

(1963) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 37 of 1962

Rajendra Kumar

APPELLANT

Vs

Vice Chancellor, Vikram University and Others

RESPONDENT

Date of Decision : 29-03-1963

Acts Referred:

Madhya Bharat Vikram University Act, 1955 — Section 19

Citation : AIR 1966 MP 136 : (1965) JLJ 912 : (1966) 11 MPLJ 16

Hon'ble Judges : V.R. Newaskar, J;P.K. Tare, J

Bench : Division Bench

Advocate : G.L. Oza, for the Appellant; K.A. Chitle, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.

This petition under Article 226 of the Constitution is submitted by an examinee at the IIIrd year B.Sc. (Mechanical Engineering) examination held by the Vikram University Ujjain in the year 1962. The petitioner is named Rajendra Kumar and his Roll Number was 228. The petitioner seeks to quash the order issued pursuant to the resolution No. 10 dated 9-5-1962 passed by the Results Committee of the University, consisting of the Vice Chancellor as the Chairman and other two members, cancelling the examination of the petitioner for the year 1962 and debarring him from appearing at the examination to be held in the year 1963 and 1964.

The petitioner was a student of Govindram Seksaria Technological Institute. Indore. He appeared at the IIIrd year Mechanical Engineering B.Sc. Examination held by the Vikram University for the year 1962. While the examination was in progress and the petitioner was solving his paper No. 32 M (Electrical Engineering) on 25-4-1962 the Superintendent of the examination took away his answer-book when only five minutes were left for the days" examination and asked him to leave the examination-hall suspecting him to be guilty of some

unfair practice while writing his answer-book. The petitioner learned nothing about any further steps which were being taken against him until 25th of August 1962 when the list of students guilty of unfair practices at the examination was notified and the petitioner was declared to have been debarred from appearing at the examination for the years 1963 and 1964 and his examination for the year 1962 as having been cancelled.

The grievance of the petitioner is that the University while taking the action of the nature above referred imposing the said punishment acted in a quasi-judicial capacity and that it was incumbent upon it to give opportunity to the petitioner to explain the circumstances assumed to exist against him and to meet the same. This was not done. The committee thus acted against the principles of natural justice. The petitioner made a demand for justice but the wrong done to him was not rectified. On these allegations the petitioner seeks to quash the punishment imposed upon him.

In the return submitted on behalf of the respondents Nos. 1, 2 and 4 namely the Vice-Chancellor, the Registrar and the Vikram University by the Registrar of the University Shri V. Shankaran it was contended that during the examination held on 25-4-1962 petitioner was found, by the Invigilator Shri Tulapurkar and the Senior Superintendent of Examination Dr. Dasgupta, to be in possession of a scale having some diagrams on it. Thereupon as per instructions issued to all the Superintendents at an examination for dealing with the reported cases involving alleged unfair practices the explanation of the petitioner was sought for his possession of that scale with diagrams on it and his answer-book was at once withdrawn.

The petitioner submitted his explanation on 3-5-1962 suggesting that he had asked the invigilator on duty to provide him with a scale to draw diagrams; that the invigilator did supply him the scale in question and he drew diagrams with it but that when only two minutes for the examination were left the Senior Superintendent with one of the two invigilators went to him to check the scale which unfortunately for him was found to have "a connection diagram of Disde which happened to occur in the question paper as an indirect question".

In view of this explanation, reply of the two invigilators on duty Shri Tulapurkar and Shri Ketkar was sought in writing to the same. They filed a joint explanation denying the fact that they had supplied any scale to the petitioner. The Senior Superintendent therefore, was satisfied that the petitioner used the said scale with a diagram on it in answering one of the questions and referred the matter to the University for an appropriate action. It is further stated by the Registrar that in exercise of the power u/s 29(g) of the Vikram University Act Ordinance No. 16 has been framed by the Syndicate for regulating the examinations in general u/s 10 of which the Syndicate is empowered to debar a candidate found guilty of using or attempting to use unfair means at an examination. In the scheme of the said Ordinance the matter goes to the Syndicate on the report of the Results Committee appointed under another Ordinance No, 32.

