

(2004) 10 AHC CK 0040

In the Allahabad High Court

Case No : C.M.W.P. No"s. 25703 of 2004 and 12 Petitions

Rajeev Singh

APPELLANT

Vs

Chhatrapati Shahuji Maharaj University and Others

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Citation : (2005) 1 AWC 118

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : V.C. Mishra and J.P. Tripathi, for the Appellant; U.N. Sharma and Neeraj Tiwari, for the Respondent

Judgement

Arun Tandon, J.—All these writ petitions raise common questions of fact and law and as such they are being decided by means of this common judgment.

2. Heard Sri V.C. Mishra, senior advocate, assisted by Sri J.P. Tripathi advocate, on behalf of the petitioners, Sri U.N. Sharma, senior advocate, assisted by Sri Neeraj Tiwari advocate, on behalf of Chhatrapati Shahuji Maharaj University, Kanpur and the standing counsel on behalf of State-respondents.

3. The petitioners in the aforesaid writ petitions are students who have appeared in the examinations conducted by Chhatrapati Shahuji Maharaj University, Kanpur (hereinafter referred to as the University), in respect of B.A., B.Sc. and B.Ed, course from various examination centres, for the year 2004. The basic relief prayed for in all these writ petitions is that the University may be directed to produce answer sheets of the petitioners in respect of their examinations and to declare the results of the petitioners on the basis of the original marks obtained by them in the respective papers.

4. The University has filed a counter-affidavit in the present writ petitions and in the said counter-affidavit it has been stated that the examinations were conducted by the University in the month of April, 2004, in all the affiliated colleges of the University situate in 13 districts of Uttar Pradesh. For the

purposes of maintaining standard of education and for conduct of the examinations the University has constituted a Flying Squad which comprises of Professors, Readers and Lecturers of the University. The said Flying Squad makes visits at the examination centres for the purposes of ensuring proper conduct of the examinations without any assistance from outside source. On the basis of the reports received from the aforesaid Flying Squad in respect of various examination centres, where the petitioners were undertaking examinations, it was noticed that examinees at the said examination centres during the examinations were involved in mass copying. On the basis of the reports so submitted by the Flying Squad to the University a decision was taken to get the answer sheet in respect of particular paper of all the students of the such centres re-evaluated. After such re-evaluation of the answer sheets of the petitioners the University decided to declare the results of the petitioners on the basis of the marks so obtained after re-evaluation. It is, therefore, contended that the petitioners cannot be granted relief of declaration of their results on the basis of the original marks which they had obtained in respect of the papers concerned.

5. I have heard learned counsel for the parties and gone through the record of the writ petition. The petitioner-students belong to two categories (a) the petitioners who have been successful even after re-evaluation of their answer sheets, and (b) the petitioners who have failed after such re-evaluation of their answer sheets. On behalf of the University it has been categorically stated that re-evaluation of the answer sheets has been done only in respect of particular papers of particular date in respect whereof there was a report by the Flying Squad about mass copying. It has been further stated that there has been no re-evaluation of other answer sheets of the students-petitioners of the said centres.

6. It is agreed between the parties that the dispute in the present writ petitions is confined only to those papers in respect whereof there is report of Flying Squad of mass copying pertaining to particular dates or days. There is no dispute with regard to other papers of the petitioner-students in respect whereof there is no complaint of any mass copying by the Flying Squad.

7. Both the categories of the student-petitioners, referred to above, are aggrieved by the re-evaluation of their answer sheets in respect of the papers in respect whereof there is complaint of Flying Squad regarding mass copying.

8. This Court had earlier decided Writ Petition No. 26976 of 2004, Puneet Kumar Rai and Ors. v. Chhatrapati Shahuji Maharaj Kanpur University and Ors., on 27.7.2004 by means of the following order :

"In such circumstances, it is not necessary for this Court to go into the merits of the present writ petition. It is directed that the University shall hold fresh examination in respect of the students who have appeared as regular students from the institutions in respect whereof there are allegations of mass-copying at the earliest possible within one month from the date a certified copy of this order is produced before it. It is further directed that the result of the fresh

examination of the students shall be declared at the earliest possible.

In view of the above directions, this writ petition is disposed of finally."

9. In the said writ petition an application for review of the judgment and order has been filed. The said review application is also being decided by means of this judgment.

10. In support of the review application as well as in respect of other writ petitions it is contended on behalf of the petitioners that there is no material on record on the basis whereof it could be said that there has been mass copying at the said centres. It is further contended that the University did not afford any opportunity of hearing to the petitioners before taking the decision to get the answer sheets of the petitioners re-evaluated. With regard to the report of the Flying Squad which forms basis of the adverse action taken by the University against the petitioners it is contended that the said report is based on mere hearsay inasmuch as no student was caught by the Flying Squad at any point of time using unfair means nor there is similarity in the answers given by the students in respect of a particular paper. It is, therefore, contended that there is no material to come to the conclusion that there has been mass copying at the respective centres.

11. With regard to the contention raised on behalf of the petitioners that there is no material for coming to the conclusion that there has been mass copying at the respective examination centres from where the petitioners have appeared in the examination, suffice it to point out that the University has filed a counter-affidavit categorically referring to the reports of the Flying Squad and as a matter of fact at the time of hearing of the present writ petitions the counsel for the University has produced the reports of the Flying Squad in respect of the institutions examination centres in question, in original before this Court. From the allegations made in the writ petitions as well as in the supplementary affidavit it is apparent that there are no allegations of mala fide against any member of the Flying Squad. Even otherwise there is no reason to disbelieve the reports of the Flying Squad in respect of mass copying. It has been pointed out by the counsel for the University that the reports have been submitted by the Flying Squad on prescribed proforma which categorically demonstrates that the Flying Squad had reported mass copying at the examination centres on particular date/days.

