
(1969) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 45 of 1969

Raj Kumar Gupta

APPELLANT

Vs

Ram Lal Bhargotra and others

RESPONDENT

Date of Decision : 23-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Article 103

Citation : AIR 1971 J&K 37

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : R.S. Mehta, for the Appellant; Ishwar Singh, for the Respondent

Final Decision : Allowed

Judgement

Mian Jalal-Ud-Din, J.—This is a petition u/s 103 of the Jammu and Kashmir Constitution read with Article 226 of the Constitution of India

for writ of certiorari to quash the show cause notice No. F (9) U.F. M/MA/69 dated 17th July 1969, whereby the respondent No. 1 has

proposed disqualification of the petitioner for a period of three years by way of punishment under Statutes 52 and 56(ii) for the alleged use of

unfair means by the petitioner in the examination of Higher Secondary (Elective) conducted in March 1969 by the Board of Jammu and Kashmir

Secondary Education, and for a direction in the nature of mandamus directing the respondents to declare the petitioner's illegally withheld result

forthwith, and for further direction in the nature of mandamus permanently restraining respondent No. 3 from instituting any further enquiry into the

matter specified in the show cause notice. It is averred in the petition that the petitioner appeared in the Higher Secondary Examination in the

month of March 1969 under Roll No. 3089 through Higher Secondary School Samba. The results of the said Examination were declared by the

Board in the month of May 1969 but the petitioner's result has been withheld. Till the day of the result the petitioner did not receive communication

from the respondents in any way allegedly charging him for what is contained in the relevant para of the show cause notice (Annexure A). In the

said notice the petitioner has been charged with having used his hand written pieces of paper relevant to mathematics B which were alleged to have

been recovered from him in the examination Hall on 18-3-1969 and that the petitioner had copied questions Nos. 1(a), (b) and 5(a) from the

recovered material and that also he created disturbance in the Examination Hall. The committee for scrutiny of unfair means cases has proposed

punishment of 3 years disqualification for the petitioner to appear in any examination in pursuance of the Statute 52(ii).

The petitioner has further alleged that he has been proceeded against unilaterally by the respondents 1 and 2 without affording him any opportunity

to meet the charges against him about the alleged guilt. No enquiry was held by the respondents in the presence of the petitioner, nor was any

evidence of the charges made known to the petitioner before issuing the impugned show cause notice. The principles of natural justice have been

violated inasmuch as the punishment of disqualification has been proposed without conducting any enquiry and behind the back of the petitioner.

Neither the Superintendent of the Examination nor the respondents Nos. 1 and 2 ever asked the petitioner to make any statement or explanation in

his defence. It is further averred that the respondents Nos. 1 and 2 have on the basis of some alleged evidence reached a definite conclusion about

the guilt of the petitioner and the scrutiny Committee has recommended disqualification for three years and this has been done without a semblance

of enquiry. The respondent No. 2 which is the statutory body vested with powers to enquire into such cases quasi judicially has already prejudged

the issue and has therefore acquired bias in favour of their findings. The conduct of the respondent 2 has created a reasonable apprehension in the

mind of the petitioner about his impartiality and fairness. Therefore the respondents are not now competent to hold any enquiry in the case, and

even the respondent No. 1 is not competent to issue show cause notice to the petitioner. The petitioner has, therefore made the prayers for

quashing the show cause notice and for issuance of writs the nature of which has been mentioned above. Along with the petition the petitioner has

filed the affidavit and also the show cause notice (Annexure A).

2. The respondent, the Joint Secretary of the Jammu and Kashmir Board of Secondary Education has in his reply affidavit stated that the petitioner

was found copying in the examination Hall from the pieces of papers which along with the answer book were seized from his possession by the

Superintendent of the Examination Hall. The petitioner was asked to make statement but he declined to do so. The Superintendent thereupon sent

the answer book, recovered pieces of paper and his report for the consideration of the respondents. After considering the same and having found

that some answers seemed to have been copied in the answer book from the piece recovered from the petitioner the Scrutiny Committee came to

the conclusion that prima facie a case was made out against the petitioner and he was therefore served with the show cause notice to explain as to

why the proposed punishment be not awarded to him. The proposed punishment was only a proposal which could be awarded in full or lesser

degree or even the petitioner could be exonerated after he showed sufficient cause for the purpose. The said show cause notice was issued simply

to afford an opportunity to the petitioner to make charges known to him. The petitioner was alleged to have been caught red-handed and also to

have disobeyed the orders of the Superintendent and had created disturbance inside the Hall. By issuing a show cause notice it was never meant

that the authority had made up its mind against the petitioner. The principles of natural justice have not been violated but have been fully complied

with. The Committee has not reached any conclusion as yet. The petition is misconceived, premature and is about a matter which is not justiciable.

The case has not been prejudged and apprehension of the petitioner is unfounded. There has been no contravention of the Statutes of the Board.

The prayer of the petitioner cannot be accepted and the petition merits dismissal.

