
(1991) 02 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 3006 of 1990

Shri Bhairav Nath

APPELLANT

Vs

Central Board of Education and others

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Citation : AIR 1991 Delhi 232 : (1991) 43 DLT 688

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : S.S. Vats, for the Appellant; Anil Kumar and Ms. Anita Shani, for the Respondent

Judgement

1. The petitioner, a student of Government Boys Senior Secondary School, New Police Lines, Delhi, appeared for the 10th class examination conducted by respondent No. 1 - Central Board of Secondary Education, Delhi in March 1990. His Roll No. was 471819. The petitioner appeared in the said examination at the Centre in Government Boys Senior Secondary School No. 2 Roop Nagar, Delhi. The petitioner appeared in all the examination papers offered by him from 15th March 1990 to 30th March 1990 as per the date-sheet issued by respondent No. 1. The last paper in which the petitioner appeared was in Mathematics held on 30th March 1990. It is alleged by the petitioner that the result of the examination was declared on 4th June 1990 by respondent No. 1. When the petitioner went to find out about his result, he found that a remark "Result withheld" was mentioned against his Roll Number. He, Therefore, made frantic efforts to find out why his result was withheld. The Petitioner thereafter received a letter dated 29th June 1990 from respondent No. 1 informing that, the petitioner -should present himself in the office of respondent No.1 on 20th July 1990 at 2 p.m. and it was alleged in the said letter that the petitioner had slipped away from the examination hall with his answer book in Mathematics paper held on 30th March 1990 and it amounted to use of unfair means.

2. It is alleged by the petitioner that he presented himself in the office of

respondent No. 1 on 20th July 1990 before the Results Committee and explained that he did not slip away from the examination hall with his answer book in Mathematics paper and that he had handed over his answer book to the invigilator on duty on that date. According to the petitioner, the name of the invigilator to whom the answer book was handed over was one Shri Yusuf Ali. It is further alleged by the petitioner that the petitioner was under the impression that the members of the Committee were satisfied by his Explanation, however to his utter surprise, he received a memo on 9th August 1990 through the Desk Officer of respondent No. 1 informing him that his entire examination for the year 1990 had been cancelled and the petitioner was further debarred from appearing in any examination of the Board to be held in the year 1991 and 1992. The petitioner has challenged this order of respondent No. 1 dated 9th August 1990 in this writ petition under Article 226 of the Constitution of India.

3. It was contended by the learned counsel for the petitioner that the petitioner did not slip away with the answer book as alleged by respondent No. 1, that it was practically impossible for any candidate to slip away with the answer book because in the said examination hall there were only 20 examinees with two invigilators and there was only one door. It was further submitted that the petitioner being an outstanding player of Soccer and had as such represented the school in several tournaments and won prizes and trophies, the petitioner did not gain anything by involving himself in mal practice which results in rustication. Learned counsel submitted that the normal procedure in conduct of examination by the Board is such that it is difficult for any candidate to slip away with the answer book. There is an attendance sheet maintained at the examination hall itself and the signatures of the examinee/ student are taken on various occasions on this attendance sheet; firstly when he is given the answer book along with the question paper, secondly when he takes supplementary sheet and lastly when he gives back the answer sheets to the invigilator after he has finished writing the answer book. Learned counsel submitted that the attendance sheet filed by respondent No. 1 as Annexure R- 1 / 2 shows that the petitioner has signed the attendance sheet while taking the answer book and also the supplementary answer book and has finally signed at the time of return of the answer book to the invigilator. This attendance sheet is kept by the invigilator with himself and he takes the signatures only after he receives the answer book. Thus, if the petitioner had slipped away with the answer book, the invigilator would not have allowed the petitioner to sign in Column No. 6 of the attendance sheet which indicates that the answer book has been returned to the invigilator. He further submitted that the invigilator is also required to sign at the end of the examination after he receives the answer book. In the present case, the invigilator has signed in the last column of the attendance sheet but later on certain remarks have been added in the column which clearly indicate that there is certain interpolation done by the invigilator or the Superintendent concerned after it was found that the answer book is not traceable. Learned counsel submitted that it was not difficult for the invigilator or the peon or the constable

