

(1989) 08 MP CK 0048

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 271 and 411 of 1988

Ratiram Singh Yadav

APPELLANT

Vs

Principal, Government Polytechnic, Harda and Another

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Act, 1872 — Section 37

Madhya Pradesh Recognised Examinations Act, 1937 — Section 2

Madhya Pradesh Recognised Examinations Rules — Rule 1

Citation : AIR 1990 MP 129 : (1989) MPJR 921 : (1989) MPLJ 712

Hon'ble Judges : D.M. Dharmadhikari, J;B.C. Varma, J

Bench : Division Bench

Advocate : A.K. Choubey, for the Appellant; P.C. Naik, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The order passed in this petition shall also govern the disposal of M. P. No. 411 / 88 (Omshankar Chanderi and Ors. v. Madhya Pradesh Technical Education Board, through its Secretary and another).

The petitioners who are students of Govt. Polytechnic, Harda, being an institution under the Madhya Pradesh Board of Technical Education, Bhopal, have all been rusticated and debarred from appearing in the examinations conducted by the Board, by way of disciplinary action against them for their disorderly behaviour in the examination hall. All the petitioners have a common grievance that disciplinary action of debarring them from the examination, by way of punishment, has been taken against them by the Principal of the Institution and by the Board of Technical Education, without affording them any opportunity to show cause against the penal action.

The petitioner Ratiram Singh Yadav in M.P. No. 271/88 has come forward with a specific grievance that he never appeared in the supplementary examination held in Sept.-Oct. 1987, because he had already passed the examination in April-May, 1987. He also denied that he ever misbehaved during the examination of final year held in Sept.-Oct. 1987. The order dated 23-12- 1987 (Annexure-E), debarring him from appearing in the examination of the Board for a period of three years and cancellation of his admission from the Institution for the aforesaid period has been challenged on the grounds that it was a punishment inflicted on him without any justification and without giving him any opportunity of hearing or show cause.

The petitioners, eight in number, in M.P. No. 411/88 have similarly challenged the impugned orders (Annexures P-1 to P-8), whereby they have been debarred from appearing in the examinations of Board for a period of two years and rusticated from the institution for the said period. These petitioners admit that they had appeared in the examination held in Sept.-Oct. 1987, but they denied to have either misbehaved or adopted any unfair means in the examination. Their grievance is also same that the disciplinary action was taken against them without giving them any opportunity of hearing or showing cause. Separate returns have been filed in both the cases jointly by the Principal of the Institution and the Secretary of the Madhya Pradesh Technical Board (for brevity referred to as the "Board"). Shri P. C. Naik, Dy. A. G., appearing for the respondents has stated that the examinations conducted by the Board are regulated by Examination Rules and separate rules have been framed to deal with cases of unfair means in relation to the examinations conducted by the Board. A copy of the Rules for punishment as approved by the Executive Council of the Board for dealing with use of unfair means in the examination was supplied to us, under which the disciplinary action was taken against the petitioners and the punishment was imposed of debarring them for three years and two years respectively in M.P. No. 271/88 and 411/88.

Explaining the highly objectionable conduct of petitioner Ratiram Singh Yadav, the respondents have narrated the incident in their returns in paragraphs 3 to 8, as reproduced below :--

"3. That on 18-9-1987 the paper for Mathematics II of First Year started at 8.0 a.m. That at about 10.00 a.m. the petitioner with Dinesh Thapak went upstairs where the examination was in progress but he was sent back by Shri N.P. Patil, lecturer. That while returning back A.G. Deo, Head of the Department enquired the petitioner and Dinesh Thapak about their entry towards examination hall. The petitioner replied that he had some work with Shri Mukesh Bhadoria and requested Shri Deo to send Mukesh Bhadoria. Shri Deo informed Shri Bhadoria that the petitioner and Dinesh Thapak want to meet him for some important work if he likes he may go after handing over the answer-book. .

Shri Bhadoria went to meet the friends after handing-over the answer book to the invigilator.

That after some time Shri Bhadoria again came and requested Shri Deo for admitting him in the examination. Shri Deo refused because it was not as per Rules of the Examination.

That after some time the petitioner along with Dinesh Thapak and Mukesh Bhadoria reached upstairs and instigated the other examinees not to appear in the examination and boycott the examination.

That as per direction of the petitioner 28 answer book were torn, 10 students submitted the answer books after 11.30 a.m., 13 students submitted the answer books on 21-9-1987, that 8 students submitted the answer books on 23-9-1987 and one student submitted the answer book on 24-9-1987. The whereabouts of three answer books is still not known.

That out of 128 examinees only 65 submitted the answer books in time 28 were torn and 3 are missing due to unlawful activities of the petitioner who entered the restricted area and the examination hall without permission and created law and order situation."

