

(2000) 04 GUJ CK 0091
In the Gujarat High Court

Case No : Special Civil Application No's. 9533 and 9546 of 1999

Prasidha Kismatkumar Trivedi

APPELLANT

Vs

Principal, Sarvajanik College of Engineering and Technology
and Another

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 Guj 244

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : A.D. Oza, for the Appellant; K.J. Brahmbhatt, (for No. 1) and V.K. Joshi, for Mukund M. Desai, (for No. 2), for the Respondent

Judgement

J.N. Bhatt, J.—Both these petitions, under Article 226 of the Constitution of India, raise identical questions, and, therefore, upon request, they are being disposed of by this common judgment.

2. The petitioners appeared in the third semester of B.E. II (Electrical) Examination conducted by the respondent No. 2, South Gujarat University, in the subject of Electrical Machine-I and Electrical Technology in December, 1998. Petitioner-student P.K. Trivedi has filed Special Civil Application No. 9533/99, whereas, petitioner-student P.L. Gopani, has filed Special Civil Application No. 9546/99. When the result of the said examination was declared, the result of the petitioners was withheld. Of course, the petitioners started learning in the 4th semester from January, 1999 onwards, which, ended in May, 1999. The petitioners were not, therefore, allowed to appear in the 4th semester examination, which commenced, in June, 1999.

3. The respondent University, upon a complaint by the letter dated 24-2-99, from the Examiner in the subject of Electrical Technology stating that the petitioners were guilty of copying from a book, sought explanation of the petitioners by the letter, dated 5-3-99. The petitioners, seriously, controverted, the imputation of

irregularities of copying from the book. The petitioners were, subsequently, instructed to appear before Achar Samiti on 14-5-99, by letter, dated 3-5-99. Achar Samiti recorded statement of each of the petitioner, on 14-5-99. The charges of imputations were again denied by the petitioners. Achar Samiti made recommendation, after hearing the petitioners in a report which came to be placed before the Syndicate of the South Gujarat University, respondent No. 2 in its meeting, dated 29-6-99. The report of the examiner and the chairman was also called for in the same meeting and had been placed before the Achar Samiti for reconsideration. The letter, dated 7-8-99 was sent to the Chairman and the Examiner on which the respondent No. 2 has placed reliance. A joint report made by the Chairman and the Paper Settler by a letter, dated 16-9-99 was, also, placed before the Achar Samiti, on 8-10-99. Upon considering the report, the Achar Samiti recorded a resolution which was placed before the Syndicate in its meetings, dated 2-11-99 and 19-11-99. The Syndicate of the respondent No. 2, University, also, resolved, on 19-11-99, to appoint, a Chakasani Samiti, in order to verify the notes of the Achar Samiti as well as its recommendation. The Syndicate of the respondent No. 2 University in its meeting, dated 8-7-99, recorded resolution No. 19, for imposing punishment, on the students who were found copying in the examination or were involved in irregularities. Subsequently, the Syndicate of the respondent No. 2, University, in its meeting held in December, 1999 decided to impose punishment on the petitioners. As per the decision of the respondent No. 2, University the result of the petitioners of the examination taken in December, 1998 of 3rd semester was cancelled and the petitioners were ordered to be debarred from appearing in the examination for a period of one year and also imposed a fine of Rs. 500/- on each of the petitioners. Both the petitioners, have, therefore, questioned the legality and validity of the resolution and the decision of the respondent No. 2 University, mainly, on following two grounds :

- (1) Violation of principles of natural justice;
- (2) Proportionality of imposition of penalty.

4. The respondents appeared and resisted the petitioners, virtually, by a common defence. The allegations made in the petitioners are traversed and controverted. It is denied that there was any violation of principles of natural justice and that there was disproportionate imposition of punishment.

5. At this stage, following aspects, may be highlighted, which are, incontrovertible.

1. The petitioners had appeared in the third semester examination of B.E. II Electrical conducted by the respondent No. 2, University, and their examination seat numbers were 89 and 120 and, it is not the case of the University that they copied, simultaneously, or one after another, from the same book.

2. The allegation of copying against the petitioners came to be imputed, for the first time, when the examiner made a report by letter dated 24-2-99 that in the

subject of Electrical Technology, the petitioners had copied from a book known as Text Book of Electrical Technology, Vol. 2, whereas, the examination had been conducted in December, 1998.