present at the examination hall to nab the petitioner if he had tried to run away with the answer book, but neither the petitioner was nabbed nor was he called later on by any one to find out about the answer book. Learned counsel submitted that respondent No. 1 has published Examination Bye-laws and under Rule 6.6.2 of the said Bye-laws, the procedure to be followed in cases of alleged unfair means is prescribed. Learned counsel submitted that respondent No. 1 did not follow this procedure and the rules of natural justice were not complied with inasmuch as neither the petitioner was shown the material available with the Board to, come to the conclusion that he had run away with the answer book nor was his Explanation and representation considered by the Results Committee before the order debarring him was passed. Learned counsel submitted that under the said Rule it is necessary to record the statement of the concerned invigilators, peon, police constable etc., if any, which is to be forwarded to the Controller of Examination of the Board along with the Explanation of the candidate. The statement should contain the time of the incident and details of the case as to how the candidate took away the answer book and also the efforts made to recover the answer book. Learned counsel submitted that though respondent No. 1 has filed some statement of invigilators along with the counter affidavits, the statements were not filed when answer to Show Cause Notice was filed by respondent No. 1 and he has reason to believe that these statements were not available, rather not produced when the Results Committee considered the case of the petitioner and have been procured later after the writ petition was filed. Learned counsel submitted that the statements of the invigilators now filed show that there is interpolation in these statements. Learned counsel submitted that these statements were procured later on by respondent No. 1 in order to cover their lapse in losing the answer book of the petitioner. Learned counsel also referred to the extracts of the minutes of the Results Committee and contended that from the minutes it was not possible to know what was considered by the Results Committee in arriving at the conclusion that the petitioner was guilty of adopting unfair means. Learned counsel submitted that the impugned order does not give any reason and it is not possible to know on what basis the Results Committee came to the conclusion that the petitioner ran away with the answer sheets.

4. On the other hand, it was contended by the learned counsel for respondent No. 1 that it is fairly common in Delhi that the students run away with their answer books and since there is no mala fide alleged against any of the officers of respondent No. 1 and the petitioner's case was fully considered by the Results Committee after giving hearing to the petitioner, there is no violation of the rules of natural justice, thus this Court should not interfere with the finding of the Results Committee. Learned counsel relied on *Dipa Pal Vs. University of Calcutta*, *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, *Suresh Koshy George Vs. University of Kerala and Others*, and *Prem Parkash Kaluniya Vs. The Punjab University and Others*, in support of his contention, Learned counsel further submitted that respondent No.

` carried out the investigation strictly in compliance with the Examination Bye-Laws and the signatures on the attendance sheet does not prove the case of the petitioner because very often even the invigilators sign before the answer books are actually collected by them because every one is in a hurry to leave immediately after the examination time is over, particularly when it is the last paper. Learned counsel, submitted that immediately after the petitioner ran away with the answer sheet, the invigilators reported the matter to the Superintendent, and the Principal of the school in which the examination was held reported the matter to the police and a copy of the complaint was sent to the Results Committee along with the attendance sheet and a note prepared by the Central Superintendent. It was submitted that the note of the Central Superintendent itself showed that the petitioner had run away with the answer book and an F.I.R. was lodged on that very day.

5. The Supreme Court in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, has discussed the scope of inquiry by courts and observed as follows (at page 878):

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the University or appellant No. 1 set up inquiry 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 Universities. In dealing with the validity of the impugned orders passed by Universities under Art. 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. Inquiries 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 inquiries, the Tribunals must scrupulously follow rules of natural justice, but it would, we think, not be reasonable to import into these inquiries are considerations which govern criminal trials in ordinary court of law. In the present case, no animus is suggested and no mala fide have been pleaded. The inquiry has been fair and the respondent has had an opportunity of making his defense. That being so, we think the High Court was not justified in interfering with the order passed against the respondent."

6. The Supreme Court in Suresh Koshy George Vs. University of Kerala and Others, referred to the following observations of Lord Harman, J. in Byrne v. Kinematograph Renters Society Limited 1958-2 All ER 579:

"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 accusation made, secondly that he should be given an opportunity to state his case, and thirdly of course, that the tribunals should act in good faith. I do not think that there really is anything more."

and held that since the inquiry was fair and adequate opportunity was given to the student to defend himself, there was no violation of natural justice in that case. This view was reiterated by the Supreme Court in Prem Parkash Kaluniya Vs. The Punjab University and Others, . The Supreme Court observed as follows (at p. 1411):

"The law on the point is well settled that an examinee must be adequately informed of the case he has to meet and given a full opportunity of meeting it. As to what the extent and content of that information should or ought to be would depend on the facts of each case. The examinee can ask for more information or details with regard to the material or evidence which may be sought to be used against him and normally if he makes a request in that behalf, the University authorities, in order to inform him adequately of the case he has to meet, would supply him the necessary particulars or details of the evidence. In the very nature of things no hard and fast rule can be laid down and so long as the Court is satisfied that the opportunity which was afforded to the examinee was adequate and sufficient, it will not interfere with any orders prejudicial to him which may have been made by the University authorities.

7. Therefore, this Court in exercise of jurisdiction under Art. 226 of the Constitution of India ordinarily will not interfere with the finding of impartial committee like the Results Committee unless it is found that the rules of natural justice have not been complied with or that the decision of the Committee is contrary to evidence, against the established procedure or perverse.

