
(1969) 08 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 107 of 1969

Sadananda Patnaik

APPELLANT

Vs

Vice Chancellor, Berhampur University and Another

RESPONDENT

Date of Decision : 06-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1970 Ori 63 : (1970) 36 CLT 106

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

Bench : Division Bench

Advocate : P. Palit, K.C. Panda and J.N. Patnaik, for the Appellant; R.C. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution of India by a student of the Ramchandra Mardaraj Science College at Khallikote in the district of Ganjam, which is affiliated to the Berhampur University established under the Berhampur University Act of 1966. The petitioner appeared at the Pre-University (Arts) Examination of 1968. The said examination was held in the month of July and its results were published on 19-9-68. The petitioner's result, however, was not declared, but before the said date on 2-9-68 the petitioner was called upon by the Assistant Registrar of the University to show cause why action might not be taken against him for having taken recourse to unfair means in the Examination Hall. On 9-9-68 the petitioner submitted his explanation in which he denied all the allegations and imputed bias and mala fides against one Sri Prabhu Prasad Panigrahi, a Lecturer in Political Science of the College where the petitioner studied, and categorically stated that the said Sri Panigrahi, who was the Invigilator, might have inserted the printed page, which was detected from the petitioner's answer book, after the answer paper was submitted by the petitioner to the said Invigilator at the end of the day's examination. The University Authorities did not hold any other enquiry to the knowledge of the

petitioner, but ultimately by an order dated 12-12-68 cancelled the result of the petitioner's examination and directed that he be debarred from appearing at any examination of the University prior to the annual examination of 1970. It is against the said order of 12-12-68 that the petitioner has come up to this Court seeking for issue of a Writ of certiorari to quash the said order.

2. The stand taken by the University Authorities would appear from the notice dated 2-9-68 issued to the petitioner. For convenience it is extracted below:

" xx xx xx To

Sadananda Patnaik Roll No. 616 Son of Jayakrishna Patnaik, At/P. O. Khallikote (Ganjam).

It is reported that you brought a piece of printed page relating to English Paper II to the Examination Hall while you were appearing in English Paper II at the Second P. U. Examination, 1968 and you left the said incrimination material in your answer book and handed over the same to the Invigilator. In this connection I am directed to say that the following charges have been made against you:

(1) That, you brought a piece of printed page relating to English paper II to the Examination on 17-7-1968 in the 1st sitting while answering English Paper II with the evident intention of copying from it;

(2) You left the said incriminating material in your answer book and handed over the same to the Invigilator inadvertently;

(3) You were warned before the commencement of the Examination not to bring any paper other than the admit card to the Examination Hall;

(4) You have made use of the document;

You are therefore required to show cause why action will not be taken against you for taking recourse to unfair means in the Examination Hall in spite of repeated warnings by the Centre Superintendent and instructions printed on the back side of the admit card.

xx xx xx

Sd/- Assistant Registrar"

The Assistant Registrar of the University filed an affidavit in opposition wherein it was further stated,--

"Para 3. . . .There was no occasion for the Invigilator or the Centre Superintendent to bring (sic) the notice of the petitioner regarding the "printing page" and "making use of it" since in the Examination hall they had not detected malpractice adopted by the petitioner. In fact, it was no part of the duty of the Invigilator or the Centre Superintendent to verify the answer books of the examinees after they are submitted. In fact, they had no knowledge that the "printed page" was left inside the answer book of the petitioner. The Chief

Examiner while valuing the petitioner's answer book detected the printed page inside the answer book and reported the fact to the Registrar and his report is annexed hereto.

Para 5.. .The Mal-practice Committee appointed by the syndicate went into the question, enquired into the matter in detail and were satisfied that the allegations made by the petitioner against the invigilator were false and rejected his explanation. . ."

Para 6.. .It is submitted that the petitioner in his explanation did state that he got some questions by heart from notes and reproduced them in the aforesaid examination, but the Mal-practice Committee was not satisfied with the explanation offered by the petitioner."

Para 7. . .The explanation is absurd and it is highly unbelievable that the Invigilator knew that questions the petitioner got by heart. . . "

Para 10. . .The allegations made by the petitioner against the Invigilator were thoroughly enquired into by the Mal-practice Committee appointed by the Syndicate of the Berhampur University, and after the said enquiry the Committee was satisfied that the allegations made by the petitioner against the Invigilator were thoroughly false and baseless."

3. It may not be out of place to mention here that the petitioner applied to the University for his mark sheet in the impugned examination and was supplied on 11-10-68, the marks which he secured at the Second P. U. Arts Examination held in July 1968. The said mark sheet goes to show that the petitioner had passed in all the papers, and the petitioner contends that the impugned order of cancellation of his result and the penalty of debarring him from appearing at the subsequent examinations until 1970 be cancelled, and on the basis of the marks secured by him the University be called upon to publish his result.

4. The nature of jurisdiction to be exercised by the Court in such cases came up for examination in some recent decisions of the Supreme Court. In AIR 3966 SC 875 H.S. & I.E. Board U.P. v. Baleswar Prasad, Mr. Justice Gajendragadkar, as he then was, spoke for the Court thus,--

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 (the Board of Education) set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of

domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question, its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law."

