

(1962) 03 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1257 of 1961

Sardar Anmol Singh

APPELLANT

Vs

Registrar, Osmania University, Hyderabad, A. P. and Another

RESPONDENT

Date of Decision : 13-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1963 AP 83

Hon'ble Judges : Seshachelapati, J

Bench : Single Bench

Advocate : Shankar Rao Borgaonkar, for the Appellant; Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

Seshachelapati, J.—This is a petition under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus directing the respondents 1 and 2 to refrain from enforcing their orders with regard to the petitioner contained in their communication dated 14-10-1961 and to declare the examination results of the petitioner, or, in the alternative to permit him to sit for the forthcoming examination of the Bachelor of Arts (III-year) Final of the Osmania University.

2. The petitioner was a student of the Nizam College, Hyderabad, studying for the degree of Bachelor of Arts, of the Osmania University. He appeared with the roll No. 1476 for his B. A. (II-year) Examination held in September-October, 1960, at the Nizam College, which was one of the centres fixed by the University. One of the subjects in which the petitioner took his examination was Economics, being one of his optional subjects. The Examiner in Economics, Mr. S. G. Moghe, who valued the petitioner's papers made a report dated 29-10-1960 to the Chief Examiner to the effect that the second additional answer book of the petitioner should have been smuggled in from outside. He based his suspicion on three grounds; (i) that the hand-writing of the petitioner in the second additional book

was very neat, though normally the hand-writing would become indifferent towards the end of the answer papers; (ii) that the answer in the second additional book was in much greater detail and in sharp contrast with the answer given by the petitioner to the earlier questions; and (iii) that the initials of the invigilator on the additional answer book did not tally with the initials of the same invigilator on the first additional answer book supplied to the petitioner and must have, therefore, been forged. The Chief Examiner reported the matter to the Board of Examiners without making any comment. On 9-11-1960 the Board of Examiners took the view that though there was some difference in the initials of the invigilator in the two answer books suggestive of malpractice, it could not reach a final conclusion in the absence of a statement from the invigilator regarding the genuineness of the initials on the second answer book. It, therefore, directed the Controller of Examinations to submit the invigilator's statement to the Vice Chancellor for the disposal of the case. The invigilator was interrogated and on 10-11-1960 she gave a report to the following effect:

"The initials on the continued additional sheet for question No. 2 is my initial and continued additional sheet for question No. 7 is not mine".

3. The invigilator's report was considered by the Results Committee on 19-11-1960, which passed a resolution directing the cancellation of the results of the petitioner and rusticating him for a period of two years with a direction that he may appear for the examination in September-October, 1962. A notification to that effect was issued on 6-12-1960 in respect of the petitioner as well as some other students similarly punished for malpractice. The petitioner addressed a communication to the Vice Chancellor on 28-12-1960 either to cancel the order of rustication, or hold an enquiry after giving him an opportunity to explain and answer the charges and allegations. The Vice-Chancellor thereupon authorised the Controller of examinations to send for the candidates and enquire into the matter. Accordingly, the Controller of Examinations sent for the petitioner on 12-1-1961 and put certain questions and recorded a statement from the petitioner. Subsequently, the petitioner received a communication dated 4-2-1961 to the effect that no reconsideration of his case was possible and that the order of rustication should stand.

4. The petitioner, then filed W. P. No. 443 of 1961 praying for the issue of a Writ of Mandamus directed against the notification dated 6-12-1960. In that writ petition the principal ground of complaint was that at the enquiry held by the Controller of Examinations on 12-1-1961, only certain questions were put to the petitioner, but that he was never informed of the nature of the charges relating to malpractice, nor was he given any opportunity of explaining the same. By his judgment dated 7-8-1961, Srinivasa Chari, J. upheld the contention of the petitioner. The learned Judge observed thus:

"I am, therefore, of the opinion that in this case the enquiry suffers from this defect that the charges that were made against the petitioners in consequence of which the University authorities came to the conclusion that there was

malpractice on the part of the student were not specifically and clearly brought to the notice of the petitioner and he was not afforded an opportunity to explain the charges".