8. The basic rule of natural justice requires that a party must have an adequate opportunity of knowing the case he has to meet, of answering it and of putting his own case.

9. In the present case the submission of the respondent is that the respondent followed the procedure prescribed and the Results Committee took the decision after giving a hearing to the petitioner and thus the action cannot be challenged as being violative of rules of natural justice.

10. Thus, it is necessary to see whether respondent No. 1 followed the procedure prescribed under the Examination Bye-laws; whether there was evidence before the Committee to arrive at the conclusion and whether the material was shown to the student and adequate opportunity was given to him to meet the charge.

Rule 6.6.2 of the Examination Bye-Laws which provides for the procedure for dealing with an alleged unfair means reads thus:

6.6.2 Identification and Reporting of Unfair Means cases

a) xx xx xx xx xx xx

b) As soon as it is brought to the notice of the Centre Superintendent that a candidate has smuggled out an answer book, he should call for the student directly or through the principal of the school concerned and try to secure the answer book. In case of non-availability of the answer book, the matter should be reported to the police and a copy of the report to be sent to the office of the Board along with the statements of the invigilators present in the room, and also of the candidate. The statements of peon, police constable etc., if any, relevant to the situation should also be forwarded. The statements should contain the time of the incident and details of the case as to how the candidate took away the answer book. Efforts made to recover the answer book should be stated."

11. Thus, as soon as the Superintendent is informed that a candidate has smuggled out an answer book he has first to call the student himself or through the principal of the school concerned and try to secure the answer book. If the Superintendent fails to procure the answer book from the student, the matter is to be reported to the police and the copy of the report lodged with the police and the statements of invigilators present in the room and the statement of the candidate is to be forwarded to the Board. The nature of the statements of invigilators is also prescribed. It is required to state him of the incident and the details of the case as to how the candidate took away the answer book and also the efforts made to recover the answer book.

12. In the present case it is not disputed that the statement of the candidate was not recorded. Now, it is alleged by the respondent that on the same day, a complaint was lodged by the principal of the school with the police regarding the petitioner's running away with the answer book. A carbon copy of the complaint addressed to the S.H.O. Police Station Roshnara Road, Roop Nagar, Delhi is in the file. However, respondent No. 1 has not come forward either with the Daily Diary Entry or copy of the FIR to substantiate the claim that the FIR was lodged on the same day. The petitioner was not nabbed on the spot and he has alleged that he came to know about the allegation of running away with the answer book only after he received the intimation from respondent No. 1 requiring him to appear before the Results Committee. Since in the rejoinder affidavit the petitioner has alleged that the documents in the file were not prepared contemporaneously and no FIR was lodged on 30-3-1990 the respondent ought to have produced the Daily Diary Entry and the FIR along with the counter affidavit filed to the main writ petition which was filed by respondent No. 1 after Rule was issued in the writ petition and after rejoinder affidavit was filed by the petitioner. Admittedly, the police did not take any action on the complaint because the petitioner was not called and his statement was also not recorded.

13. It was submitted by the learned counsel for respondent No. 1 that on the same day i.e. 30-3-1990 statements of the two invigilators were recorded. Now, respondent No. 1 did not make any mention regarding these alleged statements of the invigilators in the answer to the Show Cause Notice filed by them but has referred to it only later on in the counter-affidavit. The petitioner has, Therefore, alleged that the statements of the invigilators were procured by respondent No. 1 at a later stage in order to show that the inquiry was made strictly in compliance with the Examination Bye-Laws.

14. The allegation of the petitioner cannot be said to be without any basis. A perusal of the two statements of the invigilators indicate that the statements were got recorded with the requirement of the rule in mind. A sentence has been added at the end at some subsequent stage. The addition is identical in the statements of both the invigilators. This addition indicates at what stage the petitioner fled away with the answer book. Thus, the fact that the respondent failed to even refer to it at the earliest opportunity in the reply to the show cause and the identical interpolation in the statements of both the invigilators, to my mind, raises a doubt regarding its authenticity and credibility. Then there is the note submitted by the Superintendent Ext. R- 1. This note does not bear any date. Thus, it is not known on what date the entries were made in this note and when it was submitted to respondent No. 1.

15. Though respondent No. 1 has not stated what efforts were made to trace out the answer books in the two affidavits filed in court, there is a letter written by the principal of the Govt. Boys Sr. Secondary School on the file dated 31-3-90 i.e. one day after the incident. It is noted in the said letter that on receipt of the message, the student was called in the school through one Shri H. S. Mudgal and he denied the charges and efforts were being made to trace out the answer books. There is nothing on record to indicate what efforts were made and with what results. The petitioner has however specifically averred in the writ petition that he did not know why his Result was withheld till he received the intimation from respondent No. 1. Thus, in the absence of any other evidence it is difficult to place any reliance on this letter. For this reason, respondent No. 1 has itself not referred to this letter in any of the affidavits filed in court. The nature of investigation carried out by the concerned authority, to my mind, is not in compliance with the prescribed bye-laws and to say the least does not inspire confidence.