3. Nothing was found from the students, who are the petitioners before us, in the examination hall. No examiner had ever complained before 24-2-99 and no supervisor had also lodged any complaint against the students. No any such intimation was ever given or received to the concerned supervisor or Examination Controller or the University and it was when letter, dated 24-2-99 came to be written by the examiner after the examination, which was held in December, 1999, the process started about the mal practice and irregularities, allegedly, made by the petitioners.

4. No documentary evidence was ever taken or found from the the possession of the petitioners either during the course of examination or, thereafter.

5. The imputation of copying from a text book came to the notice of the petitioners by letter dated 5-3-99, which came to be immediately controverted.

6. The petitioners are minors and father of each petitioner had written letter to the Vice-Chancellor for early action.

7. Even when the examination of the students of ATKKT (abbreviation of "allowed to keep term") was to commence in January, 2000; despite repeated reminders, no permission was given to the petitioners to appear even in the said examination of 4th semester and since could not be taken within a period of one year, apart from the cancellation of the result of the examination held in December, 1998, the students could not appear for 4th semester examination which commenced in January, 2000.

8. Semester of the academic session of each year starts from June to December and January to May.

9. The impugned order and the resultant punishment of cancellation of result of the examination held in December, 1998, for the third semester of B.E. II (Electrical) and debarring the petitioners from appearing in the examination for one more year and imposition of fine of Rs. 500 is founded upon a resolution of the Syndicate and a report of Examiner on the following allegations :

6. In Special Civil Application No. 9553 of 1999, the allegations are as follows :

"This is to draw your kind notice to the fact that student of Exam. No. 120, at Sarvajani College of Engg. & Tech., Surat centre, has copied the answer of Q. 6 scott connection from the Book of B.L. Theraja & A.K. Theraja, 22nd edition, Reprint 1997 titled "A Text Book of Electrical Technology", Vol. II, book page No. 1004. He has quoted the same fig. No. 31.12 as given in the book. You are requested to take appropriate action in these regards."

7. In Special Civil Application No. 9546 of 1999, the allegations made against the student are as follows :

"This is to draw your kind notice to the fact that student of Exam No. 89 of Sarvajani College of Engg. & Tech., Surat Center has copied the answer of Q. 6 (c) (mentioned by student as (b)) various methods of starting of 3-phase inductor motors from the book of B. L. Theraja and A.K. Theraja, 22nd Edition, reprint 1997, titled "A Text Book of Electrical Technology" Vol. II book page No. 1093 and article No. 33.9. He has quoted same articles No. 32.15 as given in the book. You are requested to take appropriate action, in these regards."

8. It could, therefore, very well, be visualised from the aforesaid observations that the allegations against petitioners, who are, minor students, whose results are cancelled and who were debarred for the examination for one year and imposition of fine of Rs. 500 each, on the ground of irregularities in answer books are, essentially, founded upon the imputation that the answer given to question No. 6 is similar and identical as that of paragraph in the book of "B.L. Theraja and A.K. Theraja. 22nd Edition, reprint 1997, titled "A Text Book of Electrical Technology" Vol. II, book page No. 1004 in case of petitioner in SCA No. 9533/99. It is alleged that the petitioner has quoted the same figure as given in the said book,

9. So is the imputation in case of the petitioner, in SCA No. 9546 of 1999. The Examiner while going through the answer of question 6(c), doubted that various methods of starting of 3-phase Induction motors from the book of B.L. Theraja and A.K. Theraja. 22nd Edition reprint. 1997, titled. "A Text Book of Electrical Technology" Vol. II book page No. 1093 is similar and identical as that of the petitioner.

10. This Court, after having heard the learned Advocates appearing for the parties, at marathon length, perused the original answer books and the material paragraphs of the said books. It appears that the apprehension cherished and nourished by the Examiner after two months of the examination is based on his speculative perception that the students must have copied from the book as the answers in the answer books are identical and similar as that of the said book. No doubt, such a perception may arise and the Court, ordinarily, would not go into the constitution of primary facts, on which the conclusion is based upon, in a petition under Article 226 of the Constitution of India. However, if it is, successfully, shown that, ordinarily, no prudent man would reach to such a conclusion which the authority has taken on considering the primary facts constituted from the record and considered by the authority while taking a decision. In the present case, merely, because one question out of six, in both the cases, incidentally, noticed to be identical and similar as that of the quotation made in a book, ipso facto, without any further supporting material could not constitute a case of copying, more-so, when no any such documentary evidence was found by the Supervisor, at the time of examination, nor any report was sent by the Supervisor. Two months after the examination, at the time of examining the papers by the Examiner, he thought that one question in each paper out of other answers attempted by both the students was similar to the quotation or

writing made in the book and, therefore, he thought it expedient to report to the University that there was apprehension of copying from the book at the time of writing answer In the examination hall, which is denied by both the students.

