

(1998) 07 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 42581 of 1997

Sachin Agarwal

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 All 157 : (1999) 1 AWC 50 : (1998) 3 UPLBEC 1667

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : V.K. Nagaich, for the Appellant;

Final Decision : Allowed

Judgement

O.P. Garg, J.—The petitioner, Sachin Agarwal, appeared in the Intermediate Examination with Roll No. 293095 in science subjects from Janta Technical Inter College, Bisalpur, Pilibhit Center, A provisional mark-sheet under "W.B" category, i.e., a suspected case of using unfair means during examination issued to him. A notice was issued to the petitioner to appear in August, 1997 before the Spot Enquiry Committee at Government Inter College, Pilibhit. It was found that there was resemblance in the answer of the petitioner in question No. 3-Ga of Mathematics IIInd paper with other candidates bearing Roll Nos. 293088, 293089. Ultimately, by order dated 6.12.1997. the result of the petitioner of Intermediate Examination 1997 was cancelled. A copy of this non-speaking one line order is contained in Annexure-1 to the writ petition. The petitioner has denied to have indulged in adopting unfair means and by means of this writ petition under Article 226 of the Constitution of India, it is prayed that the impugned order dated 6,12.1997 cancelling the result of the petitioner be quashed and the respondent No, 1 be commanded to declare the result of the petitioner and to issue a proper and clean mark-sheet and certificate treating him to have passed the examination.

2. In the counter-affidavit filed by Sri Sanjay Upadhyay. Up Sachiv. Madhyamlk

Shiksha Parishad, U. P., the allegations contained in the petition have been denied and it is stated that the decision of the Committee was communicated to the petitioner through the Principal of the College,

3. Heard Sri V. K. Nagaich. learned counsel for the petitioner and learned standing counsel on behalf of the respondents.

4. The original record of enquiry was summoned. An office file (No. 1957/7116) containing loose papers with regard to Janta Technical Inter College Bisalpur, Pilibhit was brought before the Court. A thorough scrutiny of the record indicates that one Subhash Chandra Saxena had made a complaint to the Sub-Divisional Magistrate, Bisalpur. Pilibhit that there has been a large scale bungling in the examinations held at Janta Technical Inter College, Bisalpur. Pilibhit and that the staff members, including District Inspector of Schools have been in collusion with each other to bring about the situation that the candidates appearing at the centre have indulged in free mass-copying. On this complaint, an office note was put up that the file be sent to Confidential Anubhag-5 for further action. A report from the District Inspector of Schools was also called for but it was never forthcoming. The Principals of the various Colleges including Janta Technical Inter College. Bisalpur, Pilibhit were required to notify the fact of enquiry into the large scale mass-copying at their centres. Some of the answer books were sent to Moderators/nominated officers, obviously for revaluation and checking. A number of students of Janta Technical Inter College. Bisalpur, Pilibhit centre were let off and their results were recommended to be declared as in their case, it was found that there was no resemblance in the answers. Roll Nos. of such candidates, for example, are 1806947. 1806950. 1806954, 1806968, 293075, 293076, 293127. 293128 and 292951. etc. Unfortunately, the Roll number of the present petitioner along with two other candidates having roll Nos. 293088 and 293089 fall in the category of those candidates whose results were recommended to be cancelled on the ground that in answer to question No, 3-Ga of Mathematics IInd Paper, there was common mistake. On the basis of the recommendation of the nominated officer, the results of the petitioner and the candidates having aforesaid two roll numbers were cancelled. The answer books of the petitioner as well as two other candidates were produced before the Court. Answer, which is in the form of step-wise calculation to question No. 3-Ga, shows that there are two mistakes encircled in green ink in the last but one step. Except for these two common mistakes, in one of the long steps of answers, there is nothing to indicate that the question was copied from the other candidates who were seated by the side of the petitioner.

5. This is undoubtedly a case in which the petitioner was not caught red-handed adopting unfair means at the spot, i.e.. examination hall. There is no report of the invigilator, much less that of the Centre Superintendent. The common mistake came to be detected only after scrutiny or the checking of the answer book on the general and sweeping complaint made by Subhash Chandra Saxena.

6. It is amazing to note that in the background of the alleged large scale mass-

copying, the petitioner and few other candidates have been singled out. If the allegation that the candidates have indulged in large scale mass-copying at the centre in question was found to be correct, on enquiry, the proper course would have been, as is done in most of the cases. to cancel the entire examination in a particular subject of all the candidates, held at that centre. A number of students, who were accommodated in the same room. I.e.. Room No. 9 in which the petitioner was having a seat, have been exonerated. Liability on the petitioner has been fastened only on the ground that there was some resemblance or at least two common mistakes in one of the steps of the detailed calculation in answer to question No. 3-Ga. Resemblance of common mistakes may occur for variety of reasons, even though a student may not have taken the recourse to unfair means. It is common knowledge that the students get assistance from the key answer books/guess papers/guide books, which are in general circulation. If in the key answer books/guess papers/guide books, there is a mistake, all the candidates are bound to commit the same mistake, while writing their answers as they are to be guided by the wrong answer given in the key answer books/guess papers/ guide books. Not only this, most, of the students are used to get private coaching in which important questions are solved and ready-made answers are given. If such answers suffer from some inaccuracy, all those students who have taken private coaching are bound to commit common mistakes or their answers would resemble with each other. At the fag end of the academic session, the students barring few meritorious and genius candidates indulge in cramming and learning the answers by heart with a view to re produce/divulge the same at a particular examination. In such a situation, common mistakes are bound to occur or, of necessity, come up and sometimes, there is resemblance of answers given by different candidates. The inference of mass-copying cannot be drawn in these circumstances. W.B. category is indicative of the fact that a candidate was suspected of indulging in unfair means. Suspicion cannot take the place of proof. To say that a particular candidate or candidates "might" have taken recourse to unfair means cannot be made the basis for cancelling their results unless it is proved that they have in reality adopted unfair means. There is always a yawning gap between "might" and "must".

