
(1988) 01 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3141 of 1987 (J)

Ravindra Roy and others

APPELLANT

Vs

The Bhopal University and others

RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 52
Penal Code, 1860 (IPC) — Section 294, 332, 353

Citation : (1988) MPJR 29

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

Advocate : Fakhruddin and N.N. Gupta, for the Appellant; M.V. Tamaskar, A.G. and Mr. O.P. Namdeo, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

These 38 petitioners, who appeared in the LL.B. Part II Examination from Saifia Law College, Bhopal are challenging the cancellation of their examination and their being debarred from appearing in three examinations, allegedly for using unfair means in the examination.

These petitioners were regular students of Saifia Law College, Bhopal, under the Bhopal University. The LL.B. Part II examination commenced from 21-4-1987 and all the papers were completed by 29-5-1987. On 24-4-1987, there was paper on Personal Law and the students appearing in that examination were sitting in room Nos. 36 to 38 in Saifia College premises. In room No. 36, there was one student Shahriyar Khan and in room No. 38, there was a girl student Ku. Asmita Ambare. As Shahriyar Khan had gone to room No. 38 to help Ku. Asmita Ambare, there was a quarrel with the invigilator, who was assaulted by Shahriyar Khan. A report was lodged in the Police Station and offences under Sections 294, 332 and 353, Indian Penal Code were registered against him. On that day in all, 36 students were caught using unfair means and incriminating materials were

seized from them and they were given show cause notices. According to the petitioners, the remaining 98 students, who appeared in that paper, did not use any unfair means and at no time they were warned that they had used unfair means. Nothing was seized from them, nor any show cause notice was given. The petitioners were taken by surprise on looking to the tabulation report of the LL.B. Part II examination from Saifia College mentioning that all these 98 students have been declared failed for having used unfair means in the paper on Personal Law. The petitioners represented to the Registrar, through the Principal of the College, but they were told that the information of the Unfair Means Committee is confidential and the same cannot be supplied to the petitioners. Thereafter, the petitioners were informed that their LL.B. Part II examination has been cancelled and they are debarred from appearing in three more examinations. According to the petitioners, there is no foundation for taking such a drastic action against the petitioners for having used unfair means. No show cause notice was given to them, nor any opportunity to explain. Any enquiry held by the Unfair Means Committee behind their back is invalid and such a committee is not a legally constituted committee. The petitioners: have been discriminated while imposing the penalty. Not only their examination has been cancelled, but they have also been debarred from three more examinations, while one student, N.K. Jain, actually caught using unfair means in two papers, including Personal Law, has only been awarded punishment of cancellation of LL.B. Part II examination, and Ku. Ambare's examination has been cancelled and she has been debarred from two examinations. During the pendency of this petition, the petitioners applied for being permitted to appear in the supplementary examination in Personal Law in LL.B. Part II, commencing from 26-10-1987 and this Court permitted them to do so, but their results were withheld. Subsequently, they have also made an application that they may be permitted to join LL.B. Part II classes and appear in the LL.B. Part III examination.

As per the return filed by the respondents, on 24-4-1987, there was paper on Personal Law in LL.B. Part II examination. The invigilator in rooms Nos. 36 to 38 in Saifia College found mass copying by the students. One of the students, Shahriyar Khan in room No. 36, was found talking to a girl student Ku. Ambare in room No. 38. On being objected, the invigilator was assaulted and he was injured. A report was lodged and offences under Sections 294, 332 and 353 Indian Penal Code were registered. The Superintendent of the centre, i.e. the Principal of the College, reported the matter to the Vice-Chancellor about students indulging in mass copying and misbehaving and assaulting the invigilator. As many as 36 students were found copying and incriminating materials were seized from them. The Vice-Chancellor, therefore, authorised the Unfair Means Committee to make an enquiry, which was constituted by him, under the provisions of Section 52 of the Vishwavidyalaya Adhiniyam. Rules have been framed and guidelines given for the Unfair Means Committee, which also provide for punishment. Copies of the answer books of the students appearing in Part II LL.B. examination in these three rooms were sent for examination and it

was found that the material seized was used for mass copying and most of the candidates had attempted the same question and the language of the answer was bookish, as part or full of the answers were from the book. The report of the examination has also been appended with the return. There was sufficient material on record to show that there was mass copying and in order to maintain the sanctity of the examination, the students have been debarred from 2 to 3 years, depending upon the gravity of the charges. Therefore, there is no illegality or infirmity in the orders passed for cancellation of the petitioners' examination and debarring them from appearing in three examinations.