The Results Committee, it is said, is charged with duty u/s 5 of Ordinance No. 32 to deal with the cases of candidates reported to have been guilty of unfair means at an examination. The concerned authorities placed all the material before the Results Committee including the report of the invigilators and the explanation of the petitioner. The Committee thereupon unanimously resolved to cancel the petitioner's examination for 1962 and to debar him from examination for 1963 and 1964. The report of the Results Committee was then placed before the Syndicate in its meeting dated 11-8-1962 when they approved of the said recommendation of the Results Committee in their Resolution No. 272 dated 11th August 1962.

In view of the respective submissions of the parties points to be considered are whether the Syndicate of the University while taking action cancelling the petitioner's examination of 1962 and debarring him from appearing for the examinations of 1963 and 1964 was acting in a quasi-judicial capacity? If so, was due opportunity given to the petitioner to meet the circumstances appearing against him justifying the imposition of the said punishment.

On the first question we have the decision of the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, .

In that case the Examinations Committee, which was by Rule 1(1) of Chapter VI of the Regulations framed u/s 15 of the U. P. Intermediate Education Act (2 of 1921) empowered to impose penalty upon an examinee for using unfair means at the examination cancelled the results of a candidate for the examination of 1954. The candidate made a grievance before the High Court in a petition under Article 226 of the Constitution that the Committee was required to act judicially before imposing the said punishment that is it should have afforded some kind of hearing to Mm. It not having done so the imposition of punishment was without jurisdiction.

While considering this question their Lordships of the Supreme Court reiterated the observations made by Das. J., in the Province of Bombay Vs. Kusaldas S. Advani and Others, at p. 260, which are as follows:

"The principles, as I apprehend them are:

(i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the

authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

Their Lordships further observed:

"Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively (vide observations of Parker, J., in *R. v. Manchester Legal Aid Committee* 1952 2 Q.B. 413).

Their Lordships then examined the Act and Regulations framed thereunder and particularly Rule 1 (i) of Chapter VI of the Regulations framed u/s 15 of the Act which is in the following terms:

"It shall be the duty of the Examinations Committee, subject to sanction and control of the Board,

to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following:

Withdrawal of certificate of having passed the examination;

cancellation of the examination;

exclusion from the examination."

It was accepted by their Lordships that there was no express provision in Chapter VI casting duty upon the committee to act judicially while acting in exercise of the powers envisaged in Rule 1 (1) quoted above nor was any procedure provided requiring the committee to call for explanation from the

examinee and to hear those whose cases the committee is required to consider. They however were of the opinion:

"That the mere fact that the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and to hear the examinee is not conclusive on the question whether the Committee acts as a quasi-judicial body in exercising its powers under Rule 1(1). Even though calling for an explanation and hearing the examinee may not have been made expressly obligatory by the Act or the Regulations, it is obvious that the Committee when it proceeds to decide matters covered by Rule 1 (1) will have to depend upon materials placed before it, in coming to its decision. Before the Committee decides to award any penalty it has to come to an objective determination on certain facts and only when it comes to the conclusion that those facts are established that it can proceed to punish the examinee concerned".

They finally concluded:

"Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examiners, before it can take any action in the exercise of its power under Rule 1 (1). We are therefore of opinion that the Committee when it exercises its powers under Rule 1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee."

Their Lordships approved of the decisions reported in *Dipa Pal Vs. University of Calcutta*, and *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, .

In order therefore to consider, whether there was duty cast upon anybody to act judicially, before the petitioner in the present case was punished, let us examine the provisions of the *Vikram University Act* and the Statutes and Regulations made thereunder which are material and relevant. The two authorities of the University with which we will be mainly concerned in this connection are *Syndicate* and the *Results Committee*.

According to Section 19 *Syndicate* is the executive body of the University consisting of four ex-officio and several other members and as provided in Section 20 (m) this body exercises the powers and performs duties among others of making, amending and repealing Ordinances.

