

(1998) 10 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No. 13395 of 1998

Prafulla Singh

APPELLANT

Vs

U.P. Board of High School and Intermediate Education,
Regional Office, Allahabad and others

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 531 : (1999) 2 UPLBEC 42

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : S.P. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

O.P. Garg, J.—The petitioner appeared in Intermediate Examination of 1996 as private candidate. His result has been cancelled by order dated 16th September, 1997, Annexure-2 to the writ petition by respondent No. 1 on the ground that on 2.4.1996 when he was appearing in Maths IIIrd paper at National Granodyogic Higher Secondary School, Sarai Vanshi, Allahabad, the Flying Squad seized two hand written papers from his possession and the said act of the petitioner was against the provisions of Regulation 2 (1) of Chapter VI of the Board's calendar for which an explanation of the petitioner was called for. The petitioner denied the allegations made against him and maintained that the seized written papers were not in his hand writing and that the Flying Squad had collected them from behind the seat of the petitioner and that on mere suspicion, his answer book was checked but nothing objectionable was found from his possession.

2. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 16.9.1997, Annexure-2 to the writ petition by which the result of the petitioner of Intermediate, 1996 examination has been cancelled and he has been debarred from appearing in the examination in the next year.

3. Counter and rejoinder-affidavits have been exchanged. Heard Sri S. P. Pandey. learned counsel for the petitioner as well as learned standing counsel on behalf of the respondents.

4. At the outset, it may be mentioned that out of the five, in four subjects of Physics. Chemistry, Hindi and English, the petitioner has obtained first division marks in the aggregate. He can easily be termed as a good student. The result of the petitioner of Intermediate Examination, 1996 as said above has been cancelled solely on the ground that two hand written papers were seized from his possession which could be used by him to solve the answer to question Nos. 2-Ka, 2-Kha, 3-Ka and 5-Ga. The stand taken by the petitioner is that the offending papers are not in his hand writing and that they were not seized from his possession. The original record of enquiry along with relevant answer book of the petitioner has been produced for perusal of the Court. The report of the examiner is that the petitioner has not used the hand written papers in writing the answers to the various questions. Now the question is whether the two hand written papers were actually seized from the possession of the petitioner or not.

5. The printed form "Ga-5-Ka (4) utilised for the purpose by the Flying Squad simply indicates that two hand written papers were seized. it is not mentioned from where the said papers were seized. The positive plea of the petitioner is that the said two incriminating papers were not seized from his possession and that the Flying Squad picked up the two hand written papers from behind his table. This stand of the petitioner is clearly fortified and corroborated by Sri V. A, Siddiqui, Principal of the College, who has filed a counter-affidavit. Since the counter-affidavit of Sri Siddiqui is having a direct bearing on the result of the writ petition, it is found proper to extract the relevant portion, here and now, for ready reference :

"5.It is stated that when the Flying Squad visited the institution for Inspection purpose, the deponent was also present. The deponent also accompanied the members of the Flying Squad during inspection. When the deponent entered in examination room with the members of the Flying Squad where the petitioner was giving examination of Mathematics IIIrd paper of Intermediate Examination. some of the examinees started throwing slips after seeing the inspection team. Total three slips were found in the said examination room thrown by the examinees. One of the slips was found behind the seat of the petitioner also. The aforesaid material which was found behind the seat of the petitioner was taken into custody by the inspection team.

6.That the answer book of the petitioner was thereafter checked up by the inspection team as well as by the deponent but it was found that the petitioner had not copied from the recovered slip. Similarly remaining two other slips were found behind the seats of two other candidates/examinees, having Roll Nos. 915845 and 915846. The members of the Flying Squad levelled similar charges to all the three examinees Including the petitioner. At the time of inspection, the deponent also Informed the members of the Flying Squad that since the material

found behind the seats of the examinees were not found in actual possession of the examinees, either in their physical possession or in their desks and moreover, since the students concerned did not use the materials to solve their questions, hence no action should have been taken against the examinees, yet the members of the Flying Squad got filled up forms from those three students including the petitioner and obtained their signatures thereon.

7.That the deponent made a report to the effect that the petitioner did not use any unfair means and in fact the petitioner was wrongly served with the charge-sheet, hence no action was needed against the petitioner, yet the Flying Squad got filled up form from the petitioner and reported for using unfair means."

6. Sri Siddiqui, Principal of the college has categorically deposed in paragraph 12 that ".....the material was neither found in possession of the petitioner nor the same was found to have been used by the petitioner after checking the answer book of the petitioner. The members of the Flying Squad reported against the petitioner only because the material was lying behind the seat of the petitioner".

7. The above deposition of the Principal of the college, who had also accompanied the Flying Squad, gives a death blow to the case of the respondents that two hand written papers which the petitioner could have utilised in writing answer to some of the questions, were seized from his possession. in order to dive-deep in the matter, i had ordered on 24.7.1998 that in view of the assertion of the petitioner, it is necessary that Kendra Vyauasthapak or any member of the Flying Squad should file a counter-affidavit. Though the Principal of the college has filed the counter-affidavit, relevant portions of which have been culled out above, no member of the Flying Squad has come forward to rebut or disprove the assertions of the petitioner or that of the Principal of the college. Therefore, there can be no hesitation in coming to an irresistible conclusion that the two hand written papers were not actually seized from the possession of the petitioner but were picked up by the Flying Squad from behind the table of the petitioner. it is also well-established that these hand written papers are not in the hand writing of the petitioner.