7. It would be proper not to miss an opportunity to highlight the fact that mass-copying in the examination is unfortunately becoming an unseemly feature of our educational Institutions which is a reflection of the alarmingly decaying moral standards in all spheres of our country. The essence of the examination is that the worth of every person is appraised without any assistance from outside source. Examinations, on account of mass-copying on the large scale, become a farce and the degrees and certificates lose their credibility.

8. Students alone are not responsible for the malady. The low standard of vigilance and the vested interest of the concerned teachers or invigilators or, for that matter, the Centre Superintendent, are some of the factors which directly contribute to bring about the situation. The invigilation at the examination is far

from satisfactory. The reports are that the invigilators themselves abet the malpractices in the examination hall and cooperate with the examinees to adopt the unfair means. Sometimes, they are the active partners in promoting the evil of mass-copying. About the low standard of vigilance and corrupt practices by responsible persons and the resultant disorderly condition in the examination hall, the Supreme Court in *Board of High School and Intermediate, Education, U. P. v. Bagleshwar* AIR 1976 SC 875 had the occasion to point out the callousness of the authorities in charge of examinations as follows :

"It appears that in the examination held at.....unfair means were adopted on a very large scale, by a large number of students and the examination appeared to have been conducted in an atmosphere which was not at all congenial to the enforcement of the discipline which had to be observed in conducting examinations. It appeared that there were rivalries and party politics.....that ran the institution at which this examination was held and there were rivalries and party politics even among the members of the staff. The members of the Board and other influential people of the locality brought undue pressure on the principal and invigilators to help their wards or the wards of their friends and relatives in the examination. As a result of this unhealthy atmosphere the centre has been abolished for some years but on account of public pressure it was restarted and the result was very unfortunate. A typed paper containing answers to all questions was dropped in the examination room and it was complained by one of the invigilators that this had been typed in the office of the Centre Superintendent. The invigilators themselves were so much frightened by the prevailing rowdyism and by the pressure from the influential people that they found themselves powerless to maintain discipline in the examination hall."

But no action was taken against any person responsible for it. It appeared that the invigilators themselves were so much frightened by the prevailing rowdyism and by the pressure from the influential people that they found themselves powerless to maintain discipline in the examination hall. It appears that some Invigilators could not prevent copying. There was indeed, a rioting atmosphere in the examination hall. These scathing observations by the highest court are eye opener.

9. It is not uncommon that invigilators under the threat to life become meije passive spectators. They are forced to help the particular examinees directly or indirectly. It may, perhaps, be proper if the public examinations are conducted in Institutions other than to which the students belong so that Invigilators may not be familiar to students.

10. In the instant case, there were serious complaints against Centre Superintendent, Invigilators, teachers and the District Inspector of Schools but unfortunately, it appears that no action in the matter appears to have been taken and not even a semblance of enquiry into their conduct has been made which by itself is a very sorry state of affairs.

11. The Board felt completely satisfied by performing its duty of cancellation of results of some of the candidates and exonerating some of the other similarly situated candidates. Cancellation of the result of students on the ground of use of unfair means by them may be held to be unjustified if there is no material to reach such a conclusion. The procedure to be adopted before cancellation of result has to be in conformity with the rules of natural Justice and the procedure prescribed. There may be cases where the requirement of the principles of natural justice may be fulfilled if an opportunity to submit the explanation is afforded and. In this connection, reference may be made to the decisions of the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, and The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, as well as Maharashtra State Board of Secondary and Higher Secondary v. A. S. Gandhi and others (1991) 2 SCC 726. The Board in cancelling the examination exercises quasi-Judicial function and it is incumbent upon it to issue a show cause notice to the candidate before inflicting the penalty of cancellation. It would be wrong to withhold the result without giving an opportunity to the student concerned and also to adduce evidence-oral or documentary, at the enquiry. Learned counsel for the petitioner maintained that proper procedure prescribed for the enquiry was not adopted in the present case and that the report of the Sub-Committee was not made available to the petitioner. This submission is not without force.

12. The Courts have shown great concern in the matter of award of punishment as it may mar the future of the punished young man. It carries with it indelible stigma of far reaching consequences on his entire future career". B. N. Banerjee, a renowned Judge laid stress to take generous view in the matter of punishment to be meted out to the delinquent student by observing-

"Scratch the green rind of a sapling repeatedly or wantonly twist it in the soil and a scarred or crooked oak will tell of the act for years to come. So it is with the youngster ; treat him unsympathetically or shut to his face all the doors of educational Institutions or an uneducated or a half educated youth may leave a useless life to proclaim what man want only did by refusing to him all particulars of college education."

13. In the Instant case, the question of inflicting punishment of cancellation of result did not arise as it has not been established beyond reasonable doubt that the petitioner had adopted unfair means in writing answer to question No. 3-Ga, above. The impugned order dated 6.12.1997 cancelling the result of the petitioner has, therefore, to be quashed.

14. In conclusion, the writ petition succeeds and is allowed. The order dated 6.12.1997, Annexure-1 to the writ petition passed by respondent No. 1 cancelling petitioner's result of Intermediate Examination, 1997 is hereby quashed. Respondent No. 1 is commanded to declare the result of the petitioner of Intermediate Examination, 1997 and to issue him proper and clean mark-

sheet and certificate, ignoring the order dated 6.12.1997. The result, in the light of the above direction, shall be declared and the clean mark-sheet shall be issued to the petitioner within one month from the date of this order.