It has further been stated in the return in M.P. No. 271/88 that the Examination Committee of the Board considered the whole matter as reported by the Head of the Department, Invigilators and the teachers who were conducting the examinations. It came to the conclusion that the petitioner Ratiram Singh Yadav was mainly responsible for creating disturbance in the examination who unauthorisedly entered into the examination hall, instigated other students to boycott the examination and to tear off the answer books. According to the respondent Board, the action was rightly taken against the petitioners under the rules which provide categories of punishments for various misconducts. The petitioner Ratiram Singh Yadav was rightly punished by debarring him from appearance in the examinations of the Board for a period of three years, which was a punishment provided in category 111 in the Rules. Same stand has been taken by the Board and the Institution in its return in M.P. No. 411/88. It has been specifically stated that the petitioners who were examinees in the examination held in Sept.-Oct., 1987 had created disturbances in the examination hall by walking out of the examination and instigating other examinees to similarly boy-cott the same. In the report of the Head of the Department and the Invigilator, the petitioners, eight in numbers, were said to be the students who had taken leading part in creating disturbance in the examination hall and in creating law and order situation.

We have heard the learned counsel Shri A. K. Choube and Shri Ajay Raizada for the petitioners in the two cases. Their principal submission, which is common, is that in imposing such a severe punishment, by the respondent authorities, there had been flagrant violation of principles of natural justice because the petitioners were not given any opportunity of hearing or of showing cause. The learned counsel submitted that the action being quasi-judicial, the petitioners could not be condemned unheard without holding any enquiry and without permitting them

to participate in that enquiry. The counsel appearing for Ratiram Singh Yadav also contended that his client was not an examinee in the examination held in Sept.-Oct., 1987 and, therefore, he could not have been punished for alleged use of unfair means in that examination. He also informed that prosecution has already been recommended against his client under the provisions of the Madhya Pradesh Recognised Examinations Act No. X of 1937 (hereinafter referred to as the "Act").

The learned counsel for the petitioners in M.P. No. 411/88 supported the case of the students by contending that the alleged misbehaviour of the students in the examination hall did not fall within the definition of "unfair means" as defined u/s 2(c) of the Act. Both the counsel have also assailed the action on the ground that the punishment is unduly disproportionate to the misbehaviour alleged and found proved.

At the outset we may point out that the disciplinary action by the Institution and the Board was taken under the Rules framed for dealing with use of unfair means in the examinations of the Board. The said rules are administrative rules framed by the Board and are binding on the students when they agreed to take up the examination in accordance with those rules. The rules framed by the Board are, binding on the students as terms of contract between the examinees and the authorities conducting the examination. As Lord Devlin said in a published report about misconduct by students :

"Contract is the foundation of most domestic or internal systems of discipline..... The power to discipline should be derived from the acceptance of it by the student in the contract of matriculation."

(See Administrative Law by H.W.R. Wade, 5th Edition, page 567).

The Act No. X of 1937 is aimed at taking penal action against students adopting unfair means in a recognised examination. Under the provisions of the Act adoption of "unfair means" is an offence which is to be tried before a Magistrate and punishment can be imposed on a student found guilty of that offence. The definition of unfair means provided u/s 2(c) of the Act is not applicable to disciplinary action taken by the authorities conducting the examination. "Unfair means" defined under the Act for taking disciplinary action against the students reads as under : --

"Section 2(c) "Unfair Menas" in relation to any recognised examination, means taking or giving or attempting to take or give any help other than one permissible, if any, under the rules applicable thereto from any material, written, recorded or printed or from any person in any form whatsoever."

Compared to the above definition, the definition of "unfair means" in the Rules is as under :

""Unfair means in the examination hall" means any action of the examinee, which is not strictly according to the rules laid down for the examination by the

Board of Technical Education, Madhya Pradesh and will include :

Copying.....

Exchange of ideas.....

Unauthorised absence.....

Misbehaviour.

Misbehaviour means abnormal behaviour or behaving improperly with any or all the members of staff engaged in the examination work during or after the examination inside or outside the examination hall. This will include improper behaviour with fellow examinee(s) inside the examination hall, Tearing of the question paper, answer book, use of improper words, creating disturbance in the examination hall, non-compliance of the seating order, disobedience of the oral or written orders of the Superintendent of Examination or any invigilator will also constitute misbehaviour.

Impersonation.....

Habitual Offender.....

Notwithstanding any thing contained in the foregoing paras, the Executive Council shall have the power to decide whether a particular act committed by an examinee in or outside the examination hall will constitute using unfair means or otherwise.

FOR ANNUAL EXAMINATION "APRIL" (which will be for regular students only)."