In that view, the learned Judge quashed the notification of the University dated 6-12-1961 and directed the University authorities to hold a fresh enquiry and dispose of the case in accordance with law and in the light of the observations made in the judgment. Accordingly, the Controller of Examinations issued to the petitioner a notice dated 26-8-1961, specifying the charges and directed him to appear before the Board of Examiners on 4-9-1961. The notice is issued to this effect:

"You are hereby charged with the malpractice of smuggling in an additional answer Book with answer to question No. 7 written on it at the B. A. Second Year (3 year Degree Course) examination held on 4th October, 1960 in Economics Paper-I at the Nizam College Centre. You are hereby given notice to submit your explanations regarding the following:

1. The handwriting of your answer to question No. 1 is neater and better than the handwriting of your answers to other questions even though question No. 7 has been answered by you as the last question.
2. Your answer to question No. 7 is in a greater detail when compared with your answers to other questions and is in sharp contrast to the answers given earlier.
3. The signature of the invigilator on the 1st answer book obtained by you is B. S. and below that the date is 4-10-60 whereas in the additional answer book in which you have answered the 7th question bears the initials of the invigilator B. S. 4-10-1960. In the other additional answer books issued by the same invigilator the date has been invariably written as 4-10-1960. From the difference in the manner in which the date has been written on the second additional answer book taken by you it is suspected that, the signature and the date on that answer book is not that of the invigilator and has been forged.
4. The signature of the invigilator on the 1st Additional Answer Book used by you is in blue ink whereas the signature on the second additional Answer Book used by you is in a different ink. It is also therefore, suspected that the signature on the second Additional Answer Book has been forged.
5. There is also an obvious difference between the handwriting of the initials on the 1st additional Answer Book used by you and the Second Additional Answer Book used by you. That also gives rise to suspicion that the signature on the second Additional Answer Book is forged.
6. The invigilator Shrimati B. Shivashankar when shown the initials on the 1st Additional Answer Book and the Second Additional Answer Book used by you has stated that the initials on the 1st Additional Answer book are hers but the initials on the Second Additional Answer Book on which the answer to question No. 7 is written is not hers.

You are directed to see the Board of Examiners on 4th September 1961 at 2-00 P.M. in the office of the Controller of Examinations, Osmania University, Adikmet, to give your explanation to the charges and the questions stated above. On your failure to do so, the University will presume that you have no explanations to offer and will proceed accordingly."

5. In conformity with the notice aforesaid the petitioner appeared on 4-9-1961 before the Board of Examiners and filed a detailed written explanation meeting the charges levelled against him. The following statement from the petitioner was also recorded: "

To

The Controller of Examinations,

Osmania University,

Hyderabad, A.P.

Sir,

I appeared before the Board of Examiners on 4th September 1961, and I have brought with me a written statement answering the charges contained in your letter No. 10955 dated 26th August 1961, and I am submitting it to the Board of Examiners. I don't want to give any answers in writing or explain any questions by the members of the Board of Examiners".

Yours obediently, Sd/- Sardar Anmolsingh, 4/9 -"

6. There is some controversy as to the purport and significance of this statement and I shall deal with it later. The Chairman of the Board of Examiners forwarded the written statement of the petitioner to the Controller of Examinations with a covering letter couched in these words:

"I am forwarding herewith a written statement brought by the candidate Shri Sardar Anmolsingh and handed over to the Board. The candidate has refused to give any answers to questions to be put by the Board and a statement from the candidate to the above effect is also forwarded herewith".

Thereupon the Vice Chancellor passed the following order:

"The original orders will stand as the candidate has not given a satisfactory explanation. His refusal to answer any questions confirms the suspicion of malpractice".

On 14-10-1961, the Controller of Examinations intimated to the petitioner that his case was considered by the University authorities and that it was decided that the original order should stand since the explanation given by the petitioner was not satisfactory and that his refusal to answer any questions confirmed the suspicion regarding malpractice. It is the legality of this order that is put in challenge in this petition.

7. Mr. Shanker Rao Borgaonkar, the learned counsel for the petitioner contends, first, that the so called enquiry on 4-9-1961 was but a mere pretence to comply with the directions of the High Court, and that neither fresh charges, nor evidence was brought against the petitioner; secondly, that the petitioner had no chance of cross-examining any witness, nor was Dr. Gulam Omer Khan examined; and, thirdly, that the finding as to malpractice was based merely on suspicion, and it would be a very grave injustice to punish a University student merely on suspicion.

8. Mr. Vaidya, on behalf of the University has contended that after the case was decided by the High Court the petitioner was informed of the specific charges against him; that he was called upon to explain them, that on 4-9-1961 the petitioner filed a long written explanation and declined to answer any questions and that the Vice Chancellor after duly considering the explanation together with the statement recorded from the petitioner on 4-9-1961, passed the final order. It is argued that in this case there is absolutely no infringement of any statutory provision or the principles of natural justice, so as to justify the interference of this Court under Article 226 of the Constitution.