12. The Hon"ble Supreme Court of India in the judgment in Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, , has specifically held that the Universities which regulate establishment of educational institutions are vested with the power to ensure proper conduct of the examinations.

13. For the said purpose the University has constituted Flying Squad in order to maintain standard and to conduct the examinations so as to appraise the real worth of every student appearing in the said examinations without any assistance from outside source. If the said Flying Squad submits a report about

mass copying at the particular centre/centres on particular day/days, the examination committee constituted by the University considers the said reports of mass copying and directs appropriate action thereon, no illegality or infirmity can be alleged nor can be entertained in writ proceedings. Thus, if the University, in the facts of the present case, has placed reliance on the reports of the Flying Squad for coming to the conclusion that there has been mass copying at the particular centres on particular dates, from where the petitioners were undertaking examinations, it cannot be said that the said decision of the University is based on no material evidence.

14. Further under the Statute and Ordinances framed by the University an authority, known as Examination Committee" is to look and decide such matters. If the said Examination Committee is satisfied that the examinations were not conducted fairly, it would not be fair for this Court to interfere with such decision in writ jurisdiction as has been held by a Division Bench of this Court in the case of *Rajiv Ratna Shukla and Another Vs. University of Allahabad and Others*, . The Division Bench has specifically held that the report of the Flying Squad, if accepted by the Examination Committee, is sufficient material for coming to the conclusion that the examinations have not been fairly conducted at the particular centre and the Court cannot substitute its opinion in place of the opinion of the Examination Committee even if it finds that on considering the same material it could have come to a different conclusion. Since the decision of the Examination Committee does not suffer from any error, the contentions raised by the petitioners cannot be legally sustained.

15. The issue of affording opportunity of hearing to the petitioners has been finally decided by the Full Bench of this Court in the case of *Km. Madhulika Mathur v. Gorakhpur University* 1984 UPLBEC 365, wherein it has been held that the principles of natural justice apply In the case when the result of an individual examinee is cancelled and also applies to those cases of mass copying where the examination is not cancelled and the University decides to deduct the marks of the candidates to some extent. When confronted with the issue as to whether in the facts of the case the University was justified in getting the answer sheets of the petitioners re-evaluated without affording opportunity of hearing, it has fairly been conceded that proper course in the facts of the case was to get re-examination held in respect of particular papers. The said stand of the University, in the opinion of the Court, is the proper procedure which is to be adopted in view of the fact that re-evaluation of the answer sheets will not have the effect of determining the real worth of the students who have appeared in the examinations inasmuch as they had been permitted assistance from outside source. In the present case, where examination centres are situate in 13 districts of the State and colleges provide assistance by way of mass copying to the students the extent whereof cannot be strictly ascertained, in the opinion of the Court, it is not desirable that there should be re-evaluation of the answer sheets on the basis of the answers given with assistance of outside source. In such cases, for judging the worth of the students and for maintaining purity of the

examinations it is necessary to hold re-examinations.

16. The Court is aware that the petitioners who have passed even after re-evaluation of their answer sheets would also be subjected to re-examination in the paper concerned. This may cause some injustice to such students. However, this Court cannot hold the examination of the particular paper in which there has been mass copying to be treated valid for some students and invalid for the other students. The examination of a particular paper regarding which there is a report of mass copying in fact is no examination in the eye of law and such an examination has to be declared Invalid for all purposes. At this stage it is worthwhile to reproduce the relevant portion of the judgment of this Court in the case of *Rajiv Ratna Shukla v. University of Allahabad* (supra) :

"We are not unconscious or oblivious of grave injustice which might be done to some of the students, may be even majority, because of refusal by this Court to interfere but we cannot ignore the deterioration in the standard of discipline of academic institutions. How this should be regulated or controlled should best be left to the discretion of" those who are entrusted with this responsibility. If this Court starts substituting its own opinion in place of opinion expressed by authorities it shall result in chaos. It is well known that due to conduct of others even innocent persons suffer but the sufferings of few has to be tolerated in the larger interest of the society. As is usual in such matters it is only the few who are responsible but to protect the bona fide or the genuine if a decision is given which erodes the discipline and vitiates the atmosphere of the academic institutions then it is better to restrain and refuse."

17. Thus, although holding of re-examination may cause some injustice to the candidates who have been declared successful even after re-evaluation of the answer sheets, this Court cannot ignore the deterioration in the standard of discipline of academic institutions and as such every student must undertake re-examination in respect of particular papers in respect whereof there has been a report of mass copying.

18. In view of the aforesaid it is directed that (a) the University shall hold re-examination in respect of those papers only for which there has been a report of mass copying by the Flying Squad on the particular day when the particular paper was earlier held, and (b) the University shall declare the result of the students within one month from the date of holding the said re-examination in the papers concerned, after taking into consideration the marks obtained by the petitioners in the re-examination along with the marks obtained by the petitioners in other subjects in respect whereof there has been no complaint of mass copying.

19. With the above directions the writ petitions and the review application are disposed of.