

(1981) 01 OHC CK 0013

In the Orissa High Court

Case No : Original Jurn. Case No. 1480 of 1980

Ramlal Agarwala

APPELLANT

Vs

Sambalpur University

RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Ori 102 : (1981) 51 CLT 195

Hon'ble Judges : R.N. Misra, C.J.;B.N. Misra, J

Bench : Division Bench

Advocate : L. Rath, for the Appellant; R.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Misra, C.J.—Bhima Bohi College located at Rairakhole is affiliated to the Sambalpur University. Petitioner appeared for the Bachelor's Examination in Arts conducted by the Sambalpur University from that centre in 1980 and his examinations were held on specified dates between 16th of April and 6th of June of that year. Petitioner was assigned roll number 176 and one of the subjects in which he appeared was Political Science. The results of the examinations were published on 27-7-1980, but his results were not made known. While he was busy enquiring as to what happened to his matter, he received a communication dated 22-8-1980 to the following effect (as far as relevant);--

"You have copied from your co-examinee bearing Roll No. 178 in answering Question No. 9 of Pol. Sc. IIInd Paper."

and he was called upon to offer explanation by 29th of August and he was also notified that his case would be considered by the authorities on 29-8-1980 at 1 p.m. He was told in case he thought that he should be heard at the enquiry, he should be present for the purpose. Petitioner in his explanation denied to have adopted any unfair practice and also appeared at the hearing. He supported his stand by filing an affidavit wherein he reiterated the stand taken in the

explanation. He also indicated the sitting arrangement made in room No. 13, where he took the examination and relied upon the feature that he and the other candidate were far apart and there was no scope for copying. In case petitioner had changed his seat during the course of the examination, the Invigilator was bound to take note of it. AS there was no allegation by the Invigilator or from the Centre, there was no scope for presuming that the malpractice has been resorted to in the manner alleged. Petitioner alleged that during the personal hearing, the answer papers were not read and no comparison was made between the two answers for coming to the conclusion that there had been any copying by the petitioner from the other answer paper. Ultimately by order dated 10th of September, 1980 under Annexure 4, petitioner's result of examination was cancelled. Challenge in this application is to this disciplinary action.

2. A counter-affidavit has been filed by the Deputy Registrar of the University wherein the factual allegations regarding the sitting arrangement, the fact that no complaint was made from the Centre and the answer papers were not compared in presence of the petitioner at the personal hearing, are not disputed. It has, however been pleaded that on a comparison, the answers so far as question No. 9 was concerned substantially tallied and misconduct had, therefore been established.

3. At the request of the petitioner, the two answer papers were made available at the hearing and have been compared in Court in regard to the answer to Question No. 9. We shall presently advert to that aspect. Mr. Rath for the petitioner contended that the counter-affidavit does not indicate that its deponent was personally present at the time of hearing by the disciplinary committee and the facts alleged in the counter-affidavit cannot, therefore, be relied upon. There is no assertion by way of rejoinder that the Deputy Registrar was not personally present. There is nothing in the counter-affidavit from which it can be gathered that he was actually not there. Reliance was placed by Mr. Rath on a Bench decision of this Court in the case of Dilip Kumar Ganguli v. Utkal University (1968) 34 CLT 198. The observation there that adverse inference could be drawn when the relevant papers are not produced before the Court must be confined to its own facts and we do not think it would be appropriate in the facts of this case to draw such adverse inference. Reliance was next placed by Mr. Rath on a Bench decision of this Court in the case of Kamalendu Prasad Padhi Vs. The Sambalpur University and Others, where the allegation was that the candidate was in possession of some incriminating material while the examination was in progress, The extent of natural justice warranted by facts of the case fell for consideration and reference was made to the earlier full Bench decision of this Court in the case of Pramila Dei Vs. Secretary, Board of Secondary Education, and to the famous decision of the Privy Council in the case of University of Ceylon v. Fernando (1960) 1 All ER 631. Mr. Mohapatra for the University on the other hand relied upon another Bench decision of this Court in the case of Brajendra Maharana and Others Vs. The Utkal University, where the content of natural justice applicable to a case of the present type has been

indicated in a little different strain. Both the judgments are by the same learned Judge though the Benches were differently constituted. We do not think, it is necessary to enter into a consideration regarding which one lays down the law correctly for the purpose of disposing of the present case. Here the facts are simple. There is no allegation of detection of malpractice at the examination centre. The examiner while valuing the papers was of the opinion that the answer to Question No. 9 tallied in the answer papers of petitioner and the candidate with roll number 178. There is no material for the charge that petitioner copied from the other candidate. Merely on the premises that the answers tallied, there is no presumption that the petitioner copied from the other candidate's paper. It could as well have been the other way, that is, the other candidate may have copied from the petitioner.