9. It is not in dispute that there are no rules or regulations in the University Code governing the procedure in the matter of the dealing with the question of malpractice at the examination. If there are such rules, it would be necessary for the authorities concerned to follow strictly the rules of procedure, and any violation in that behalf may be subject to correction in appropriate cases by the High Court under Article 226 of the Constitution. Where there are no such rules laid down as in the present case -- the validity or otherwise of the order impugned will have to be adjudged in the light of the principles of natural justice. The requirements of natural justice are not fixed and immutable. They depend upon the character of the Tribunal, the nature of the enquiry and the effect of the adjudication and so on. As pointed out by Lord Atkin in *General Medical Education v. Spackman* 1943 2 All ER 337 at 341

"the procedure which may be very just in deciding whether to close a school or an insanitary house is not necessarily right in deciding a charge of infamous conduct against a professional man". In *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , after a review of several English authorities, the Supreme Court of India has held that the question whether in a particular case the rules of natural justice have been observed must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the Legislature and in that sense the rules themselves must vary. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, their Lordships of the Supreme Court reiterated what they held in the case of *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , and have observed that the question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the light of statutory rules and provisions

under which statutory body functions.

10. But the real difficulty arises in cases where as in the instant case there are no rules or regulations framed. In such cases, natural justice means and can only mean that the action of the tribunal or authority in question must have been taken in good faith, that the party affected must have an opportunity of explaining or correcting any relevant fact or statement prejudicial to his interests. In other words, no man should be condemned without being heard. (Vide *Weinberger v. Inglis* 1919 AC 606 and *Russell v. Duke of Norfolk* 1949 1 All ER 109.)

11. Adverting to a case where there are no rules of procedure laid down, Harman, J., in *Byrne v. Kinematograph Renters Society* 1958 2 All ER 579 at p. 599 observed thus:

"What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more.

12. This I may respectfully say, is a very lucid statement of the requirements of natural justice, and it has the additional advantage of having had an express approval of the Privy Council in *University of Ceylon v. Fernando* 1960 1 All ER 631. Now, let us see in this case whether the three requirements have not been complied with.

13. The first requirement is that the person accused should know the nature of the offence. Srinivasachari, J., quashed the notification of the University D/- 6-12-1960 principally upon the ground that all that was done by the University authorities was to put a few questions and that the petitioner was never informed of the nature of the charges of malpractice. It may be recalled that after the rendering of the decision by the High Court the petitioner was informed in the communication dated 26-8-1961 of the exact charges against him. Those charges and the facts upon which they are based have been stated fully and clearly. Mr. Shanker Rao Borgaonkar contended that the charges contained in the communication aforesaid are nothing more than rehash of the questions that were put to the petitioner on the former occasion by the Controller of Examinations. In that connection, he placed reliance upon a decision of the Mysore High Court in *L. Nagaraj v. University of Mysore* AIR 1961 Mys 164. In that case, the learned Judges found that the enquiry by the Malpractice Committee was nothing more than a mere interrogation, and that it did not appear from its report that the petitioner was ever told what exactly was the suspicion entertained against him in respect of his chemistry II paper, or in what respect the University suspected him as being guilty of malpractice. That certainly is not the case here. The reasons are set out in the communication dated 26th August, 1961 with precision and particularity. In this case charges are

not merely in the form of questions leaving the student guessing as to what their purpose and intendment could possibly be. The suspicions have been reduced to the form of specific charges and have been framed precisely. I think, therefore, the first requirement of natural justice as conceived by Harman. J. in Byrne's case, 1958-2 All ER 579 has been fully satisfied.

14. The second requirement is that the person concerned should be given an opportunity to state his case. That the petitioner was asked to appear and give his explanation to the charges on 4-9-1961 admits of no doubt. In fact, the petitioner did appear and filed a statement. That statement was received. There is, however, a controversy as to whether there was any further enquiry after the riling of the written explanation by the petitioner. According to the petitioner, the Board of Examiners wanted to examine him on the subject of Economics with special reference to the questions that he answered in his answer papers and that he declined to do so. On the contrary, the case put forward on behalf of the University authorities is that after filing the explanation, the members of the Board of Examiners wanted to put certain question to the petitioner regarding the explanation and that he declined to do so. In his statement dated 4-9-1961, the petitioner said:

"I don't want to give any answers in writing or explain any questions by the members of the Board of Examiners".

15. In forwarding the written explanation and the statement, the Chairman of the Board of Examiners has informed the Controller of Examinations that the candidate had refused to give any answers to the questions to be put by the Board I think that the version given by the respondent No. 2 that no further enquiry was possible would appear to be more consistent with the facts and probabilities of the case.

