
(2010) 05 AHC CK 0305
In the Allahabad High Court

Prakash Mishra

APPELLANT

Vs

University of Allahabad and Others

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Citation : (2010) 4 AWC 3648

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioner, who had appeared at the First Semester of the LL.B. (Hons.) Ist Year Examination 2009-10 from the C.M.P. Degree College, Allahabad which is affiliated to the University of Allahabad, has sought the quashing of the order dated 1st April, 2010 passed by the University cancelling his LL.B. (Hons.) Ist year First Semester Examination and also debaring him from appearing at the subsequent 2011 Examination for use of unfair means at the said examination.

2. It is stated in the petition that the University issued a show cause notice dated 2nd January, 2010 to the petitioner. The notice stated that on 23rd December, 2009 while the petitioner was giving his "Human Rights" Examination of the LL.B. Ist year, First Semester, he was caught by the flying squad with eighteen hand written chits in his pocket. The petitioner was asked to submit explanation as to why his examination result may not be cancelled and he may not be debarred from appearing at the future examination. The petitioner claims to have submitted two replies to the aforesaid show cause notice mentioning therein that the chits did not belong to him and were not recovered from his pocket but were picked-up from the floor by the flying squad members. He further stated that the chits were not in his handwriting and nor had he used the chits in answering the paper. The University, however, cancelled the LL.B. 2009-10 First Year First Semester Examination result of the petitioner and also debarred him from appearing at the 2011 examination.

3. It is the contention of Sri Nigmendra Shukla, learned Counsel appearing for the petitioner that the decision that was taken by the Committee constituted by the University to deal with and decide cases relating to unfair means imposed the said punishment on the petitioner without even considering the reply submitted by the petitioner and without recording any reasons. It is his submission that the petitioner had not resorted to use of unfair means at the examination as the chits were not recovered from the possession of the petitioner and nor had he utilized the same in answering the questions.

4. Sri A.B.L. Gour, learned Counsel appearing for the respondent-University submitted, on the basis of the records produced by him, that the petitioner had used the unauthorized material which he had in his possession. He, therefore, submits that the Committee was justified in imposing the punishment upon the petitioner and mere absence of reasons in the order will not vitiate the order.

5. I have carefully considered the submissions advanced by the learned Counsel for the parties.

6. The show cause notice issued to the petitioner mentions that the unauthorized material had been recovered from the pocket of the petitioner. The petitioner, in his reply, clearly denied this fact and stated that the chits had been recovered from the floor and the petitioner had no connection with it. The impugned order merely mentions the punishment imposed on the petitioner but gives no reasons for imposing the punishment. It also does not deal with the reply submitted by the petitioner. The records produced by learned Counsel for the respondent-University also show that the Committee formed to deal with and decide cases relating to unfair means at the examination has only mentioned the punishment imposed upon the petitioner.

7. A Division Bench of this Court in *Rajesh Misra Vs. University of Allahabad and others*, has dealt with this issue in respect of this University and upon a consideration of the Ordinances framed by the University, particularly Ordinance No. 1.5, has observed:

...Ordinance No. 1.5 reads as under:

The Committee referred to in Ordinance No. 14 above shall consider-

- (a) the report, if any, about the candidate having been found in possession of unauthorized material;
- (b) the reply of the candidate, if any, to the notice;
- (c) the report of the examiner concerned, if any, regarding the transcription of non-transcription of the unauthorized material of which the candidate was found in possession;
- (d) any other report of intimidation, threat, manhandling or violence received in connection with the conduct of the examination by any person on duty of the University; and

(e) any other material.

...From the combined reading of the Ordinance Nos. 1.5 and 1.6, the legal position which emerges is, that the Committee appointed under Ordinance No. 1.4 has to consider the documents, detailed in Clauses (1) to (e) of Ordinance No. 1.5, then it has to place on record that it has examined the aforesaid document and has also to record its satisfaction regarding the facts of the matter.

...In our considered view, the Committee appointed under Ordinance No. 1.4 miserably failed to decide the matter in terms of the requirements provided in Ordinance Nos. 1.5 and 1.6. There is no discussion in the proceedings about the reply of the petitioner, the allegations against him and the reports of the examiner and invigilator.... At this place, we would like to recommend to the University not to permit use of such printed form for giving the decision of the Committee. The Committee of five members appointed under Ordinance No. 1.4, should be asked to consider the cases of unfair means in terms of Ordinance Nos. 1.5 and 1.6 and record its minutes in handwriting by Governor/Chairman of the Committee or any one of the members. By aforesaid observation, we do not mean that the Committee should write a judgment like a civil court. We only want to convey that Committee must discharge its legal obligation imposed by Ordinance Nos. 1.5 and 1.6 by writing in short analytical discussion of the charge, the reply of candidate and about the material available on record and then to record reasons in short to form its opinion for awarding the punishment. Such matters are very delicate and casual handling like in the present case should be avoided.

(emphasis supplied)

8. This apart, in *Rameshwar Prasad Misra v. The Lucknow University, Lucknow and Ors.* 1983 UPLBEC (LB) 175; *Pradeep Singh Chauhan v. University of Lucknow and Ors.* 1983 UPLBEC (LB) 534 and *Atul Goel v. Registrar, University of Gorakhpur, Gorakhpur and Ors.* 1985 UPLBEC 448, Division Benches of this Court have emphasised that reasons should be given by the Committee while imposing punishment upon students who have resorted to use of unfair means. It is, therefore, not possible to sustain the order of the University imposing punishment upon the petitioner.

9. After perusing the records, learned Counsel for the petitioner further submitted that the noting by the examiner that the petitioner had utilized the unauthorized material in answering certain questions is not correct since the answer book does not show that he had utilized unauthorized material said to have been recovered from him. Since the matter is being sent back to the University to pass a fresh order, this contention of the learned Counsel for the petitioner can also be examined by the University.

10. The order dated 1st April, 2010 of the University is, accordingly, set aside. It shall, however, be open to the University to pass a fresh order taking into consideration the reply filed by the petitioner and the observations made in the

judgments referred to above expeditiously, preferably within a period of three weeks from the date a certified copy of this order is filed by the petitioner before the University.

11. The writ petition is allowed to the extent indicated above.