4. We are aware of the position that our jurisdiction is not appellate, but law is fairly settled that where in a given case no prudent person capable of appreciating facts and coming to an independent conclusion could have come to the conclusion which the University authorities have on the materials available, the superior Court in a proceeding for certiorari has jurisdiction to interfere. For that limited purpose, we shall now consider the two answers to question No. 9.

5. The examiner has given the other candidate 11 1/2 marks in the answer to question No. 9 while the petitioner for the relevant answer has been given 7 marks. The other candidate seems to have better equipment than the petitioner, inasmuch as the general performance of the other candidate is better and his manner of writing is very different from that of the petitioner. The portions tallied in the two answers are to the following extent:--

(i) "In the opening lines of the manifesto of the Communist Party, Marx and Engles wrote:

"A spectre is haunting Europe, the spectre of communism. All the powers of Europe have entered into a holy alliance to exercise this spectre. Pope and Czar, Matternich and Gruizot, French radicals and German Police spies".

(In the answer of the other candidate "old" is written before Europe and the word spies is written as "spices")

(ii) "An Architect and Defender of Revolution : The party claims itself to be the architect of the Revolution and the defender of the socialist order against the internal enemies and the external foes....."

(iii) "Control over judiciary:--Even the judiciary consists of those comrades who toe the line of the party....."

The rest of the contents in the answers are in different language and the points answered in the answers also differ. The placement given to the treatment of the sub-headings in the two answers also varies. While both the answers open with what has been extracted above as item (i), the other two sub-headings occur differently in the two answers. In the other candidate's answer, the portion

marked (ii) occurs earlier while in the answer of the petitioner, it is virtually towards the later portion. Even in the material which is contended to be tallying there is slight difference namely in the first item while the other candidate has used the word "old" the petitioner has used the word "all". While the other candidate has used the word "spices". Each of the candidates after quoting the common material has written the answer in his own way and as we have already pointed out, the contents are very different. If there was a tendency to copy, it would normally have been a copy of the material available at a stretch. The manner in which the two answers have been written leads us to hold that the answer for the question appears to have come essentially from a common source and the candidates had memorised the opening words of the answer and they had also remembered one or two sentences of the sub-heads. The answers otherwise do not have any intrinsic material to evidence copying. On the other hand, looking at the answers gives a clear impression that this is not a case of resorting to unfair means in the examination hall. No prudent person looking at the answers is likely to reach this conclusion. In the circumstances, it becomes difficult for us to hold that the conclusion of the University authorities that the petitioner had resorted to malpractice was justified and merely from the answer and in the absence of any complaint from the Centre, the view adopted by the University authorities can stand.

6. We accordingly allow the writ application, quash the disciplinary direction of the University in Annexure-4 and call upon the University to publish the result of the petitioner, within a month from now in accordance with its Statutes. Since we have no doubt that the action of the University was wholly bona fide, we do not propose to award any costs against the University.

7. Before we part with the case, we would like to place on record our serious concern over the falling standards of the University Degrees and the allegations of malpractice in University examinations. It is very appropriate to recall the advice of the famous Asquith to the students of the University:--

"Keep always with you, wherever your course may lie, the best and most enduring gift that a University can bestow the company of great thoughts, the inspiration of great ideals, the example of great achievements, the consolation of great failures. So equipped, you can face, without perturbation, the buffets of circumstances, the caprice of fortune, all the inscrutable vicissitudes of life. Nor can you do better than take as your motto the famous words which I read over the portals of this college when I came here today:

"They have said. What say they? Let them say"."

B.N. Misra, J.

I agree.