11. No doubt, ordinarily, while exercising powers under Article 226 of the Constitution of India, in a writ petition, and more- so, in a case of academic affairs and examination matters, Courts would be at loath to interfere in the factual finding or in the decision recorded by the experts or in case where a student was caught red-handed in the examination hall with documentary evidence. Unlike that, in the present group of two petitions, nothing was found from the examination hall and no such allegation is ever made against the students. The Examiner, after a lapse of about two months, while making assessment of the answer books, felt that one of the answer tallied or was similar to the one contained in one book. This, by itself, would not lead to an unerring or rational or logical conclusion that the students must have copied from the book keeping the book with them in the examination hall. It happens that, students may write identical paragraphs or quotation or answer from any book on account of sharp memory. So, this is not a case where the punishment imposed on the students upon report of the Supervisor who had caught the students red-handed with documents or with any book. This Court is dealing with a group of two petitions in which the apprehension was nourished, if not cherished, by the Examiner two months after the examination, while making assessment of the answer books only on the premise of similarity of answer given by the students and as that of the one given in the books. Similarity, by itself, in the factual scenario could not be said to be nothing, but only an act of copying from book, as alleged by the University.

12. In case of allegation of unfair means or employment of irregularities in the examination, serious actions should be followed, if it is proved and established. However, merely on the basis of imputation of similarity or a perception of one Examiner that similarity might have been on account of copying could not be sustained. Had there been a case of copying from book, there would have been a complaint from the Supervisor. Nothing, as such, has happened for a period of more than two months. Only the Examiner while making assessment of the papers doubted and, accordingly, reported to the University and on that basis, University appointed a Committee and the Committee prepared report after calling and seeking explanation of the students, which is the basis of the impugned order. The Committee constituted had no any other evidence except the report of the Examiner which was founded upon an apprehension, which could not be said to be sufficient so as to affirm and confirm the conclusion of the University that it was nothing but a case of copying from a book. In this connection a decision of the Hon"ble Apex Court in *Rajesh Kumar and Another Vs. Institute of Engineers (India)*, is required to be considered. The proposition propounded in this case is that total similarity in answers given by candidates cannot be said to be per se indicative of adoption of unfair means. All literates persons have been students at a given point of time, but all have not been

crammers. Some of them may have sharp memory. Some of them may be good crammers. A text book is a common source for reading or cramming. Unless there is material to show that the answer was copied from the book or text or some material, merely because there was similarity in answer as contained in the text book, per say, could never be characterised as sufficient launching pad for successful imputation of unfair means in examination. At the best, it was an apprehension or a doubt of an Examiner which became, unfortunately, the report of the Committee before whom only students were called, who plainly, denied the allegations. But the Committee accepted the version of the Examiner on the basis of which, unfortunately, the impugned order came to be recorded by the University, whereby, both the students are inflicted, in reality, with three penalties, like that, cancellation of results, debarring them from appearing in the examination and imposition of fine of Rs. 500/-.

13. Even if one were to hold that there was some substance in the imputation of unfair means in the examination, then also the University is obliged to consider the proportionality of punishment. No doubt, views and conclusions of autonomous bodies, like University, ordinarily, should not be interfered with by Courts, moreso, by exercising powers under Article 226 of the Constitution of India. However, at the same time, the proportionality, even if the guilt or the unfair means test is proved, cannot be ignored. There is no doubt in the mind of this Court that, unmindfully, if not, maliciously, the University has lost sight of this important parameter of proportion in imposing punishment upon finding of unfair means in the examination. The students, at the time of examination, were minors. The correspondence, which the parents of the students exchanged with the University will tell the woes of not only of the students, but the whole family. It was parents of each student who went on writing, requesting and reminding to the University to decide the issue. Unfortunately, the examination which was held in December, 1998, upon a report of one examiner, that too on a personal perception and apprehension, culminated into aforesaid three punishments, after more than 12 months. It is not in dispute that B.E. Electrical course is in semester system. Even in case of finding of unfair means on the part of the students, waiting for decision for more than one year is inexecutable. Thereby, both the students, unfortunately, lost two semesters. Be that as it may. In the opinion of this Court, since the impugned order of the respondent University is based upon mere personal perception and individual apprehension without any supporting evidence. Even the report of the Committee, which was constituted after the report made by the Examiner was never supplied to the students. Obviously, when a report is made, holding the students responsible for copying, the report of such a committee is required to be given to the students to explain the circumstances. In fact, this is a case, wherein, there was a violation of principles of natural justice. Merely, because students were called in the meeting of experts and oral and orally questions were asked and imputations were mentioned, of course, which were also denied, it could not be said that there was sufficient compliance of the principles of natural justice.

