J

Bench : Division Bench

Advocate : R.D. Suman, H.A. Husain and P.P. Singh, for the Appellant; B.M.N. Kachur, Umesh Chandra Srivastava and Krishna Chandra, for the Respondent

Judgement

T.S. Misra, J.—The Petitioner was a student of B.Sc. Part I of Canning College, Lucknow University, Lucknow. He appeared at the Physics Practical B.Sc. Part I Examination conducted by the Lucknow University on 26-5-1982, Sri. S.G. Wadhwani, opposite party No. 3, who was one of the Examiners apprehended the Petitioner and after completing the formalities reported the matter to the Sub-Committee concerned. The formalities were: (i) completion of form for reporting cases of use or attempt to use unfair means at the examination (the statement of the candidate was obtained immediately in his own handwriting and signed by him), and (ii) serving of show cause notice on the candidate. It was said that the Petitioner had a hand-written slip of paper pertaining to experiment which he was performing and the hand-written slip was recovered from the possession of the Petitioner. A copy of the show cause notice served on the Petitioner is Annexure No. 2 to the petition. The Petitioner was charged on two counts. He gave his reply to the notice (vide Annexure No. 3 to the petition). The Registrar of the University informed the Petitioner (vide Annexure No. 4 to the petition) that the Examination Committee of the University had cancelled the entire examination of the Petitioner of the year 1982. Aggrieved, the Petitioner has filed the instant petition under Article 226 of the Constitution for the quashing of the said order (Annexure No. 4) and for a mandamus directing the opposite party

No. 1 to declare the result of the Petitioner for the examination of the year 1981-82. The petition has been opposed. Sri. S.G. Wadhwani has filed his counter-affidavit.

2. We have heard the learned Counsel for the Petitioner as also Sri. Umesh Chandra the learned Counsel for the opposite parties.

3. For the Petitioner it was urged that the two charges levelled against him were not only vague but contradictory; hence he was not afforded with a reasonable opportunity of defence. Secondly, it was submitted that the Unfair Means Sub-committee has not recorded any finding and has merely recorded the punishment to be awarded. Thirdly, it was submitted that Sri. S.G. Wadhwani was bent upon causing harm to the Petitioner. According to the Petitioner. Sri. Wadhwani in his counter-affi-sister of the Petitioner and had also abused him and the entire thing was manoeuvred by Sri. Wadhwani with a view to cause harm and loss to the Petitioner. Sri. Wadhwani in his counter-affidavit has denied these allegations and has urged that the Petitioner had a handwritten slip of paper pertaining to experiment which he was performing and the hand-written slip was recovered from the possession of the Petitioner. He further says in his counter-affidavit that it is incorrect that he had planted the said paper upon the Petitioner. He also stated in the counter-affidavit that it is incorrect that it was done with a view to taking revenge. Further Sri. Wadhwani states in the counter affidavit that he did not know either the Petitioner or his sister and that he met the Petitioner for the first time during the course of the practical examination. In order to appreciate the respective contentions of the parties we directed the learned Counsel for the opposite parties to produce before us the original show cause notice and all other relevant papers including the order passed by the said sub-committee. The learned Counsel for the opposite parties has accordingly produced before us the said original documents and we have perused the same. On going through the documents in question it transpires that the Petitioner was said to have acted in a manner mentioned at items Nos. 1 and 2 in the show cause notice and had thereby used or attempted to use unfair means at the said practical examination. The two charges levelled against the Petitioner run as follows:

1. Having in possession during the examination hours, material pertaining to syllabus of the question paper of the day, but not used.

2. Having in possession during the examination hours, material pertaining to syllabus of the question paper of the day, and used.

Obviously both these charges run counter to each other. The two charges are not only vague but are contradictory to each other; hence there is substance in the contention of the Petitioner that he was not given a reasonable opportunity of defence. A perusal of the decision of the Unfair Means Sub-Committee would also disclose that the said Sub-Committee had not recorded any finding on the charges levelled against the Petitioner. The relevant document in original

produced before us for our perusal reads as follows:

FINDINGS OF THE U.F.M. SUB-COMMITTEE

The Committee has inspected thoroughly the answer-book of the above Roll No. of the said date with the following U.F.M. material submitted along with the answer-books:

1. Books
2. Printed torn leaves
3. Hand-written slips-One....
4. ...
5. ...

Having gone through the report of the invigilator checking squad and the reply to the show cause notice the findings of the Committee are as follows:

DECISIONS OF THE COMMITTEE

1. x x x 2. x x x x x 3. Entire examination of the year 1982 cancelled.
4. x x x x x

