

(1965) 08 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Application No. 139 of 1965

Ranjeet Singh

APPELLANT

Vs

The University of Rajasthan and Others

RESPONDENT

Date of Decision : 16-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) RLW 275

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : Chandmal Lodha, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Ranjeet Singh challenging the validity of a notification, dated 10-8-64, issued by the University of Rajasthan, whereby the University cancelled the examination taken by the petitioner in 1964, and also debarred him from appearing at any subsequent examinations of the University to be held in three succeeding years.

2. The petitioner was a student of the Second Year Three-Years-Degree Course (Science) at the University of Rajasthan. He sat at the Second Year Examination held by University in April 1964, at the Bikaner centre. On 6-4-64, the petitioner answered his Mathematics Paper No. 1. His case is that after answering the paper he went to his house, but soon thereafter he was called by the Principal, Doongar College, to his office. Accordingly, the petitioner presented himself before the Principal who then told him that one of the invigilators Shri Jag Mohan Mittal had complained against the petitioner that he had used unfair means at the time of answering the question paper of that day. The petitioner replied that the allegation was completely wrong and he had not used any unfair means at the examination. The petitioner was then allowed to go home. The petitioner asserts that he was never confronted with the invigilator Shri Jag Mohan Mittal and the Principal did not make any inquiry in the matter in the presence of the

petitioner. When the results of the Second Year (Science) examination were announced the petitioner found that his result was withheld. On this the petitioner addressed a letter to the Registrar inquiring as to why his result had been withheld. There was no response to his communication, but eventually the Registrar of the University intimated the petitioner about the issuing of the impugned notification by the University. The petitioner then made representations to the University for withdrawing the notification, but without any response.

3. In attacking this notification the petitioner submits that, as the University of Rajasthan is a statutory body and as the Syndicate is the executive body of the University it was bound to act quasi judicially and follow the principles of natural justice before it could take such a drastic action against an examinee. In this regard the petitioner asserted that he was never called upon to meet any charge made against him, nor was he given any opportunity to submit his explanation. He was also not given any opportunity to cross-examine the witnesses whose statements might have been recorded and further, no opportunity to adduce his defence was afforded. In short, his submission is that he has been condemned unheard.

4. The writ petition has been contested by the University. Traversing the averments of the petitioner it was submitted on behalf of the University that on 6-4-1961 at 10.00 A.M., when the time of the examination was over and the answer books of the candidates including the petitioner were being collected it was found by Shri Jag Mohan Mittal, one of the invigilators who came to collect the answer book of the petitioner, that in the said answer book there was a paper containing full solution of Question No. 8(A) of the Question Paper of that day. Shri Mittal then prepared his report about what he had found and asked the petitioner to put his signature thereon, but he fled away. Shri Mittal then submitted his report to the Superintendent of Examinations, Shri P.C. Jain. At about 11-45 A.M. the petitioner appeared before Shri P.C. Jain on his own initiative when Shri Jain inquired from the petitioner in the presence of Shri Mittal and Servashri Sahani, Additional Superintendent of the Examinations and Gopikishan, Clerk whether the sheet of paper containing the solution was recovered from his answer book by the invigilator Shri Mittal. The petitioner then admitted that this was so, but when he was asked to give his statement in writing he said that this he would be doing after consulting his father. He then went away without making a statement in writing, but again came back to the office of Shri Jain at about 1-25 P.M., this time accompanied by one Shri Madan Singh who was his guardian. The Superintendent then recorded the statement of the candidate, but the candidate denied the allegation and said that some other student had thrown this paper towards his table when it was picked up by the invigilator from a place close to his seat. The petitioner proceeded to say that after this incident he went away to his home after the answer book had been handed over by him to the invigilator. The respondents maintain that Shri P.C. Jain then recorded the statement of Shri Jag Mohan Mittal and eventually sent

the papers along with his report to the University. On receipt of the papers at the University Office the report of the Head Examiner Shri P.S. Nigam was obtained and Shri Nigam's report showed that the paper said to have been recovered contained a full solution of Question No. 8(A) which carried 4 1/2 marks and the petitioner had partly made use of that sheet of paper in answering the question. According to the Examiner, this question was attempted at the end and the petitioner could not get sufficient time or opportunity to copy out the full solution and thus the answer was left incomplete.