The analysis that can be drawn as a guide on examination of a number of Supreme Court decisions touching upon the question of disciplinary jurisdiction over candidates taking examinations is that the educational authorities should be left without interference from Courts and other outside agencies in administering their affairs as long as they act in compliance with the rules of natural justice. As and when the Supreme Court has come to examine such a case, it has always indicated that the jurisdiction in such matters should not be extended, and it should always be a sound rule of discretion to allow the domestic Tribunals set up by such educational institutions to deal with the students so; long they act in accordance with their rules and regulations. In *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, , Mr. Justice Bose, speaking on behalf of the Court, said,--

". . . but it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law."

In *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, , the Court again Indicated,--

". . . matters falling within the jurisdiction of the educational authorities should normally be left to their decision, and the High Court should interfere with them only when it thinks it must do so in the interests of justice."

In our opinion, this is the correct approach in matters of disciplinary jurisdiction exercised by educational institutions, and the Court should not extend its jurisdiction over such matters unless in the facts of a given case on examination of materials it comes to the view that the procedure adopted has been contrary to natural justice and the cause of justice, which is paramount, warrants interference.

5. It has often been said that the rules of natural justice are not embodied rules, and the question whether the requirements of natural justice have been met by

the procedure adopted in a given case must depend, to a great extent, on the facts and circumstances of the case under examination, the constitution of the Tribunal and the rules under which it functions. It is admitted that there is no particular rule or regulation which the Mal-practices Committee of the Berhampur University is to follow in the matter of holding the enquiry into the malpractices adopted by candidates taking the different examinations under it. But it is settled law by now that in exercise of such jurisdiction a duty is cast on the committee to act judicially. A portion of the decision in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , may be quoted for convenience where Wanchoo J., as he then was, spoke thus,--

"Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under Rule 1 (1). 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."

The Court in the said decision further indicated in another part of the judgment,--

"But where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee."

In another recent decision in Suresh Koshy George Vs. University of Kerala and Others, , the Court extracted with approval the dictum in the case of Russel v. Duke of Norfolk 1949 1 All ER 109, where Tucker, L. J. observed.-

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt, with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

6. We now proceed to examine the facts of this case in order to find out whether the Mal-practices Committee of the University has followed a procedure keeping with the principles of natural justice, and whether the petitioner had been given a reasonable opportunity of presenting his case before the said Committee to

exonerate himself of the allegations made in the notice to show cause dated 2-9-68. Admittedly, the petitioner did not accept the allegations, and while refuting the same he imputed bias and mala fide against the Invigilator. The counter affidavit, as extracted above, goes to show that the allegations of the petitioner were in fact enquired into by the Mal-practices Committee, But, as the materials on record show, the petitioner was not allowed to participate in such proceedings in which the enquiry by the Mal-practices Committee was conducted. In the facts of the present case, the allegations against the Invigilator are directly connected with the conduct of the petitioner as to whether he is or is not guilty of the charges against him, and if the Mal-practices committee exonerated the Invigilator from the allegations made against him without giving the petitioner an opportunity to participate in such enquiry so as to present his case, the canon of natural justice cannot be said to have been satisfied.

The petitioner came forward with a case that he had got the particular paragraph, which was the answer to question No. 1 (d) in the English Paper II, by heart. It was proper for the University Authorities or the Committee to give an opportunity to the petitioner to appear before them at the enquiry. If he had been given that opportunity, it is quite possible that the petitioner might have impressed the members of the Committee about the justness of his defence. For instance, if the Invigilator had been examined by the Committee in presence of the petitioner, the petitioner might have been in a position to put certain questions to the Invigilator and ultimately be successful in bringing on record materials to justify his allegations against the Invigilator. It is not for us to make surmises in the matter. If the authorities concerned had acted in such a manner and had given the petitioner reasonable opportunity of presenting his case, the conclusions arrived at by the appropriate authorities in the matter could not be questioned and the Court would be left with no jurisdiction to interfere in the matter. But, on examination of the materials placed by the petitioner and the counter-affidavit of the authorities of the University, we find that a reasonable opportunity has not been given to the petitioner to present his case, and the conclusions have been arrived at by the Committee and ultimately by the University Authorities against the petitioner after keeping him out of the picture. Such a decision is not in keeping with the rules of natural justice as adopted by the Courts in India.

7. Mr. Palit appearing for the petitioner wanted us to quash the punishment and to declare the result of the petitioner on the basis of the marks secured by him. It is not for this Court to declare the result of the examination of the petitioner. The alleged mal-practice against the petitioner has to be enquired into in a proper way, and it is open to the University Authorities to dispose of the matter after instituting a proper enquiry. We must, therefore, leave the matter to the University even after quashing the final order passed by them on 12-12-68, and allow the University Authorities to dispose of the charges made against the petitioner in the show cause notice dated 2-9-68.

8. In the result, the writ application is allowed and a writ of certiorari be issued quashing the order dated 12-12-68. It Is open to the University Authorities to continue the proceedings against the petitioner on the basis of the charges framed on 2-9-68 and to dispose of the same in accordance with law. Such proceedings, if taken up, however, should be closed within three months from the date of the order. We make no order as to costs of this case.

G.K. Misra, C.J.

9. I agree.