Signature of the members

1. sd/- 2. sd/- 3. sd/- 4. sd/- 5. Dated 19/7/82

4. It is thus quite plain that the Sub-Committee though intended to record its findings but failed to do so as is evident from the findings extracted hereinabove. The said Sub-Committee in the fact merely recorded the punishment to be awarded to the Petitioner. It did not say as to whether the charge No. 1 was established or charge No. 2 was established or both the charges were established. It also did not say as to whether it was not satisfied with the explanation given by the Petitioner against the show cause notice. The learned Counsel for the opposite parties, however, submitted that the entire findings of the aforesaid Sub-Committee should be considered as a whole and no part of it should be considered in isolation and if the entire findings are taken into consideration it would be evident that the said Sub-Committee was satisfied that the charges levelled against the Petitioner were established. We do not find any merit in this contention. Taking the entire findings as a whole into consideration it would be seen that the said Sub-Committee though desired to record its findings but failed to do so. It simply recorded its decision to the effect that the "Entire examination of the year 1982 cancelled." Such a decision of the Sub-Committee based on no findings would hence not be sustainable.

5. The learned Counsel for the opposite parties, however, referred us to a decision of the Supreme Court in Prem Parkash Kaluniya Vs. The Punjab University and Others, . Referring to the observations made in paragraph 12 of

the said decision it was submitted by the learned Counsel for the opposite parties that in dealing with such cases the problem faced by the Universities should be appreciated by this Court and the matter should not be examined with the same strictness as applicable to criminal charges in the ordinary Courts of law. In Prem Prakash's case the Supreme Court referring to its earlier decision in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, observed that the identity of the wrong answers given by the Respondent in that case, with that of the other candidate bearing the consecutive Roll Number rendered the Charge of the Respondent having employed unfair means highly probable and that the findings of the enquiry committee based upon such probabilities and circumstantial evidence could not be said to be based on no evidence as in such matters direct evidence quite often cannot be available. The Supreme Court further observed: "It was further pointed out that in dealing with those cases the problem faced by such institutions should be appreciated by the High Court and so long as the enquiry held was fair and afforded the candidate an opportunity to defend himself, the matter should not be examined with the same strictness as applicable to criminal charges in the ordinary Courts of law."

6. In the case in hand it would, however, be seen that the Unfair Means Sub-Committee did not record any finding whatsoever. It is not the case of the Petitioner that the finding is based on no evidence. In fact in the instant case there is no finding at all. No doubt the problem faced by the University in conducting the examinations has to be appreciated but it has also to be borne in mind by the University Authorities while inflicting punishment on a student which may adversely affect his future career as well that he should be given a reasonable opportunity to defend himself. It is trite to say that the person on whom a punishment is sought to be imposed should be told with definiteness as to what charges were levelled against him. If the charges are vague and contradictory in nature, as in the instant case, it cannot be said that the inquiry was fair and that the person concerned was afforded an opportunity to defend himself. Needless to emphasise that it is the duty of the Unfair Means Sub-Committee to record its findings on the Charges. In the case in hand instead of recording a finding the Unfair Means Sub-Committee merely recorded the punishment to be imposed. This procedure is not warranted by law. The view which we have taken finds support from the decisions of two Division Benches of this Court in (i) *Mahendra v. Lucknow University, Lucknow* (1982 LLJ 87) and (2) *Man Mohan Sharma v. University of Lucknow* (1982 All LJ 55). There is also another unreported decision of a Division Bench of this Court which has relevance to the points in issue. It was rendered in Writ petition No. 724 of 1983 (*Madhukar Shukla v. Registrar, Lucknow University, Lucknow*) on 24-2-1983. This Court has thus consistently held that the charge or charges levelled should not be left vague. They should be definite and precise and that the student concerned should be given reasonable opportunity of defence. The Unfair Means Sub-Committee should have recorded a finding with respect to the charges levelled against the Petitioner and if that is not done the order of the Unfair

Means Sub-Committee would be bad in law and unsustainable. It seems that the Unfair Means Sub-Committee uses a cyclostyled form while dealing with matters pertaining to unfair means in the Examination. Even in that form there is space left for recording a finding but in the instant case that space in the Form had remained blank.

7. For the reasons in the foregoing the petition is allowed with costs. The order of the Lucknow University, Lucknow, cancelling the examination of the Petitioner for the year 1982 (Annex No. 4 to the Writ Petition) is quashed. The Lucknow University is directed to declare the result of the Petitioner of the B.Sc. Part I Examination for the year, 1982 within a week and if the Petitioner is found eligible the University shall permit him to appear at the ensuing examination of B.Sc. Part II.