5. It is contended by the respondents that Shri P.C. Jain, the Superintendent of Examinations at Bikaner had made a full inquiry and nothing more was required to be done before taking any action.

6. It will be thus seen from the above narration that the two versions are at variance. According to the report of Shri P.C. Jain which is based on the statement made before him by the invigilator the objectionable sheet of paper was found in the answer book of the candidate when the invigilator was collecting it. On the other hand, according to the candidate this was not so and someone else had thrown that sheet of paper towards his seat and it was picked up by the invigilator and wrongly attributed to the petitioner. However, it is not for this Court to enter into controversies over facts and it is for the competent tribunal who has to take a decision in the matter to arrive at its own finding.

7. The only question that was in the circumstances vehemently debated before us was whether the notification issued by the University was rendered invalid on account of the failure to deal with the matter according to law.

8. It is common ground between the parties that the competent authority to take action in such matters is the Syndicate of the University in whom the executive authority of the University vests under the University of Rajasthan Act, 1946. It is also admitted by the learned counsel for the University that there are no statutory orders or rules laying down the procedure for dealing with disciplinary matters like the present one. In the circumstances the question arises as to how such matters have to be approached and dealt with.

9. In Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, the Supreme Court had occasion to deal with a case where the Board of High School, United Provinces had cancelled the Intermediate Examination of three students. They were first declared to have passed the examination in Second Division, but later on as a result of some inquiry the examination of the students was ordered to be cancelled and they were debarred from appearing at a subsequent examination. This was done, because the Board found as a result of the inquiries that the students had used unfair means at the examination of 1954. In attacking the order of the Board the students contended that no opportunity had been afforded to them to meet the case of using unfair means set up against them. After adverting to the considerations that should guide in determining as to when the act of a statutory

body should be held to be a quasi-judicial act and when it should be held to be merely administrative in character and after reviewing the previous decisions of the Supreme Court their Lordships of the Supreme Court laid down as follows:

"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.

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."

Their Lordships, after considering the statutory provisions, held that there was no doubt that many of the powers of the Board were administrative in character, but when some quasi judicial duties were also entrusted to it, it became a quasi judicial body for performing those duties. It was further laid down that though the Board could prescribe its own procedure the principles of natural justice were to be followed and adequate opportunity of presenting his case was to be given to the examinee. In that case as their Lordships came to the conclusion that no opportunity whatever was given to the examinee to give his explanation or presenting his case before the Committee of the Board, the resolution of the Committee cancelling the result and debarring the candidates from appearing at the next examination stood vitiated.

10. Mr. C.L. Agarwal, learned counsel for the respondent, has submitted that this decision was distinguishable on facts, as in the present case, according to him, a proper opportunity had been given to the candidate in that Shri P.C. Jain, the Superintendent of the Examination, called the candidate and faced him with Shri Mittal. According to Shri Jain the petitioner had admitted the correctness of the allegations made against him. Mr. Agarwal pointed out that in this case their Lordships had approved of the view taken by the Calcutta High Court in *Dipa Pal Vs. University of Calcutta*, and *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, which cases, according to Shri Agarwal fully support him. We may, however, observe that their Lordships never proceeded to affirm everything that was said by the learned Judges of the Calcutta High Court in the two aforementioned cases, but their Lordships approved them only to the extent that

it was therein held that the University Authorities were to act quasi judicially in such matters. This will be quite apparent from the following passage:

"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. This view was taken by the Calcutta High Court in *Dipa Pal Vs. University of Calcutta*, and *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, in similar circumstances and is in our opinion correct."

11. In *Dipa Pal Vs. University of Calcutta*, Dipa Pal had appeared at the B.A. Examination of the Calcutta University as a private student. Her name did not appear amongst successful candidates when the result was announced. She then made inquiries and came to know that there was a report against her that she had used unfair means at the examination. It transpired that the examiner of the paper in philosophy had reported that he was convinced that two groups of candidates had indulged in foul play and among them was the petitioner. It was found that several answers were similar and there were common mistakes and thus it was found that the candidates had copied one another's answers. The High Court came to the conclusion that as proper opportunity had not been given to the candidate to have her say, the order of the University was bad. The learned counsel is trying to take advantage of the following observations in that case:

"In cases where breaches of discipline are detected by the invigilators or other officers present in the examination hall and candidates concerned are expelled from the hall or are otherwise dealt with, question of any enquiry or investigation upon notice to the candidates may not arise. But where no breach of discipline is actually detected but subsequently upon examination of the answer papers the examiners come to entertain suspicion about adoption of unfair means by particular candidate or candidates and the Examination Board has to consider such cases and come to a determination as to the nature of the offence committed and has to apportion the penalty which can properly be inflicted upon the delinquents, it is only fit and proper that the party concerned should have an opportunity to defend himself and to offer an explanation, if any."