14. At this stage, it would be interesting to refer to the observations made by this Court in *S.M. Sharma v. South Gujarat University* 1982 (1) 23 GLR 233. While speaking for the Division Bench, P.D. Desai, J., as he then was, has observed in Para 30 of the Judgment as to what is evidence and what is no evidence. It would, therefore, be expedient to refer to the said paragraph:

"The "no evidence" rule has the same content and meaning in our country as in England. "No evidence" does not merely signify total dearth of evidence; evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. In other words, cases where there is complete lack of evidence and cases where the evidence, if any, is incapable of rationally leading to the conclusion reached, are both treated on a par so far the applicability of the rule of "no evidence" is concerned."

"Mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, is held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, is found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which must be applied is whether there is some material capable of having any evidential value. If not, the case must be held to fall within the mischief of the rule of "no evidence."

15. It is, in this context, while examining the factual scenario emerging from the record of this group of two petitions under Article 226 of the Constitution it is clear that this is a case of no evidence. There was mere apprehension in the mind of the Examiner while making assessment of one of the answer books that the students might have copied a text book because of similarity of answer, which, unfortunately, without much probe, investigation, examination, analysis, became the report of the Expert Committee and followed by the Syndicate and on which the impugned order and puni shmerit came to be recorded.

16. It would be, also, interesting to refer to the observations made in para 48 referable to the proportionality of penalty imposed upon the students, in case of finding of unfair means. Relevant part of para 48 reads as under:

"As we have indicated earlier, the question of penalty had to be examined in each case on the basis of the peculiar facts and circumstances present therein. Minimum and maximum penalty may be prescribed within reasonable limits. Within those parameters, the quantum of penalty may, and more often than not, will differ from case to case depending upon its varying features. To believe, therefore, that to treat one errant student differently from another in the matter of imposition of penalty, where both are found to have committed a similar malpractice, would necessarily expose the University to the charge of discrimination, betrays ignorance of the true principle governing the exercise of discretionary powers in the penological field. In fact, imposition of uniform penalty in all cases involving a similar malpractice, without regard to the

presence or absence of relevant circumstances bearing on the quantum, may sometimes invite the charge of non-application of mind or arbitrary exercise of power. Under the circumstances, had we not decided on merits in favour of the petitioner, we would have certainly interfered with the grossly disproportionate penalty imposed upon the petitioner and quashed the impugned decision in so far as it relates to penalty."

17. The Hon"ble Apex Court in *Rajesh Kumar and Another Vs. Institute of Engineers (India)*, has also, clearly, observed that mere similarity in answer given by the candidate could not be taken as a pointer of adoption of unfair means and it is further held, in so far as the imposition of penalty is concerned that proportionality must be considered by the authority concerned. Exercise of power to impose penalty should not be arbitrary or unjust. In the case before the Hon"ble Apex Court, the Institute had cancelled the result of the students and had disqualified them for two succeeding examinations and it was held that such punishment was in excess of jurisdiction and, therefore, punishment came to be quashed directing the respondent Institute to declare the result of the students.

18. In the light of the aforesaid facts and circumstances narrated hereinbefore and considering the relevant proposition of law, this Court has no hesitation in finding that the ultimate conclusion recorded by the University in cancelling the result and debarring the students for one examination with imposition of fine of Rs. 500/- on each student is unjustified and, therefore, the impugned order is required to be quashed and set aside. It is, really, unfortunate, that the University took one year to decide the imputation of unfair means and that too after several requests and reminders made by the parents of the students. It cannot be disputed that in such a case, when semester system is adopted, the University must evolve a strategy so that the allegation, imputation or any charge or charge of unfair means against the students, if some, prima facie, evidence is found for holding inquiry, are, expeditiously, disposed of as the result affects the career of bright and promising students.

19. In the result, the impugned order is quashed and set aside. The University is directed to declare the result within a period of one week. The fine Imposed, if paid, is ordered to be refunded to the students. The direction of debarring the students from appearing the examination for a period of one year, as such, has become infructuous because the University itself took more than a year's time in holding inquiry and reaching to the conclusion. However, in order to see that such an order does not come in the way of the students, in future, the entire order is quashed and set aside. The students will be at liberty to appear and the University is directed to permit the students to appear in the ensuing examination. Rule is made absolute accordingly with costs.