Senate which is the supreme authority of the University has powers and performs duties among others makes, amends or repeals statutes but the State legislature itself has made u/s 28(1) what are styled as First Statutes. Under

Clause 15 of these First Statutes the Syndicate among other bodies is authorised to appoint special committees and delegate to such committees power to deal with any Subject, subject to subsequent confirmation by the Syndicate. Under Ordinance No. 16 framed by the Syndicate in pursuance of its ordinance making power it is provided by Section 10 that if a candidate is found guilty of using or attempting to use unfair means at an examination such candidate may be debarred by the Syndicate from appearing at the examination for one or more years according to the nature of the offence of that candidate.

By another Ordinance No. 32 framed by the Syndicate in pursuance of the power of delegating its power and functions to deal with any subject, which the Syndicate could deal with under Clause 15 of the First Statutes, the Syndicate provided for constitution of a special committee known as Results Committee for performing the functions among others of dealing, by Section 5, with the cases of candidates using unfair means at the University examination.

It will thus be clear from these provisions that the cases of candidates using, or attempting to use unfair means at the examination have to be formally dealt with by the Results Committee with functions of the Syndicate delegated to it subject to subsequent confirmation of its action by the Syndicate. There is certainly no provision that the Results Committee, while dealing with the case of a committee should act judicially nor is there any provision requiring the committee to give opportunity to the candidate to explain the materials and circumstances appearing against him consequent upon the Superintendent's (at the examination) placing of answer-book of the paper for which he was caught together with his (the candidate's) explanation, the report of the invigilators, a copy of the relevant paper and other materials before the said committee.

Question which we now have to address ourselves is whether even in the absence of such express provisions is the Committee required to act judicially that is whether it should afford opportunity to the candidate for meeting the circumstances alleged to have been found against him?

We may mention here that the position of the Results Committee of the Vikram University, by the Act, Statutes and Ordinances while dealing with a case of a candidate who is alleged to have used or attempted to have used unfair means at an examination, is similar to that of the examinations committee in the Supreme Court case referred to above. That Committee too is authorised to consider similar cases subject to sanction and control of the Board which is akin to Syndicate.

Now the Results Committee while dealing with the case of a candidate alleged to have used unfair means at an examination will have to depend upon the material placed before it as from the very nature of things it would not have any personal knowledge in the matter. Therefore though there is no express provision making it obligatory upon it to call for an explanation and give opportunity of hearing to the candidate concerned yet it is implicit in the provision that the committee

must be satisfied that the candidate has in fact used unfair means at the examination. This it can do by judging the materials. The conclusions of the Committee if are against the candidate may result in blasting his career or put a serious stigma on him. In view of this, as held by their Lordships of the Supreme Court, since it has duty to decide objectively, it should be taken to act quasi-judicially.

Next question is whether the Results Committee has given opportunity to the petitioner to explain the materials against him ?

It is contended that no opportunity was required to be given to the petitioner in this case because in accordance with the instructions issued to the Superintendents at the examination, the explanation was obtained from the petitioner regarding his having used the scale with diagrams drawn upon for answering a question set in the question paper on the relevant date and he has admitted to have used scale and has further admitted that it (the scale) had a connection diagram of Disde, which happened to occur in the question paper as an indirect question. But reading the explanation as a whole it seems that according to him he had asked for a scale to draw the diagram through the invigilator on duty and it was provided and he drew the diagram and that later, when the Superintendent along with one of the two invigilators checked, the scale was found to have that diagram. He probably attributes this to an accident.

The Superintendent no doubt sent a joint explanation of the two invigilators on duty to the Assistant Registrar denying the fact they or any of them had provided him with the scale but this was behind the back of the petitioner. The defence that the use of the scale was accidental and there was no intentional use of any unfair means is a possible defence. It may be that on complying with the formalities of affording opportunity to the candidate of meeting the points against him the Committee may come to the same conclusion against him but that is a matter which does not concern this Court because then the Committee will have complied with the principles of natural justice.