He submits on the basis of these observations that where a candidate is caught in the Examination Hall itself committing some foul play, then the question of any inquiry and investigation after notice to the candidate would not arise. In our opinion, the observation about the procedure to be followed when a candidate is caught red-handed in the Examination Hall is obiter and is of no assistance to the learned counsel. The question before us is whether the authority who has to take the ultimate action should, or should not, afford a reasonable opportunity to the affected candidate to have his say before it, and this decision does not throw any light on it.

12. Similarly, *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, is of no help to the respondents. In that case the written examination for the Intermediate Licentiate Examination was held by the State Medical Faculty of West Bengal in June, 1951. One of the examiners in Physiology sent a report to the State Medical Faculty that answers to questions Nos. 1 and 2 by the candidates were almost in the same language and content. He also reported that when the same questions were put to these candidates in the oral examination not a single student could answer them and that some of them even could not follow the meaning of the answer paper when the contents were read to them. He consequently "opined that unfair means were used by the candidates at the written examination either by copying from slips of loose papers inside the Examination Hall, or the answer papers were collected by the candidates from outside. He consequently recommended the cancellation of the Examination. The matter then came before the Governing Body of the State Medical Faculty who decided that the examination of 51 candidates including the petitioners in that case be cancelled. The orders passed by the Governing Body were struck down by the High Court on the ground that no notice at all to the candidates of the charges against them was given and no opportunity was afforded of showing that the allegation was not true. Thus, For want of such an opportunity the order cancelling the examination was found to be bad and consequently quashed.

13. In dealing with such disciplinary matters as we are considering where there are statutory rules, the authority must follow those rules and in the absence of them it will have to follow the principles of natural justice. In the absence of any rules the administrative body who has to discharge its duties can, of course, function according to its ordinary procedure. The following portion of the speech of the Lord Chancellor in *Local Government Board v. Arlidge* 1915 AC 120, may be quoted with advantage:

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

14. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road*

Transport Corporation and Another, the question that came up for decision before their Lordships of the Supreme Court was whether in discharging quasi judicial functions the State Government could resort to its rules of business and their Lordships observed as follows:

"At this stage, the argument hinted at but not seriously pressed, may be noticed. The Rules the Governor is authorised to make, the argument proceeds, are only to regulate the acts of the Governor or his subordinates in discharge of the executive power of the State Government, and, therefore, will not govern the quasi-judicial functions entrusted to It. There is a fallacy in this argument. The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those Rules conform to the principles of judicial procedure.

15. Therefore, in a case like the present one, though the Syndicate could have acted according to its normal mode of transacting business by relying on the facts collected by a subordinate, yet it was its duty to have afforded a reasonable opportunity to the petitioner to present his case before it. It was incumbent on it to follow the principles of natural justice in dealing with the matter. This could have been achieved by calling upon the petitioner to explain the report made against him.

16. In *Ram Chander Singh Vs. Punjab University, Chandigarh*, which was a case dealt with by the Unfair Means Committee appointed by the Punjab University, it made an inquiry according to the regulations and then found the candidate guilty of using unfair means. As the regulation only provided for taking an explanation of the candidate in the form of a statement at the time when he is so suspected and apprehended by the Superintendent of the examination and the regulation made no provision for the suspected candidate to know what exactly had been submitted by the Superintendent to the University, it was held that that was not enough to meet the requirements of natural justice. We may quote the following observations:

"Thus, the regulations make no provision for the suspected candidate to know what exact report has been made by the Superintendent to the University and he is afforded no opportunity to give his explanation after seeing the report. It was urged that merely asking the candidate to give his explanation at the time when he is suspected or having used unfair means is no substitute for an opportunity to the petitioner to show cause against the case as reported to the University on which action is sought to be taken. In the present case, the parties are not agreed even on the point as to whether the petitioner was asked to give his explanation or not, and, in any case, there is a material difference between the version as given by the Superintendent to the University and as was mentioned in the letter addressed to the University by the petitioner.