8. it is true, that using the unfair means has nexus with the employment of prohibited material and taking help of outside agency. if the candidate by applying his own mind made calculation on the desk or on the palm, he cannot be said to have used unfair means. if somebody outside the examination hall loudly announces the answer or some one of the supervisory staff tells the answer, the hearers do not thereby become parricides cirrnimis. Receiving help must be a conscious and voluntary act in pursuance of some attempt or effort. No examinee could help hearing the answer if it was uttered sufficiently loudly by one examinee to another. Those who did not ask the answers could not be punished on charge of adoption of unfair means because they could not avoid hearing the answer being within earshot. A person can restrain himself from talking or from otherwise communicating, as these are voluntary acts and capable of being willed. But the same is not true of acts of hearing which are

effortless and, therefore, involuntary. A guilty mind is envisaged for punishing the candidate indulging in unfair means. These observations, which were made in *Baspal Singh v. Punjab University* ILR 1968 (P&H) 677 are equally applicable and attracted to the facts of the present case. If some student has thrown the handwritten papers on account of the fear of being caught by the Flying Squad and the said material is dropped by the side of the seat of the petitioner, he cannot be held to be responsible for the misdeed of another student.

9. In the light of the above finding, I am constrained to lament in the matter as this case is an instance of sad commentary on the working of the system of Flying Squad. Examinations have a determining effect not only as a system of education but on the standard of teaching, research and career of millions of students. The examining bodies are expected to conduct examinations in impartial and highly objective manner. The whole system of education is dependent on the credibility of the examinations. Assessment of students in examination and results are very sensitive matters and are immensely consequential for the very future of the students. The examining body cannot and should not adopt a casual approach in dealing with such matters. Inaction, indifference or lack of earnestness on the part of authorities cannot be tolerated on account of the fact that such an attitude is bound to have adverse effect on the career of the students. The menace of adopting the unfair means, which has become an unseemly feature of our educational institutions and has a reflection of alarming decaying moral standards, has to be dealt with a strong hand and no laxity or sympathy is to be exhibited. On the other hand, Flying Squad cannot afford to adopt a casual and perfunctory approach. It is common knowledge that sometimes the members of the Flying Squad in over-zealousness over-reacts in a particular situation. No sooner a message passes in the examination hall that a Flying Squad is to arrive to organise raid, the students who are in possession of incriminating and offending material start throwing it and an atmosphere of commotion prevails in the examination hall. While the students who are possessing incriminating material are out to relieve themselves of the responsibility to possess the same, the members of the Flying Squad are equally anxious to book the students. Flying Squad takes pride in boasting to tell all and sundry, including their superiors, that they have achieved or exceeded the particular target of apprehending the students who were indulging in unfair means in the examination hall. The members of the Flying Squad pick up the material thrown by the students by the side of the seats of other innocent students and in spite of their protest and entreaties, they are booked. Brilliant students who had nothing to do with the incriminating material and had no intention to adopt unfair means, are framed as false charge of seizure of offending material from their possession is foisted upon them. Naturally, the students, who are innocent and helpless, cannot do anything except to plead for mercy but the stubborn members of the Flying Squad are not prepared to listen to their earnest, honest and sincere explanations. The Court cannot shut its eyes to this stark reality. Recently, at least two students have committed suicide on

account of the atrocity committed by the members of the Flying Squad. They were falsely roped in for having been in possession of unauthorised material. This quota system of the Flying Squad, instead of doing good to the students, has a serious reflection on the working of the members of the Flying Squad who are out to project their image.

10. The Board has to consider that the cases, like the present one or of the nature as pointed out above, are not repeated. An attempt should be made to put the examination system beyond suspicion and to restore the lost credibility. Once the system is revamped in the light of the various defects which have surfaced, most of its evils and ill-effects would be done away with. The future of the educational system depends on the effectiveness and credibility it gains amongst the public at large by examination that it so conducts. It is expected that the Board shall take appropriate steps to put the examination system beyond suspicion and to restore the lost credibility.

11. In conclusion, I find that the present writ petition succeeds as it has been demonstrated without any doubt that the petitioner was not found to be in possession of any unauthorised material for being used in answering the questions in Mathematics III paper. As a matter of fact, the offending two hand written papers were not seized from the possession of the petitioner but were picked up from the behind seat of the petitioner, to which he was not a party.

12. In the result, the writ petition is allowed and the impugned order dated 16th September, 1997. Annexure-2 to the writ petition cancelling the result of the petitioner of Intermediate Examination of 1996 is hereby quashed. The respondent-Board is directed to declare the result of the petitioner of Intermediate 1996 Examination and issue a clear and clean mark-sheet, within three months from the date of production of a certified copy of this judgment and order. The Board respondent No. 1 is also directed to pay a sum of Rs. 2,000 (Rupees two thousand) as costs to the petitioner, within a period of three months from the date of production of a certified copy of this judgment and order.