
(1986) 12 AHC CK 0044

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8188 of 1985

Sharad Kumar

APPELLANT

Vs

Kanpur University and Others

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 29, 29(3)

Citation : (1987) 1 AWC 694

Hon'ble Judges : K.P. Singh, J;B.L. Yadav, J

Bench : Division Bench

Advocate : H.N. Tripathi, for the Appellant; Radhey Shyam, for the Respondent

Final Decision : Allowed

Judgement

B.L. Yadav, J.—Sharad Kumar, a student of M.Sc. Previous (Chemistry), has filed the present petition under Article 226 of the Constitution of India against the order dated 28-3-85 (Annexure-5 to the petition), cancelling the result of the Petitioner of 1984 M.Sc. Previous (Chemistry) Examination on the ground of use of unfair means. The Petitioner has prayed for a writ of Certiorari quashing the impugned order and for a writ of Mandamus commanding the Respondents to permit the Petitioner to appear in M.Sc. Final Examination which was scheduled to be held from 1st July. 1985.

2. The facts of the case are few and simple and they are these. The Petitioner appeared in M.Sc. Previous (Chemistry) Examination with Roll No. 550 from the Kanpur University. He solved the Chemistry I Paper (Inorganic Chemistry) and did not use any unfair means in the examination nor there was any report from the Centre Superintendent or from the Flying Squad to that effect. But his result was withheld. The father of the Petitioner sent a letter on 13-12-84 to the Vice-Chancellor and again on 25-3-85 the Petitioner submitted a representation to the Vice-Chancellor through the Principal of V.S.D. College, Kanpur to the effect that he has been unofficially informed that his result of M.Sc. Previous (Chemistry)

Examination of 1984 has been withheld, when he never used unfair means in the said examination. The Petitioner made several efforts to know the reason as to why his result has not been declared. But he received no response. He was not given any opportunity of being heard and if some decision was to be taken against him the Petitioner must have been heard. On the representation of the Petitioner (Annexure-3 to the petition), the Principal of the College submitted a report on 27-3-85 (vide page 8 of the paper book), that according to the record of the Principal the Petitioner was not caught using unfair means. But ultimately by the impugned order dated 28-3-85 the result of the Petitioner of M.Sc. (Previous) Examination of 1984 was cancelled.

3. On 22-5-85 this Court directed the learned Counsel for the University to file a counter affidavit till 10-7-85 and thereafter rejoinder affidavit was to be filed within ten days. In the meantime the Petitioner was permitted to appear in M.Sc. (Final) Examination commencing from 1-7-85, but his result was not to be declared till further orders of this Court. The petition was admitted and notices were issued on 23-7-85. The Affidavits have been exchanged. The learned Counsel for the parties agreed that the petition may be decided on merits. We, now, propose to decide the same.

4. Sri H.N. Tripathi learned Counsel for the Petitioner urged that there was no report of the Centre Superintendent nor the Flying Squad had made any report against the Petitioner nor he was caught using unfair means during the examination. No opportunity of hearing, whatsoever, was given to the Petitioner before cancelling his result by the impugned order. It is only after filing the counter affidavit that in para 3 thereof, (in reply to paras 1 to 9 of the writ petition), it has been disclosed that the Examiner, while examining the answer books pertaining to M.Sc. (Previous) I paper, submitted a report to the Examination Committee that the Petitioner has written answers of M.Sc. Previous (Chemistry I paper) at ease and convenience and that the language used in the answer book appears to be similar to some standard book. It is better to quote the actual words as under:

(In Roman: Uttar Pustika suvidha se baith kar likhi gayee hai. Bhasha ka Prachalit pustak ki bhasha se samya hai). The Petitioner could not get any opportunity to show his innocence and bona fides in answering the questions in that Paper. The impugned order was passed in violation of the principles of natural justice. It was accordingly prayed that the impugned order may be quashed and the result of M.Sc. (Previous & Final) Examinations may be declared.

5. Sri Radhey Shyam, the learned Counsel appearing for the University, was candid enough to accept that it was a fact that the Petitioner was not given any opportunity of being heard, nor even the reports of the Examiner as contained in para 3 of the counter affidavit as indicated above, were given to the Petitioner nor he was given any opportunity of hearing before passing the impugned order. But with all emphasis and tenacity he urged that the result has been correctly cancelled and in these circumstances no opportunity of hearing was required to

be given when the report of the Examiner was received later on. The impugned order requires no interference as the same was based on conclusions of the Examination Committee and it was outside the jurisdiction of the High Court to interfere with those conclusions. He relied heavily on a Full Bench decision of this Court in Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, .