3. I have heard the arguments of the learned counsel for the parties.

4. The allegation against the petitioner is that three hand written pieces of paper relevant to the paper Mathematics B were recovered from him in

the Examination Hall on 18-3-1969 when he was taking examination and that he had copied questions Nos. 1(a), (b) and 5 (a) from the recovered

material and that he also created disturbance in the Examination Hall. The said material is alleged to have been seized from the petitioner in the

Examination Hall by the Superintendent of the Examination who referred the matter to the respondent No. 1. The case was referred to the

Committee for scrutiny of unfair means cases and it has proposed the punishment under Statutes 52 and 56(ii), disqualification for three years for

the candidate from appearing in any Examination. The petitioner has been informed by a show cause notice that before the final orders of the

competent authority are obtained on the aforesaid proposed punishment, he should show cause as to why the said action proposed by the

Committee should not be taken against him. The grievance of the petitioner is that he was not afforded any opportunity to be heard by the

Committee before passing the order of proposed punishment against him. He was not apprised of the charges and was not associated with any

enquiry held against him. In this way the principles of natural justice had been clearly violated and therefore the order proposed was liable to be

quashed. It has been submitted that the relevant statutes governing the Board have been contravened. Before a final order was to be passed

against the petitioner a preliminary enquiry ought to have been made in presence of the petitioner. The expression ""final Order"" it is submitted,

envisages that there should be a preceding enquiry in the matter at the initial stage which stage has been by-passed by the Committee. The

impugned notice was therefore bad in law as the entire proceedings suffered from serious infirmity. Reliance is placed on M. Chinnappa Reddy Vs.

State of Andhra Pradesh and Others, and Suresh Koshy George Vs. University of Kerala and Others, .

5. A further contention has been raised that the Committee for scrutiny of unfair means cases has already prejudged the issues in the case and it has

acquired a bias against the petitioner, and for the vindication of the principles of natural justice it would be fair to quash the entire proceedings

pending before the Committee and ask it to desist from proceeding further in the matter. In fact the petitioner wants that the entire matter against

him be dropped and the Board be asked to declare his result of the Examination forthwith.

6. Mr. Ishwar Singh counsel for the respondent has on the other hand submitted that the petition is misconceived and premature inasmuch as no

final order has been passed by the respondents in the case. An enquiry is yet to be held; only a show cause notice has been served on the

petitioner with a view to afford him an opportunity to meet the charge against him. The Board being a domestic body the matters before it are not

therefore justiciable. The respondent No. 2 had not incurred any bias against the petitioner nor have the issues been prejudged by them.

7. While I agree with the learned counsel for the respondents that the proposed punishment is not a final order passed against the petitioner and the

impugned order contains only recommendations for punishment proposed, I however, do not subscribe to the view that the elementary principles

of natural justice have been complied with in the case. What the respondent No. 2 appears to have done is that after considering the report of the

Superintendent of Examination and also the material seized from the candidate in the Examination Hall, it has proceeded to propose punishment of

disqualification for three years for the petitioner and has submitted the same for final orders of the competent authority. The committee has not

afforded any opportunity to the petitioner to give an explanation or make a statement before proposing the punishment in respect of the alleged

adoption of unfair means by him and his reported misbehaviour. The Committee should have associated the Petitioner with the preliminary enquiry

and should have apprised him of the charge in the first instance before taking any action in the matter. It appears that the order of proposed

punishment has been passed in the absence and behind the back of the petitioner. In an unreported case (Letters Patent Appeal No. 28 of 1969,

Vice Chancellor Jammu University v. Rameshwar Nath Bhat), a Division Bench of this Court held:-

Before taking any action against the students (in that case) the scrutiny committee should have examined the Superintendent to prove his report in

presence of the students and allow them to cross-examine him with a view to eliciting facts which might have gone to disprove the report of the

Superintendent. If the show cause notice of the Students respondents supported by an oath was to be rejected merely because the

Superintendent's one sided report was to be treated as the final word then the question of giving notice to the students would have become an idle

formality. After all serious allegations were made against the students and if proved the punishment would have prejudicially affected their career

and it was therefore only proper that the students should have been given a real opportunity of meeting the case made out against them by the

University. We agree with Mr. Singh that the Syndicate being a domestic Tribunal, we cannot stretch the principles of natural justice too far so as

to insist on the authorities to conform to strict Rules of Evidence; nevertheless a reasonable opportunity of being heard had to be given to the

students because the order proposed to be passed would have materially affected their career.

8. In the instant case I find that the impugned order suffers from the infirmity that it has been passed by the Scrutiny Committee without associating

the petitioner in the preliminary enquiry when the report of the Supdt. and the other material were considered by the Committee; therefore, the

impugned order of proposed punishment is not sustainable in the eye of law as no opportunity had been given to the petitioner to meet the case

which of course materially affected his career. But at the same time I do not, however, agree with the learned counsel for the petitioner that as the

stage of enquiry has passed and the Committee has acquired some bias against the petitioner any such enquiry by the Committee would now be

meaningless. Therefore the matter be ordered to be dropped and the entire proceedings of holding an enquiry be quashed. This would be

stretching too far the scope and the object underlying the principles of natural justice. A person who is charged with some allegation of actionable

nature cannot get a clean chit from the court on the ground that the inferior authority or quasi-judicial body has not adopted the procedure in a

particular way. The question of deciding that the candidate was or was not guilty of the alleged corrupt practice in the examination rests with the

scrutiny Committee, and this court can only make a direction to it to adhere to the principles of natural justice by affording an opportunity to the

petitioner to appear before it and make a statement or give an explanation and take full part in the enquiry before any punishment is proposed to be

awarded to him and before any final order is passed by the competent authority in this behalf. Because in the present case the petitioner had been

denied opportunity at the earlier stage and the proposed punishment had been passed in violation of principles of natural justice therefore it is

hereby quashed.

9. I, therefore, partially allow this writ petition and while quashing the impugned order of proposed punishment direct the respondent to hold a de novo enquiry into the charges against the petitioner in his presence in accordance with the rules prescribed, give the petitioner a reasonable opportunity to be heard and thereafter pass an appropriate order in this behalf as the facts and the circumstances of the case would warrant. The Committee will, however, shed its past impression in the matter, if any, and will proceed to deal with the case with a fresh mind.

10. I, however, make no order as to costs.