We would therefore hold that the Committee while imposing punishment in question has acted against the principles of natural justice. The provision that the Syndicate has to confirm the action of the Results Committee does not mean that the Results Committee is any the less a body required to act judicially.

The petition is therefore allowed and the resolutions of the Results Committee and the Syndicate imposing punishment in question upon the petitioner is set aside. Under the circumstances of the case there will be no order as to costs.

Tare, J.

I have had the advantage of perusing the judgment proposed by my brother, Newaskar J. I entirely agree with him that as laid down by Their Lordships of the Supreme Court in Province of Bombay Vs. Kusaldas S. Advani and Others, , as also AIR 1962 SC 1110, the Results Committee, as also the Syndicate of the

Vikram University would be performing quasi-judicial function; and as such they would be required to act judicially while rustivating students for adoption of unfair means in the examination. However, I wish to elaborate on the phrase, "natural justice", which on several occasions is capable of being misunderstood. The real question would be as to what would be the limits, the limitations and the restrictions of natural justice when such quasi-judicial bodies function. In this connection, it is not possible to define such limits with precision. But, in my opinion, each case will have to be decided on its own merits with reference to the particular circumstances and the particular requirements under a given situation.

The broad features of natural justice would be firstly the principle of "Audi Alteram Partem" which means that no person should be condemned behind his back. So far as, disciplinary action of any sort whether under the Service Rules or under the University or the School Education Board Acts is concerned, there can be no doubt that a charge of adopting unfair means in the examinations would be more or less of a quasi-criminal nature involving the reputation and career of the student. Therefore, it is all the more necessary that before a person is condemned, he must be given an opportunity to be heard. As to what is a sufficient or a reasonable opportunity will depend on the particular facts of a case. In this connection, I might only refer to the case of *Byrne v. Kinematograph Renters Society, Ltd.* (1958 2 All ER 579), wherein at page 599, the following observations have been made -

"What, then are the requirements of natural justice in a case of this kind? Firstly, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more. It is said, however, that none of these necessities was complied with here. As regards good faith, I have already said that I see no evidence of bad faith. It was said, however, that the plaintiff was not told of the true charge against him, which was one of fraud. This I have already said is, in my judgment, a false point. The committee was not concerned with fraud at the stage then reached. Secondly, it was said that he was not shown the charge, that is to say, Mr. Belton's summary, which was the only document before the committee. This is much more serious, but on the whole I conclude that the plaintiff was not injured in this respect. There is nothing in Mr. Belton's summary which is not in Mr. Belton's letter, dated May 11, 1964, to the plaintiff, and the plaintiff admitted that he knew what was the complaint made against him, namely, the discrepancies in the two weeks already discussed. Next, it was said, to vitiate the proceedings, that Mr. Belton, his accuser, was in attendance throughout and reference was made to *Cooper v. Wilson* (1937) 2 All ER 726. That was a very different case. The plaintiff, in that case, had been dismissed from his office by the Chief Constable, and, when he appealed from that decision, he found the chief constable, a respondent to the appeal, sitting and acting as one of the tribunal. Here I see no reason why Mr. Belton should not be present. He was not a member of the committee, and there was no evidence that he took

any part in the decision. Next it is said that the charge did not contain all the relevant material. It is quite true that it omitted to state the total number of visits made and their result, or the deficiency in the hand tallies, but, in my judgment, the addition of these two matters would not have been relevant to the committee's decision. Further, it is said that the plaintiff was prevented from calling his wife to testify on his behalf. This, I think, is true, but not fatal, because it is clear to me, having heard Mrs. Byrne's evidence in the witness-box, that she would have been able to add nothing on the only point which was relevant, that is to say, an explanation of the discrepancies. The whole burden of her song was that there was, and could be, no explanation after the lapse of so long a time, having regard to the way in which the business was conducted. She did not pretend that the discrepancies did not exist, nor that they did not show that money which should have gone to the renter went into the pocket of the exhibitor. If, therefore, she had been allowed a right of audience, she could not have altered the result."