6. Having heard the learned Counsel for the parties at considerable length, we are of the opinion that the submissions urged on behalf of the Petitioner cannot be said to be without substance. The point for determination is as to whether the Petitioner was given any opportunity of hearing before passing the impugned order cancelling the result of the Petitioner of M.Sc. Previous (Chemistry) Examination of 1984. The Petitioner appears to be conscious enough rather serious to make representations to the Vice-Chancellor of the University with a view that he was at a loss as to why his result was not being declared nor he could know as to why his result has been withheld. We have perused the counter affidavit but there is no reply to the representation made by the Petitioner. It appears that inspite of representations having been made by the Petitioner no reply was given to him. In counter affidavit also in para 5 while replying paras 10 to 26 of the writ petition it was admitted that no show cause notice was issued to the Petitioner before cancelling his result. It is better to quote para 5 of the counter affidavit which is as under:

5. That in reply to averments made in paras 10 to 26 of the petition, it is stated that it is admitted that no show cause notice was issued to the Petitioner, before cancelling the result but the report submitted by the Examiner could not have been explained by the Petitioner and a perusal of the answer book will be sufficient proof of the report submitted by the Examiner. The answer book shall be produced at the time of the hearing of the petition.

7. Section 29 of the State Universities Act, 1973 enacts about the examination committee in the University or affiliated degree colleges. Sub-section (3) of Section 29 provides about the examination committee and its duties and power to deal with and decide cases relating to the use of unfair means by the examinees. It is well settled that proceedings pertaining to use of unfair means are in the nature of quasi judicial proceedings--See The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, ; Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, ; Satwant Singh v. Board of High School and Intermediate Education U.P. AIR 1974 SC 273 and Narendra Narain Misra Vs. The Vice-Chancellor, Gorakhpur University and Others, .

8. A Full Bench of this Court in Triambak Tripathi v. Board of High School and Intermediate Education 1971 ALJ 515, has laid down primarily three principles to be observed by the examination committee dealing with the use of unfair means by the examinees and they are: (1) the examinee whose rights are affected must be given notice of the charges which he has to meet, (2) he must be given

opportunity to make representation and to explain the allegations made against him and to have his say in the matter; and (3) the authority conducting the proceeding must not be biased and should act in good faith.

9. In *Km. Madhulika Mathur v. Gorakhpur University* 1984 AWC 381 : 1984 Edu. Cas 101 a Full Bench of this Court after considering the entire case law on the subject held as follows:

It is well established that in a case where the examination result of an individual examinee is cancelled on the ground of adoption of unfair means by him, there is charge against him and the cancellation is in the nature of penalty and the committee acts quasi judicially in such cases.

10. Applying the principles laid down in the aforesaid case (*supra*), we are of the view that in the instant case admittedly no notice was served on the Petitioner nor he was given any opportunity of hearing in respect of the report of the Examiner to the aforesaid effect that the answer book of M.Sc. Previous (I paper) appears to have been answered at ease and the language appears to be similar to some standard book. We, however, appreciate the conduct of the University in admitting under para 5 of the counter affidavit that no show cause notice was issued to the Petitioner before cancelling the result. We are of the opinion, that the principles of natural justice were violated inasmuch as neither any notice was issued to the Petitioner nor he was given opportunity to explain the report of the Examiner--See *Km. Narnrata Jain v. Meerut University*, Meerut 1982 Edu. Cas 287 (DB).

11. The matter can be viewed from another angle. The report of the Examiner evidences that the said charge was too vague and indefinite. The first part of the charge was that the answer book was written at ease. It is a matter of common knowledge that every examinee is expected to write the answers of different questions sitting at ease. He has to be conscious about his future prospects depending on the question he answers. The first part of the report obviously does not make any relevant and pertinent sense in the context in which it was submitted nor the first clause of the report can be said to constitute the "use of unfair means".

12. The second part of the report, i.e. In Roman: Bhasha ka prachalit pustak ki bhasha se samya hai. This clause of sentence used by the Examiner is rather a bit incomprehensible. From the context of the alleged charge of using unfair means, in which this clause appear, it has to be reconciled that it must be referring to the language used by the Examinee in answering different questions. This part of the report of the Examiner of the charge is equally too vague. Even if some sense is deliberately made out, it does not even refer to the name of the book from which similarity was alleged. We directed the learned Counsel for the Respondents to produce that book (or prachalit book) about which reference was made in the report and granted him time, but he failed to produce that book.

13. There appears to be another aspect of the matter. We required the relevant

answer book which was produced before us. A perusal makes it evident that it is written in good hand-writing. We are conscious that the subject in which the examinee appeared (Inorganic Chemistry) was not a subject where questions were to be answered like questions of Arts Subjects, i.e. History and Hindi etc. where there was scope for innovation or variety of expression. In the Science subjects like Inorganic Chemistry or Physics or Mathematics, while answering questions similarity was bound to occur. The answers have to be written almost in similar way step by step, so as to arrive at a particular correct answer. In these Science subjects there is hardly any room for a difference or innovation. Unlike Arts subjects, in Science subjects, an examinee cannot cram up certain points and thereafter he can develop it in a detailed answer in his own language. In these Science subjects the answers have to be almost similar and likely to tally step by step. Only in that case, where without proceeding step by step an examinee abruptly reaches the conclusion, or the exact answer, it can be said that the examinee has adopted unfair means or copied from some other answer book.