There is a clear distinction between the penal action to be taken before a Magistrate under the Act No. X of 1937 and the disciplinary action which may be taken by the authorities conducting the examination under the rules. The contention of the petitioners, therefore, that they have not been found using any unfair means within the meaning of Section 2(c) of the Act No. X of 1957, is totally irrelevant in the matter of disciplinary action taken against them under the rules by the authorities conducting the examination.

The principal submission, common in both the cases, which needs decision in the present case is the grievance regarding denial of natural justice in not giving any opportunity of hearing or showing cause to the students against the disciplinary action. The petitioners have placed reliance on the decision of the Supreme Court in the case of *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, With the advancement of this branch of Administrative Law it is settled that proceedings against a student on the ground of misconduct or malpractice at an examination are quasi-judicial proceedings and the principles of natural justice must be observed. The principles of natural justice, are not embodied rules and there is no invariable standard of reasonableness in the matter of hearing and whether in a particular case, natural justice has been contravened or not is for the courts to decide. In

the case before us, no enquiry of any sort was necessary where the adoption of unfair means by the students was detected by the invigilators and other authorities conducting the examination at the examination hall itself and the students immediately after being detected for misbehaviour or using unfair means walked out of the examination hall.

In the present case the petitioners misbehaved in the examination hall and instigated other students to leave the hall and tear off the answer books. The Head of Department and the Invigilator had talks with the students on the date of the incident and they separately submitted detailed reports about it which are contained in Annexures R-1 to R-5. Their reports clearly show that an incident of alleged indiscipline and misbehaviour had taken place in the examination hall in which the petitioners took a leading part. The authorities who reported the nature of the incident had no personal bias against the students and there is reason to disbelieve the truth of the allegations. The petitioner Ratiram Singh Yadav had also given a written apology and undertaking on 16-9-1987 (Annexure R-8) that he would not repeat such acts of indiscipline and that he should be pardoned. He did not claim any opportunity of hearing or showing cause. Similarly petitioners Hemant Kumar Suroliya and Mukesh Kumar Sharma have also given written apologies (Annexures R-12 and R-13) in M.P. No. 411/88.

The misbehaviour having been detected by the invigilators in the examination hall itself there was neither occasion nor any necessity to give a show cause notice or opportunity of hearing to the students who were involved in the indisciplined behaviour. In educational institutions, in the matter of conducting disciplinary proceedings a full fledged enquiry or trial as in a criminal action is neither expected nor feasible as part of requirement of natural justice. In educational institutions in the matter of maintaining discipline, requirement of natural justice varies with circumstances in each case and nature of indiscipline to be dealt with by the authorities. In the present case, it was not expected of the Board or the authorities of the institution to have given a written show cause notice to the students to elicit their replies for holding a domestic enquiry as in industrial matter or a criminal case. We rely on a decision reported in the case of Surendra Kumar Patel Vs. The University of Jabalpur and Another, and particularly the following observations contained therein (Para 10) :--

"We do not think it necessary to go into this vexed question any further, for reason we shall presently state. Even assuming that in respect of such administrative acts, the rules of natural justice embodied in the maxim "audi alteram partem" should be complied with, we are fully satisfied that requirements of the rules of natural justice were fulfilled in this particular case. In Dipa Pal Vs. University of Calcutta, (supra), H. K. Bose, J., drew a distinction between (i) cases where the misconduct was discovered in the Examination Hall itself by the invigilators, and (ii) cases where it was detected in the checking of answers submitted by the examinee, in these words :--

"In cases where breaches of discipline are detected by the Investigators or other

officers present in the examination hall and candidates concerned are expelled from the hall or otherwise dealt with, question of any enquiry on investigation upon notice to the candidates may not arise. But where no case of 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 arraigned should have an opportunity to defend himself and to offer an explanation, if any."

It is further stated in the above case that "there is no invariable standard of the reasonableness of an enquiry. The rules of natural justice must vary with varying circumstances and the question whether the person concerned, had a reasonable opportunity must depend upon the facts of each particular case."

In the case before us the acts of indiscipline were detected by the invigilators and the Head of the Department in the examination hall, in the presence of the students and reported promptly to the authorities concerned. Three of the petitioners have confessed their guilt by giving written apologies. In the above circumstances, we do not think it was necessary to give any further opportunity of hearing to the petitioners. So far as the quantum of punishment is concerned, we do not think that it is disproportionate to the alleged mis-behaviour found proved. It was imposed in accordance with the rules governing the subject. The time has reached with the growing indiscipline of students in the educational institutions that firm action must be taken by the authorities managing the institutions. In the present case, the whole examination was disturbed, so much, that even sincere students could not take up the examination and it caused around inconvenience to the authorities as well as students. Rustication of the erring students from the institution and debarring them from one and more examinations of the Board was in the circumstances well deserved punishment and we decline to grant the discretionary relief under Article 226 of the Constitution.

For the reasons stated above, both the petitions fail and are hereby dismissed. There shall be no order as to costs.