As laid down by Their Lordships of the Supreme Court in *Amalendu Ghosh Vs. District Traffic Superintendent North Eastern Railway, Katihar*, which was a case of imposition of penalty on a railway servant as a result of a railway accident, Their Lordships laid down that a reasonable opportunity would mean an opportunity to the employee to prove his innocence, of course, where departmental rules are enacted regarding employees or where statutes and ordinances are framed by a University, the requirements of the same must be met. In addition, the principle of natural justice would require such an opportunity to be given to the person concerned to show that the charge against him is not correct and that he is innocent. For this purpose the person concerned is not entitled to invoke the statutory provisions of the Civil or the Criminal Procedure Code or the Indian Evidence Act. If, such a demand is made, it would clearly be unjustified. But what might be permissible would be broadly speaking a fair opportunity to be heard and to prove one's own innocence. If these two essential requirements are met, the question of procedure is not very material, as the procedure applicable to law Courts can, in no event, be insisted upon by the person concerned.

Such an enquiry need not be elaborate as is conducted in a law Court. It may as well be summary. But the basic principles ought not to be ignored, namely, that the authority taking disciplinary action has some material before it, which can be the basis for arriving at a conclusion of the guilt of the person concerned and any reasonable man would arrive at such conclusion. I may only refer to the case of *Rex v. Housing Tribunal of Appeal* (1920) 3 K.B. 334. where the following observations were made :--

"No opportunity was given to the appellants to say whether they admitted those facts or had any explanation of them to offer. Under these circumstances the case seems to fall directly within the decision of the Queen's Bench in *Reg v. Archbishop of Canterbury* (1859) 1 E. & E. 545. It may well be that if the

appellants had been given the opportunity they might have been able to disprove the statements of the local authority, and to show that their facts or inferences were wrong. One illustration of this was given by Mr. Hogg in his argument. A point was made by the local authority that there was a scarcity of building stone, and it was pointed out by Mr. Hogg that the appellants might have been going to use ferro-concrete and not building stone at all. It seems to me that the appellants have been deprived of their elementary right of hearing and that the rules should be made absolute."

The principle further required that not only a hearing should be given to the person concerned, but also the hearing must not be given to one side in the absence of the other, as indicated in *Errington v. Minister of Health* (1935) 1 K.B. 249. Such an opportunity ought to be given before action is taken against the person concerned as indicated in *Urban Housing Co. v. Oxford Corporation* 1940 Ch D 70.

I may further observe that what is required is only a fair opportunity to the person concerned to state his case and to establish his innocence, as indicated in *Local Government Board v. Arlidge* 1915 AC 120 and *R. v. Archbishop of Canterbury* (1944) 1 All ER 179. As laid down by Their Lordships of the Supreme Court in *Roshan Lal Mehra Vs. Ishwar Das*, , if an opportunity is given to the person concerned, but he abstains from availing of such an opportunity, it would be putting a premium on the recalcitrance of the landlord if it were to be held that the principles of natural justice are violated. If after such opportunity the person concerned does not avail of it and if the conclusion is against him, the principles of natural justice are in no case violated.

Further, I may observe that unless the statutes and the ordinances framed under a University Act, require a particular procedure to be followed, the principle of natural justice would not imply a right to be heard in person on representation through a counsel or a right to cross-examine every witness examined in support of the charge, as laid down by Their Lordships of the Privy Council in *Ceylon University v. Fernando* 1960 1 WLR 223.

For this I might advert to the latest pronouncement of Their Lordships of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, , which was a service case of a Police Officer and wherein Their Lordships approved of the principle stated in the *Board of Education v. Rice* 1911 A.C. 179 and explained the earlier pronouncement of Their Lordships in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , *Union of India (UOI) Vs. T.R. Varma*, and *Phulbari Tea Estate Vs. Its Workmen*, . Their Lordships specifically disapproved of the observations of the Bombay High Court in *State of Bombay Vs. Gajanan Mahadev Badley*, . It would be pertinent to reproduce the pronouncement of Their Lordships of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, , which Their Lordships explained in the said case. They are as under;