16. It is then contended by Mr. Shanker Rao Borgaonkar that, quite apart from the absence of any opportunity of further elucidation of his written statement, the petitioner was denied the opportunity to cross-examine the witnesses, as none was examined in the presence of the petitioner. In a case like this, where there are no rules as to examination of witnesses it cannot be said that the failure to examine any witness in the presence of a candidate is an infringement of natural justice. In 1960-1 All ER 631 referred to supra, the Privy Council observed thus:

"As no special form of procedure was prescribed, it was for the Vice Chancellor to determine the procedure to be followed, as he thought best, subject to the obvious implication that some form of inquiry must be made such as would enable him fairly to determine whether he should hold himself satisfied that the charge in question had been made out."

Beyond that, there does not appear to be any obligation on the part of the University to have witnesses examined in the presence of the student so as to enable him to cross-examine them. Further, the petitioner did not ask that Mrs.

Bhagwati Shiv Shanker, who has denied her initials on the second additional answer book, should be examined in his presence so that he may have the opportunity of cross-examining her. He cannot, therefore, now make a grievance of it. In 1960-1 All ER 631 the Privy Council held that the fact that the Commission of enquiry did not tender a particular witness for cross-examination by the student was not a failure to comply with the rules of natural justice. But it was, however, pointed out that the position might have been different if the student had asked to be allowed to cross-examine a particular witness and he was not allowed to do so. It is not in dispute that neither in the written statement filed by the petitioner on 4-9-1961, nor in the statement recorded from him on that date, was there a demand that Mrs. Bhagwati Shiv Shanker should be summoned for being examined by him.

17. It is then argued by Mr. Shanker Rao Borgaonkar that the Board of Examiners should have examined Dr. Gulam Omer Khan. According to the case of the petitioner Dr. Gulam Omer Khan acted as an invigilator in the examination in question and that, as a matter of fact, he was seated by the side of the petitioner. It is suggested that he would have spoken to the fact of the petitioner being given the second additional answer book by Mrs. Bhagwati Shiv Shanker in the usual course and that the failure to examine him has caused prejudice to the case of the petitioner. It is true that in the written statement the petitioner has said that the facts might be verified from Dr. Gulam Omer Khan. But neither in the written statement, nor in the statement recorded on 4-9-1961, did the petitioner ask for the examination of Dr. Gulam Omer Khan on his behalf. Whether in an enquiry like the one we are concerned with, a suspected student has a right to summon, and have his witnesses examined as before a court of law, may be a matter of doubt. But even on the assumption that he can summon witnesses, the petitioner has not chosen to do so.

18. The last requirement is whether the Board of Examiners, or the Vice Chancellor have acted in good faith. There has been no suggestion that the University authorities were guilty of bad faith, or actuated by any hostile animus against the petitioner, I am, therefore, satisfied that in the instant case the requirements of natural justice have been fully complied with.

19. The University is a seat of learning. Under its original Charter and the Act IX of 1959, it has been constituted as an autonomous Corporation charged inter alia with the duty to hold examinations and to confer degree and diplomas and other academic distinctions on persons who have pursued a course of study in the University and its affiliated constituent or recognised colleges and institutions.

In that power is implicit the duty of the University to see that the examinations are conducted in a proper manner and to deal with, cases of malpractices of the examinees. In this case the examiner, who valued the Economics papers of the petitioner, entertained suspicions regarding the second additional answer book. On his report, an enquiry was made by the Board of Examiners consisting of all educationists. The petitioner was informed of all the facts against him and his

explanation taken. His case was considered by the Vice-Chancellor, who passed a final order. It is not for this court to go into the merits of the case, or to review the evidence or the facts.

A petition for the exercise of the prerogative jurisdiction of the High Court is not, to use the words of Lord Parker, a cloak for an appeal in disguise. This Court will interfere and issue a writ of mandamus only if the statutory tribunal in question has refused to do what in law it is bound to do, or is attempting to do something which in law it has no power to do. This court in a petition under Article 226 of the Constitution does not go into the question of disputed facts. It does not review evidence and come to its own conclusions on facts. It is quite possible that, if I were a judge of fact and hearing this case as if it were an appeal and having to determine the guilt or otherwise of the petitioner, I might have come to the conclusion that on the evidence on record the charge of malpractice of smuggling an additional answer book from outside has not been brought home to the petitioner beyond all reasonable doubt. But that certainly is not my province, and I cannot hold that on the facts of this case the University has done something which it had no power to do, such that its action should be interdicted in the manner sought for in this application. I therefore, hold that this writ petition must fail. It is accordingly dismissed.

20. I realise the stress of mind and suspense under which the petitioner must have been labouring. I can well understand his anxiety to vindicate himself by seeking to remove the smear upon his character. He is still a student, and taking all the circumstances into consideration, I think I should make no order as to costs against him.