16. Now, the next document is the attendance sheet. This is the sheet anchor of the petitioner's argument. It is not disputed by the respondent that the attendance sheet is in the possession of the invigilator and the student is required to sign column 4 of the sheet on his receiving the answer sheet at the beginning of the paper, Then he is required to put his signature in column No. 5 if and when he takes a supplementary answer book. Then when he returns the answer books, he signs in column No. 6. This column also indicates the time of the return of the answer books. Then in the last column i.e. column No. 7,

Assistant Superintendent, i.e. invigilator is required to sign after he receives back the answer book. Now, the attendance sheet filed by the respondent shows that the petitioner has affixed his signatures when he took the answer book in the first instance in column No. 4, then in column No. 5 when he took a supplementary sheet and also the third time in the column No. 6 meant for signing when he returned the answer book.

17. Though much was sought to be argued by the learned counsel for the petitioner on the noting regarding time mentioned in column No. 6 because there is overwriting in this column, I do not think the time of return of the answer book is relevant. Column No. 7 is the crucial factor in this case. A bare look at this column indicates that the invigilator affixed his signature first and the remark in the column was written later. The remark of the Superintendent is partially above the signature of the invigilator and partially below his signature. Because of paucity of space while writing the remark though some words are written above the signature, the writing was continued below the signature to complete the remark. Now as per the regular procedure, the invigilator signs only after the student returns the answer book. Thus, neither the signatures of the student would have been taken in column No. 6 of the attendance sheet, nor would the invigilator sign in column No. 7 if the student had not returned the answer sheet and had run away with the same. The argument that because the invigilator was in a hurry, he must have signed the attendance sheet earlier or that he may have also taken the signature of the student before the time for returning the answer book was over can be no Explanation .

18. The impugned decision of cancellation of results and rustication for three years not only affects the right of the petitioner as an examinee but also his right to reputation. Thus as held by the Calcutta High Court in *Dipa Pal Vs. University of Calcutta*, the Committee which considers breaches of discipline must act with due care and caution. If the invigilators do not take proper care to ensure that the procedure is strictly adhered to and an answer sheet gets misplaced, the student whose answer sheet is lost cannot be blamed and punished.

19. No doubt in the present case the petitioner has not alleged any mala fide against the Results Committee which is manned by people of high repute. However the real question is whether the petitioner had the opportunity to explain his point of view to the Results Committee and whether he was shown the material which was placed before the Results Committee. I find from the notice dated 29th June 1990 sent by respondent No. 1 to the petitioner that the notice itself states that the material connected with the case could be seen by the student at the time of the hearing itself i.e. in the presence of the Committee on 20th July 1990 at 2 p.m. It is not known whether the documents which are on the file of respondent No. 1 were before the Results Committee. Since the impugned order does not contain reasons it is difficult to know what evidence was considered by the Committee. The minutes of the Results Committee do not throw any light on this aspect. It is submitted by the learned counsel for

respondent No. 1 that it has to be presumed that these documents were before the Results Committee. I find it difficult to accept this contention. Respondent No. 1 is required to place positive proof on record to show that all the material on which it relied was shown to the Results Committee.

20. Normally particulars and statements must be given to the student before the hearing so that he can prepare the answers. Now even if it is assumed that in a case like the present one even if the material was divulged at the hearing it would be sufficient compliance of the rule, in the absence of any noting or evidence that the material was even placed before the Committee, it is doubtful whether the student could get to see the statements.

21. It was submitted by the learned counsel for respondent No. 1 that the Results Committee could even now be asked to reconsider the matter. However I am informed that the 10th class examination for 1991 are commencing from 15th March 1991 onwards. The petitioner has already lost one year. If the case of the petitioner is sent back to the Results Committee for reconsideration he may lose one more year because it is not easy to call a meeting of the Committee at short notice.

22. Learned counsel for the petitioner very fairly submitted that since the petitioner has not passed in all the subjects, even if the petitioner is allowed to appear in the 10th class examination commencing from 15th March 1991 onwards he will not insist on the formal declaration of his results for 1990 examination.

23. In the light of the discussions above I have no hesitation in coming to the conclusion that the decision was taken by respondent No. 1 in breach of rules of natural justice and thus cannot be sustained.

24. In the circumstances, the writ petition is allowed. The Rule is made absolute. The impugned order dated 9th August 1990 is set aside. Respondent No. 1 is directed to allow the petitioner to appear for the 10th class examination to be held in March 1991. Parties to bear their own costs.

25. Petition allowed.