"Stating it broadly and without intending it to be exhaustive, it may be observed

that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

With reference to Their Lordships' earlier pronouncement referred to above, the following observations were made in the instant case, namely *State of Mysore Vs. S.S. Makapur*,

"It is on the observation that "the evidence of the opponent should be taken in his presence" that the decision of the learned Judges that the evidence of witnesses should be recorded in the presence of the person against whom it is to be used is based. Read literally the passage quoted above is susceptible of the construction which the learned Judges have put on it, but when read in the context of the facts stated above, it will be clear that that is not its true import. No question arose there as to the propriety of admitting in evidence the statement of a witness recorded behind the back of a party. The entire oral evidence in that case was recorded before the enquiring officer, and in the presence of the petitioner. So there was no question of a contrast between evidence recorded behind a party and admitted in evidence against him, and evidence recorded in his presence. What was actually under consideration was the procedure to be followed by quasi-judicial bodies in holding enquiries, and the decision was that they were not bound to adopt the procedure followed in Courts, and that it was only necessary that rules of natural justice should be observed. Discussing next what those rules required, it was observed that the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

From the pronouncement of Their Lordships in the said case, it is clear that there is no standardized general test. But each case has to be decided on its own

merits with reference to the needs of a particular situation. If broadly speaking, opportunity is afforded to the person concerned to be heard and to meet the charge, it is immaterial if the procedure laid down by the CPC or the Criminal Procedure Code or the Indian Evidence Act is not followed. That is the sum and substance of the pronouncement of Their Lordships of the Supreme Court in the latest case. Therefore, the present case has to be judged in the light of those principles.

So far as the present case is concerned, we have to apply the above test to the enquiry held against the petitioner by the University. When in the examination hall the petitioner was found in possession of a plastic scale, which had sketch drawn on the back, which was related to one of the questions set in the examination, the Superintendent of Examination withdrew his answer book about five minutes before the end of examination. This happened on the 25th April 1962. Thereafter, the petitioner was asked to explain his conduct. He submitted an explanation, dated, 6-5-1962, wherein he admitted his possession of the scale with a diagram, However, his version was that one of the Invigilators on duty had given him the scale upon a demand for supply of a scale. Therefore, according to him, he was in possession of the scale consciously; and if at all it was the Invigilator, who was responsible for supplying him with a scale.

The two Invigilators at the examination, namely, Shri Tulapurkar and Shri P.R. Ketkar submitted a written explanation to the Superintendent of Examination on 4-5-1962 denying that any demand was made by the petitioner for supply of scale or that they had supplied any such scale to the petitioner during the examination hours on 25-4-1962. Thus the petitioner's version was contradicted by the two Invigilators whose statements definitely indicated that no such demand was made and that they never handed over any scale to the petitioner. Thereafter, the matter went to the Examiner who submitted his report. Later on, it was considered by the Results Committee and the Syndicate. It is a fact that the statement of the Invigilators was not recorded in the presence of the petitioner, nor was he given an opportunity to confront them. However, can it be said the principles of natural justice were violated because the petitioner did not get an opportunity to confront the Invigilators with their written explanation? The undisputed fact was that the petitioner was in possession of an objectionable scale on which a diagram connected with a question occurring in the examination was drawn. Therefore. It was for the petitioner to explain satisfactorily his possession of an objectionable scale. His version was that he was not in possession consciously, but the scale had been given to him by one of the Invigilators upon demand for supplying a scale. Both the invigilators who were in charge of the examination in their written explanation denied any such incident. Under the circumstances, it was all the more necessary that the petitioner should have been given an opportunity to prove his innocence by confronting the invigilators with their version. He was deprived of such opportunity, as the statements of the invigilators were not recorded in his presence and did not get an opportunity to confront the invigilators with their statements recorded behind his back. As an

enquiry in the presence of the petitioner was necessitated due to the particular facts of the case, I agree with the conclusion of my learned brother that the principle of natural justice was violated in the present case. Therefore, the petition is allowed as indicated by my learned brother.