14. In *Arun Kumar Singh v. University of Gorakhpur* 1985 Edu. Cas 233, in a Division Bench Case, in similar facts where charge of unfair means was levelled against an examinee, who was taking examinations in M.Sc. (Physics) final year, Hon'ble M.N. Shukla the Acting Chief Justice (as he then was) held on page 236 as follows:

In a pure Arts subjects, for instance, there is room for innovation, variety and ingenuity of expression. On the other hand in a subject like Physics and Chemistry there is hardly any room for difference or novelty. In such subjects answers are in the natural course likely to tally. Usually in such cases in stock answer begins with much phrases as "let us suppose" or "let us construct" etc. While dealing with such matters one should not be surprised at the similarity which is exhibited in the answers. Further more in the matter of resemblance also it may be emphasised that similarity in the mistakes is more indicative of the use of unfair means than mere similarity in the correctness of answers. If the mistakes are varied in character and are repeated by a group of examinees, it may not necessarily lead to the conclusion that they were the result of use of unfair means. On the other hand, if the mistakes are of a fantastic nature and are repeated in identical fashion by a large group of examinees, the inference of copying would be well founded. Not only this, in a subject like Science and Mathematics there is yet another criterion which experience dictates can be of substantial use in coming to the correct conclusion. If in the answers in such subject the intervening steps are jumped over and only the final answer is neatly set out, it would certainly justify the inference that the examinee had resorted to unfair means. On the other hand if in subjects as Science and Mathematics there are complete answers without omission of any step and no mistake is committed in coming to the final answer, the fact that the other examinees have also answered in exactly the same manner with similar precision and elaboration, cannot warrant the conclusion that the examinees concerned had used unfair

means. Notwithstanding Bertand Russel's encomium regarding the sublime beauty of certain equations in Mathematics, the fact remains that it is a subject which does not admit of variety of style, diversity of expression or embellishments of language.

15. We are accordingly of the view that the charges of unfair means against the Petitioner was vague, he was not served with the notice about the charge of unfair means and no opportunity of hearing was afforded, consequently the principles of natural justice were violated. Even if the charge is accepted on its face value, it only says that answer books were written at ease. Every examinee was expected to write answer books at ease in the examination hall. It was not using any unfair means. As regards similarity of some answers with some popular books on the subject of Chemistry was concerned, we are of the view that in Science subjects, to wit, Physics, Chemistry and Mathematics etc., the similarity from some standard popular book or the answer book of some other examinee was bound to occur. It can be, however, said to be a case of using unfair means, only when without attempting some intervening important steps, the examinee jumps to the correct answer, or some gigantic mistake of unusual nature has been committed by several examinees. This was not done by the present Petitioner. Even the alleged popular book from which the Petitioner's answer book of M.Sc. (Previous) Chemistry 1st Paper was said to bear some resemblance was not referred in the counter affidavit, nor the same was produced before us inspite of time being granted. We are satisfied that the Petitioner was not guilty of having used unfair means in M.Sc. (Previous) Examination.

16. Now coming to the scope of Article 226 in respect of the findings or conclusions of the Examination Committee as constituted u/s 29 of the Act. In the Full Bench case of Ghazanfar Rashid v. Secretary, Board of High School etc. (supra), relied upon by the learned Counsel for the Respondent, this Court held that the Examination Committee and the Screening Committee are constituted of experts, they are the sole judges to determine the question of use of unfair means on the basis of materials present on record. The decision of quasi judicial authority would be vitiated if it is based on no evidence or if it is arbitrary and the conclusions which the authority has arrived at could not be reached by any reasonable person or body of persons. This case was cited before the Division Bench (case of Arun Kumar Singh (supra)), but the same was distinguished. In Ghazanfar Rashid's case the charge was that the Petitioner arrived at the correct answer without going through the requisite working either in the rough or in the answer itself whereas the steps taken by him could not lead to the correct answer. Under those facts the Examination Committee came to the conclusion that the Petitioner used unfair means. But the present case is based on different facts. In view of the discussions made earlier in the present case, the impugned order was arbitrary and capricious and no reasonable person can come to the conclusion, the Examination Committee had reached. The Full Bench case of Ghazanfar Rashid (supra), is of no assistance to the Respondents.

17. In view of the discussions made herein-before, the impugned order cannot be sustained and deserves to be quashed.

18. In the result, the petition succeeds and is allowed. The impugned order dated 28-3-1985 (Annexure-V attached with the writ petition) is hereby quashed and the Respondents are directed to declare the result of the Petitioner for M.Sc. Chemistry 1st year of the year 1984 and if the Petitioner has succeeded in that examination, his result for M.Sc. Chemistry Final year examination, i.e. of the year 1985 should also be declared forthwith. Parties are directed to bear their own costs in the present petition.