As was remarked by the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, the decision of committee in a case where unfair means are suspected may lead to very serious results and the committee must be taken to the acting in a judicial or quasi-judicial manner, and the rules of natural justice do require that the person to be condemned must be given an opportunity of showing cause against the action proposed. In the present case, no doubt, the petitioner knew that he was being suspected of using unfair means by keeping notes relating to the subject of examination with him concealed in a handkerchief. However, it makes all the difference whether the handkerchief was in the hand of the petitioner at the time when it was found by the Superintendent or it was lying on the floor and was picked up by the Superintendent. The explanation that may have been offered by the candidate at the moment may be of considerable importance, for the committee to judge the guilt or otherwise of the candidate, yet, except in a case where there is no controversy about facts, such an explanation can be no substitute for the explanation that the candidate may offer on being told the exact version given by the Superintendent and the supervisory staff from which an inference about his having used unfair means is sought to be drawn."

17. In Son Pal Gupta Vs. The University of Agra and Another, the facts were that the University passed an order debarring a candidate from appearing in the following examination on the ground of his having used unfair means at the examination. Only the candidate was called upon to give his explanation, but he was not told as to what was the report against him. It was held in the circumstances that this did not meet the requirements of natural justice. In that case the facts were more or less akin to the facts of the present case. The invigilator caught the candidate with a chit when he was copying it. The chit was taken in possession by the invigilator and he demanded an explanation from the candidate which he declined to give. The invigilator when sent his report to the University, who then called for a report of the examiner of the answer book. His report was that the candidate had copied certain answers. The papers were then laid before the Vice Chancellor who, without giving an opportunity to the petitioner, passed orders withholding the result of the petitioner and debarring him from appearing in the subsequent examination for a period of one year. In that case it was held by the High Court while quashing the order of the Vice Chancellor that the Vice Chancellor should have heard the candidate before passing the orders, and in the opinion of the High Court, merely the taking of the explanation of the candidate by the invigilator was not enough. It was also observed that without telling the candidate as to what were the reports against him and without letting him know the nature of the explanation required of him, it could not be said that the principles of natural justice had been followed.

18. We are in respectful agreement with the view taken in these cases.

19. Shri Agarwal, learned counsel for the respondent, invited our attention to

Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, for showing that a statutory functionary can ask a responsible and competent official to enquire and report in the matter. He relies on the following passage:

"It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such powers."

20. We have no quarrel with this proposition. However, having obtained the necessary materials it becomes the duty of the competent authority to afford an opportunity to the affected candidate to explain the materials. Shri Agarwal pointed out that will create practical difficulties if the syndicate were to hear each candidate personally before taking any action against him. This may be so, but in view of the grave consequence that ensue to the affected candidate the requirement of the basic principles of natural justice cannot be dispensed with. The solution to the difficulties pointed out by Shri Agarwal lies in making proper rules by the Syndicate and thereby delegating its power to another smaller body or to any individual officer of the University as may be considered best.

21. To summarise, the position may be stated thus: As held by their Lordships of the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, the University in exercising its functions in relation to taking of disciplinary action against an erring examinee acts quasi-judicially and, therefore, it is under a duty to follow the principles of natural justice before taking ultimate action against the candidate. The principles of natural justice require that the candidate must be given an opportunity of presenting his case before that organ of the University namely, the Syndicate who has to award the punishment. The University can act according to its usual rules of business, provided the rules conform to the principles of judicial procedure (vide Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, The University or the Syndicate itself need not do everything personally, but may obtain the necessary materials through its officials 1915 AC 120. As already observed by us, a feasible course in dealing with such matters is to make proper rules on the subject and by that to delegate the powers of the Syndicate in this behalf to a small body or to any officer of the University. The rules should lay down the mode of making enquiries and about the giving of the opportunity of audience to the affected candidate.

22. As in our view, in the present case, proper procedure was not followed in that no opportunity was afforded to the candidate to present his case before the Syndicate, the impugned notification is bad and has consequently to be set aside. This will, however, not preclude the University from taking any appropriate action in the case after following proper procedure.

23. The result is that we hereby accept the writ petition and quash the notification of the University dated 10-8-1964 (Ex-1 on the record). The parties will bear their own costs.