Under Ordinance No. 5, Clause 21, when a case of unfair means in the examination is reported by the Centre Superintendent, the matter has to be examined by the Unfair Means Committee and to report about action to be taken to the Executive Council. All materials collected, along with the entire evidence, are to be forwarded to the Unfair Means Committee for its examination, along with the report of the Superintendent of the examination centre. Under clause 23 of Ordinance 6, if an action is being proposed against a student for using unfair means, he has to be given an opportunity to show cause in writing within 15 days as to why the proposed penalty be not imposed. Evidently, in the present case, no individual notices have been given to any of these petitioners or even to the 98 students, whose examination has been cancelled and who have been debarred for three more examinations. It is not disputed that in the three rooms where the examination was being held in LL.B Part II in Saifia College, 36 students were caught red-handed using unfair means. The invigilator reported to the Principal and the Superintendent of the examination that the candidates appearing complained that each of them have paid Rs. 200/- to the college, with the understanding that they will be permitted to copy. There is also a report of the Superintendent about the unfair means used and the material seized, while mass copying was going in all the rooms in Saifia College. In fact, one of the invigilators was assaulted and was injured. A report was lodged and offences registered against one of the students, Shahriyar Khan. On examination of the individual papers of all the examinees and the incriminating materials seized from the 36 students, it was found that the same questions have been more or less answered, the answers were similar and the answers were bookish in part or full, showing copying from books. Though show cause notice and opportunity have to be given before imposing penalty on individual examinee, as per clause 23 of Ordinance 6, this ordinance can have no application when there is mass copying. In case of mass copying, neither it is feasible, nor it is practicable to seize incriminating material from each and every student. Looking to the atmosphere prevailing on that day, in which one of the invigilators was actually assaulted and injured, it was not possible for the invigilators to apprehend each and every culprit. Suffice it to say that out of about 130 students, 36 were actually caught copying and incriminating materials were recovered from them. The other students, who were not so caught also used unfair means, as is evident from the answer books, which showed the answers to have been copied

from the books and most of the answers were similar. So, in order to maintain sanctity of examination and purity of the academic atmosphere, the University had no option but to cancel the LL.B. Part II examination. But it appears that a uniform standard has not been used, while some of the students, who were actually caught, have been awarded penalty of only cancellation of LL.B. Part II examination, in case of one girl student, Ku. Ambare, besides cancellation of her examination, she has been debarred from appearing in two more examinations, and in case of 98 other students who were actually not caught, including the present 38 petitioners, not only their LL.B. Part II examination has been cancelled, but they have been debarred from appearing in three examinations. It appears from the report submitted by the Unfair Means Committee, that they had laid down certain criteria for imposing penalty, i.e. smuggling of answer books in or out of the rooms, changing of pages, destruction of unfair means, using indecent language, misbehaving and threatening the invigilator and living the examination hall without handing over the answer books. It has not been clarified by the respondents why different standards of penalty have been adopted so far as the present petitioners are concerned and how their cases are graver than the cases of those examinees, who were actually found and caught using unfair means. Clearly, therefore, there is discrimination.

Regarding the application filed by the petitioners for being permitted to join the LL.B. Part II classes, we fail to understand how admission can be given when their LL.B. Part II examination has been cancelled. It has also been rightly pointed out that even if they are admitted at this stage, they will not be able to fulfil 75 per cent of attendance which is a must for a candidate to appear in LL.B. Part III examination. Therefore, the application is misconceived and rejected.

The Supreme Court, in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , held- action in cases of examinees using unfair means-committee acts quasi-judicially-principle of audi alteram partem applies, even if there is no provision in the statute to give any such opportunity. This was a case of three students using unfair means and, therefore, the examination was cancelled, without giving them any opportunity. It was not a case of mass copying. In The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, , it was held that-order by a quasi-judicial tribunal, based on no evidence-High Court will interfere-Enquiry Committee of University cancelling examination result of student. Here, in the present case, there is sufficient material on record to show that there was mass copying in the paper on Personal Law in LL.B. Part II examination and for that purpose no show cause notice is necessary. However, the Supreme Court, in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , held-- adoption of unfair means by vast majority of examinees at particular centre-school examination Board cancelling examination as a whole at that centre-opportunity to represent their cases to all candidates not necessary before action was taken. Clearly this was a case of mass copying and accordingly no individual opportunity be given. Here also, though the ordinance provided for giving of

opportunity before imposing penalty, that provision is only available, when an individual examinee is being charged with a specific act of using unfair means and not in case of examinee in mass using unfair means.

Learned counsel for the petitioners relied on certain decisions of the High Courts, in order to show that show cause notices were necessary before imposing penalty. In *Brajendra v. Utkal University* AIR 1976 Orissa 25., it was a case of malpractice at the examination and the enquiry against the delinquent examinee was found to be proper, as the principle of natural justice was followed and, therefore, the petitions were dismissed. This case does not support the petitioners. In *Pradeep Singh v. Lucknow University* A.I R. 1983 All. 427., the petitioner was charged for use of unfair means at the University examination. The charges levelled against him were vague and contradictory. The enquiry was not fair on the ground of absence of reasonable opportunity of hearing. That was a case of individual student and there was no sufficient material to prove the charge of using unfair means. In a Full Bench decision of the Delhi High Court, in *Vibhu Kapoor v. Council of I S.C. Examination* A.I.R 1985 S.C. 142., it was again a case of an individual student and penalty was found to have been imposed on mere suspicion, without giving any opportunity to the delinquent. There was no allegation that he had copied from other students. Again, it was not a case of mass copying, but concerning an individual student against whom there was no sufficient material. Lastly, the case of the Bombay High Court in *J.B. Parikh v. University of Bombay* AIR 1987 Bom. 332., is clearly distinguishable. There, the petitioner was accused of having adopted unfair means at the examination, but he was not given any opportunity to show cause against the findings of the enquiry committee. This case has also no application to a case of mass copying. Therefore, the action of the University has to be, upheld so far as cancellation of the LL.B. Part II examination of the petitioners held in April-May 1987, is concerned.

With the result, the petition is partly allowed. While upholding the cancellation of the LL.B. Part II Examination held in April-May 1987, the penalty of debarring the petitioners from appearing in three more examinations is quashed, being arbitrary and discriminatory, with the result, the petitioners will be permitted to appear in the LL.B. Part II Examination to be held in April-May 1988. In the circumstances, there shall be no order as to costs.